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**The Role of National Human Rights Commission,  
In Administration of Human Rights Justice :  
An Analytical Study**

**A THESIS SUBMITTED TO  
SAURASHTRA UNIVERSITY, RAJKOT  
FOR THE AWARD OF THE DEGREE OF**

**Doctor of Philosophy  
in  
LAW**

**By  
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**SUBMISSION OF THESIS  
JUNE-2012**

## **DECLARATION**

I here by declare that this thesis entitled “**The Role of National Human Rights Commission, In Administration of Human Rights Justice : An Analytical Study**” which I submit for the award of Degree of Doctor of Philosophy in Law, to the Saurashtra University, Rajkot as a research work done by myself.

I also declare that this thesis or any Part of it has not been submitted to this or any other university for the award of any Degree, Diploma, or Fellowship.

**Place : Rajkot**

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**( Vaishnav Niyati R. )**

**Dr. M.K. Padalia**  
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Rajkot.

## **CERTIFICATE**

This is to certify that the thesis entitled “**The Role of National Human Rights Commission, In Administration of Human Rights Justice : An Analytical Study**” submitted for the award of Degree of Doctor of Philosophy in Law, is a record of the research work done by Vaishnav Niyati R. under my guidance and supervision during the period September 2003 to June 2012.

I recommend that it should be forwarded to the examiners for evaluation.

**( Dr. M.K. Padalia )**

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**( Vaishnav Niyati R. )**

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## CHAPTER 1

### PROBLEM , METHODOLOGY, SCOPE, AND INTRODUCTION

#### 1.1 The Problem :

The Role Of National Human Rights Commission In Administration Of Human Rights Justice :

Naturally, these two matters have many social dimensions. Today democracy system in majority nations on the world. The Personal Liberty and Protection of Fundamental right are wholly accepted concepts in every country of the world.

In relation to Human Rights, position is really strange, I.e. we move to see our friend in well and healthy codition, but at our surprise we find our friend on bed of hospital – Today the same position Human Rights have !

At first, what are Human Rights and why many people do not know about it. Same position is about National Human Rights Commission,s work. How National Human Rights Commission is working, The common people must have it's knowlwdge. Because, if a person cant find justice from anywhere, then goes to National Human Rights Commission.

In our Constitutional Law of India, the Preamble presents an ideal of **FRATERNITY** through Personal Liberty and protection of Fundamental Rights are guaranteed. But cases of violations of all these Rights has been increased.

Human Rights have universal recognisation. But there is much inequality among people. Often, we find many cases those are violative to Personal Dignity.

Here, any self conscious citizen has many questions about National Human Rights Commission's work. The commission has taken interest in which type of cases and which type of decrees came out about that we have to know.

If National Human Rights Commission pay attention, then in this country has so many problems in which Human Rights justice can be administered.

Only from this thought, the Present Researcher found inspiration to study in depth the constitution of National Human Rights Commission. Plus, National Human Rights Commission's work and its contribution towards its administration of Human Rights justice which are also very useful.

## **1.2 Aims & Objective Of The Study :**

The Present Research scholar wants to arrange Research Activities for here mentioned aims and objectives:-

- 2.1 To examine the concept of Human Rights.
- 2.2 To understand the Constitution of National Human Rights Commission
- 2.3 To understand the administration of National Human Rights Commission
- 2.4 To understand Right to Life and to examine the contribution of National Human Rights Commission protection of it.
- 2.5 To understand Right to Equality and to examine the contribution of National Human Rights Commission Protection of it.
- 2.6 To understand Right to Liberty and to examine the contribution of National Human Rights Commission protection of it.

- 2.7 To understand Right to Dignity and to examine the contribution of National Human Rights Commission protection of it.
- 2.8 Statistically Report from this , an examination of the impact of National Human Rights Commission.
- 2.9 From National Human Rights Commission's Annual Report – Suggestions.

### **1.3 HYPOTHESIS :**

- 3.1 What is the Concept of Human Rights ? In addition, various legal schools effect on it.
- 3.2 What is the procedure related to National Human Rights Commission's Chairman & Members' appointment qualifications ?
- 3.3 What is the administration of National Human Rights Commission and what is the legal infrastructure to dispose complaints inside it ?
- 3.4 What is Right to Life ? Plus, what is the contribution of National Human Rights Commission in protection of it ?
- 3.5 Can National Human Rights Commission contribute for Protection of Right to Equality ? What is Right to Equality ? What is the contribution of National Human Rights Commission for the protection of Right to Equality ?
- 3.6 What is Right to Liberty ? and what is the contribution of National Human Rights Commission in protection of it ?
- 3.7 Can National Human Rights Commission contribute for Protection of Right to Dignity ? What is Right to Dignity? And What is the contribution of National Human Rights Commission for the protection of it?

3.8 Can we examine National Human Rights Commission's impact from statistical report of its work ? Can we find any proof from it ?

3.9 Can we suggest anything from reports of National Human Rights Commission's work

#### **1.4 SCOPE OF STUDY :**

The Present Research,s topic is National Human Rights Commission's contribution in protection of Human Rights. So, in this study's scope includes National Human Rights Commission's constitution. Plus it covers National Human Rights Commission's powers, work and protection of Human Rights at national level in different affected / damaged areas & taken steps towards it. All these matters are subjects of this research.

India's other states like, some where State Level Commission is working or not – Its reference's study is not also a subject of this research. But, where a provision lies and so far National Human Rights Commission,s jurisdiction expands up to states : Or there are some limitations on State Level Commission – So, all these related provisions are subject to this research. In addition, State taken actions which are not have directly component of Human Rights. But its form are specific kind of results so; only one or more than one Human Right affects adversely. Then stand by allegations – Points related by all these.

In the same reference, National Human Rights Commission's recommendations & orders are subjects of present research. Any constitutional or statutory institution may approach, procedure related to it and taken steps towards it are also dimension & scope of this study.

## **1.5 RESEARCH METHODOLOGY & COLLECTION OF DATA:**

The research study is mainly an analytical and comparative form. But, it has an effect of some historical, political & philosophical thinking.

The study mostly depends on secondary level data based points from reference books, journals, periodicals reports, newspapers & magazines.

## **1.6 Significance of study :**

### **1.6.1 At International Level :**

Human Right is a human concept. Which has not any National, Geographical or Political boundaries. Human Rights' advent & development both are in international form and has the same nature. And this concept's construction holds various kinds of beliefs. Those have important contribution. In that situation at international level all aspects should be covered. And maximize the concept of Human Rights and also introduce it, prepare it. In every nation's progress has big role in this.

In reference to India present research study will be useful to construct the international concept of Human Right, specifically to Indian at world level. And also useful to various nation's position's comparative study. This study will gainful to enflame Human Right's instruments at regional level & international level. This would be direct result of this study.

### **1.6.2 At National level :**

If there is any dilemma in People's mind about the concept of Human Right, that would be removed. In addition, an explanation of concept of Human Right at micro level to

society would be available whatever confusion about Human Right is existed in society or people that would be repealed.

Because of this study, people would be more and more familiar with own Human Right. So, at the time of violation of Human Rights, people can complain in National Human Rights Commission and ask reprisal of protection from it.

With this, how Commission is working & which type of power it has ..... and from both of this, the Commission has achieved results can be classified. All these information would be available from this study.

The National Human Rights Commission's authority is in recommendatory form. But, up to this time the Commission's recommendations towards Government, all are accepted by it. From this action, at national level, in interest of Human Right Commission's contribution is precious.

### **1.6.3 In contribution of knowledge :**

This study is very useful for expansion of knowledge based professions. Those who are connected to administration justice for them this study would be helpful to deliver justice. For Educators, Teachers, Researchers and every Citizens, this study would be useful. This study would be useful to judges, advocates, non – governmental organizations & victims of Human Rights violations.



## **1.7 Scheme of Research :**

The Present Research Student - for the object of this study wants to divide in here mentioned chapters :-

- 1.7.1 - Problem of Research, Methodology, scope and Introduction.
- 1.7.2 - Jurisprudence of Human Rights
- 1.7.3 - An Introduction of Human Rights and it's constitution.
- 1.7.4 - Promotion activities by Human Rights.
- 1.7.5 - Right to Life
- 1.7.6 - Right to Equality
- 1.7.7 - Right to Liberty
- 1.7.8 - Right to Dignity.
- 1.7.9 - Statistical Reports.
- 1.7.10- Conclusions & Suggestions.

## **List of RC Books**

Reports of NHRC

Other publications by NHRC

Dias : Jurisprudence

U. Chandra : Human Rights

J. Stone : Human law & Human Justice

P.M. Baxi : Constitutional Law of India

H.M. Seervai : Constitutional Law of India

Encyclopedia Britannica

Encyclopedia Americana

Naikar L.D. : “The Law Relating to Human Rights”

P. Basu J. : “The Law Relating to protection of  
Human Rights under the Indian  
constitution & other allied laws.”

## CHAPTER 2

### Rights: Meaning of

#### 2.1 Rights: Meaning of

Gone are the days, when food, clothing and shelter provided for all the needs of man. Today, we can clearly see the emergence of the 'welfare state', where man needs many other things. Among others, what we needs are 'Rights': Rights, which are recognized and enforced by the courts of law. We use the word 'Right' in many sense, when one says 'don't worry everything will be Right,' he or she means that things will work out satisfactory in the end. When a minister (preacher) advises us to do what is Right, we understand that we are being enjoined to follow the course that is morally correct. It is in the just sense Right - as a moral possession or normative property that has bothered political, moral and legal philosopher.

What a Right is or what sort of assertion it is to say that X has a Right to Y this is obviously a question about the meaning and nature of Rights.

History is strewn with attempts to characterize Rights in different ways. There are attempt to explain Rights terms of normative categories like duties, claims or immunities. There is a functional account of Rights highlighting what specific role they perform.

In all civilized societies, law consists of those principles in accordance with which justice is administered State and that administration of justice has be kind the physical power of the State.<sup>1</sup>

Every Right involves a 'title' or 'source' which it is derived. Thus, according to Salmond<sup>1</sup> the title is the 'defacto' antecedent of .which the Right is the 'dejure' consequent. In other words every Right involves a title or source from which it is derived.

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1. Edited by Dubey S.P. "Indian Philosophy and History" (1996) Published by Indian Council for philosophical Research. p. 148.

The terms used by Salmond in this statement should be clarified as : Antecedent is one which comes prior in the result .The term de facto' means 'actual or real', whereas, the expression de jure 'means in law' The statement thus means title is the actual or real past as a result of which a legal Right has come in to existence.

The conception of a 'Right' is of fundamental significance in modern legal theory, because one can not live without Rights which are recognized and enforced at law. Different authors have-defined-Rights in different ways. According to Salmond Right is an interest, recognized and protected by a rule of law! It is any interest respect for which is a duty, the disregard of which is a wrong. Thus is recognized and protected by a rule of legal justice.<sup>2</sup>

According to Holland, A' Right is the ability possessed by a person to contribute other's actions and self protection with the help and assistance of the state.'

According to Austin' A party has a Right when another or others are bound or obliged by law to do or for bear something.<sup>3</sup>

According to Dr. Sethana, A Right is any interest either vested or created under a law or a contract.<sup>3</sup>

A Right in this sense is thought to consist of five elements.

1. A Right holder (Subject of a Right)
2. What is Right to (object of Right) ,
3. Which he / she may assert, demand, enjoy, or enforce [exercising a Right]
4. Against some individual or group [The person or persons who have relative duty]

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2. Jhabwala N.H. "The element of Jurisprudence" (2000) – C. Jamanadas & Company, Ahmedabad, p.155  
3. Ibid p.110 In details.

5. The basis for such claim [justification of Right]

- **Right Holder (Subject of Right):**

Right is vested in a person who may be the owner of the Right, the subject of it, the person entitled, or the person in heritance.

In the western concept of jural relationship,<sup>3</sup> Right may be held by individual and groups - a family - a company, a state, a country; a region may also have Rights. For example, a particular family may have Right to perform religious Rights in temple. State may have Right over particular river, a country may have Right to know what is happening, in neighboring country, for security purpose.

Even the world may have Right to know as to what is happening in Bosnia: so also it is suggested that animate and inanimate things like trees, animals and buildings may have Rights. This is argued on the analogy of protection given and Rights as correlatives of duties, For example if a Forest Act says, tiger should not be killed. That subjects of Right may be person, body animate or inanimate objects.<sup>4</sup>

- **What is Right to (object of Right):**

A legal Right operates against some person who is under duty or obligation to obey or respect that Right. He may be distinguished as the person bound, or as the subject of the duty, or as the person of incidence. The object of the Right to, may be in the nature of claims which may be negative or positive, Negative in the sense, the subject might, pursue their own concern without interference and positive, a claim where the subject wants the bearer of co-relative duties (such as Government) to do something to advantage the interest of subject. For example in a negative Right to free speech and expression, one wants the Government not to interfere

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4. Nailkar L – D "the Law Relating to Human Rights" (2004) Puliani & Puliani Publishers Private Limited p – 1

in that freedom. In a positive Right like Right to work or livelihood, one want the Government to take positive action to provide such in interest of such citizens.

- **Exercise of Right:**

Exercise of Right may take some several forms. It may be claimed, in the sense: That I have and you have to give it or respect it, it may be asserted or demanded in the sense that the above job is done more confidently.’ To exercise Right, which also seeks protection against violation, and demands compensation for wrong done?

- **Respondents:**

Bearers of co-relative duty: with some exception, Right are held against someone or something. Actually, in Roman law actions were divided in two classes: Action in rem and Action in personam -’Action in rem meant an action brought to recover a specific, and action in ‘personam1 means a claim brought against a specific person. In Roman law, ‘Dominium’ was used to mean title which ad availed against the whole world where as obligation bound only the parties to agreement. These terms of Roman law have assumed a different meaning in English law. Thus Right in rem’ means a Right available against the whole world, for example, a Right to land or a house, this is the Right which is available against the entire world. It includes the Right to personal safety. Where as Right in Personam is a Right which is available against a definite or specified personam.<sup>5</sup>

Right may be private, i.e. vested in individuals, or they may be public, that is vested in, acquired or possessed by the public or a section. Again, Rights may be divided in to those which are ‘perfect’ or

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5 Dr. Mynani S.R. "Jurisprudence (Legal Theory)", (2001) Asia Law House, Hyderabad p.188

‘enforceable<sup>1</sup> and Rights which are imperfect or ‘enforceable and indeed it is a vain thing to imagine a Right without a remedy, for want of Right and want of remedy are reciprocal”, (HOLT c. j. in Ashby v/s white)<sup>6</sup>

This is an important feature of any Right speak. It is this co-relative with a duty a Right is said to exist. A Right without a co-relative duty on something or somebody is held meaning less; all human Rights talk is the Rights of kind, which have co-relative duties.

“A duty is an obligatory act; it is an act the opposite of which would be a wrong. Duties and wrongs are co-relative. The Commission of a wrong is the breach of a duty, and the performance of duty is the avoidance of a wrong” Salmond.

It is a debatable question whether Rights and duties are necessarily co-relative. According to one view, every Right has a corresponding duty.

The followers of his view point out that every duty is a duty towards some person or persons, in whom. Therefore a corresponding Right is vested.

The other school of thought distinguishes between relative and absolute duties. ‘Relative duties are those which have Rights corresponding to them, which absolute duties have no such Rights.

This school believes that the essence of a Right is that it should be vested in some; determinate person and that should be enforceable by some form of ‘legal process’ to be instated by him. Thus, duties towards the public at large or towards in determined portions of the public have no co-relative Right. So, also the duty to refrain from committing a public nuisance has no co-relative Rights.

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<sup>6</sup> Jhabwala N. H "The Element of Jurisprudence" NCS (2000) C. Jamanadas & Company, Ahmedabad.p. 112

As stated earlier by Austin, ‘every Right implies a corresponding duty every duty does not imply a corresponding Right’

In conclusion, it may be said that duties in the strict sense of the term have corresponding Rights, but duties in wider sense do not. It is relevant to note the observation of the Supreme Court in this connection. In *Minerva Mills Limited v/s. The Union of India* (1980) 3 s. c. c. 625, it observed that.

“There may be a rule which imposes an obligation on an individual or authority and yet it may not be enforceable in a court of law and therefore, not give rise to a corresponding

Enforceable Right in another person. But it would still be a legal rule, because it prescribes a norm of conduct to be followed by such individual or authority. The law may, provide a mechanism for enforcement of this obligation, but the existence of the obligation lies not depends upon the creation of such mechanism.

But present researcher after this wide discussion, about Rights and duty co-relation wants to add some definitions of ‘Right’ given by various scholars; to understand the meaning of Rights.<sup>7</sup>

Right is always a corresponding duty’. Right like duty is one of the’ Important concepts of law. ‘Right’ in ordinary sense means the ‘the standard of permitted action within a certain sphere. ‘As a legal term it means ‘the standard of permitted of action by law. ‘In its wider sense it is identified with the ‘power’ ‘privilege’ and ‘immunity’. Hopfield suggested the word claim as a substitute for Right.

- **Every Right has two element i.e.**

(i) The ‘material element’ of interest likes reputation, property, money etc. and

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7 "Ibid" p – 117



- (ii) The ‘formal elements’ like capacity, power to realize the interest, etc. The definitions of Right given by different jurists are mostly based on either one or the other elements of Right. Now, at first :

**‘Definition of formal element’**

**(i) Austin:**

According to Austin, Right is faculty which resides in a determine party or parties by virtue of a given law and which avails against a party or parties or answers to a duty laying on a party or parties] others then party or parties in whom it resides.

**(ii) Holland :**

Holland defines legal Right as the “capacity residing one man of controlling, with the assent and assistance of the state. The action of others” He followed the definition given by Austin. The only thing is in place of “faculty’ he used the ‘term’ capacity.

It is sometimes said that ‘Right is Might’.

The second implication of his definition is that the person who is said to have the Right must be able to obtain by a legal power-redress for any violation of his Right.

The third implication of his definition is that the individual should him self have the power of suing in a court of law any person violation of his Right.

The fourth implication of his definition is that a legal Right secures ‘control’ over the action of other of that is, places other under a legal duty, for every Right there must be a corresponding duty imposed on someone else.

**(iii) Gray:**

Gray describes a legal Right as, that power which a man has to make a person or persons do or refrain from doing a certain acts, so far as the power arises from society imposing a legal duty upon a person or persons,<sup>8</sup>

- **Definition of material element:**

All these have mentioned definition of “Formal Element” but some of philosophers have defined ‘material element.’

**Ihering** : Ihering defines as ‘legally protected interest’. The protection to human interest is the chief purpose of social organization. The law however does not protect all such interest. The interest of man conflict with one another and law. Being rule of justice, appraise such interest only some for protection. He regards such as legal Rights such of these interests as have obtained legal protection.

In every case the existence of the legal Right is dependent upon the circumstance that human interest has secured the protection of the state.<sup>9</sup>

**Salmond:**

Salmond defines Rights from a different angle. He says; ‘A Right is an interest recognized and protected by rules of Right is, that by legal rules. It is an interest respect for which is a duty and disregarded of which is a wrong.

The element of interest is essential to constitute a Right. For an interest to be regarded as a legal Right, it should be obtain not merely legal protection, but also recognition.

Rights are concerned with interests, yet Rights and interests are

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**8** Dr. Mynoni S.R. "**Jurisprudence**" (**Legal Theory**), (2001) Asia Law House, Hyderabad p.183-184 Inhering and Salmond belong to this class of writers.

**9** "**Ibid**" p185

not identical. Interest are things which are to a man's advantage, A man has an interest in his freedom or his reputation.

The writers of both groups have emphasized one or the other aspects of Right. In fact, Rights in neither a legally protected interest alone nor a legally guaranteed power alone. Will power capacities, faculties do not operate in vacuum but reaches to certain ends. These ends are interest. A correct definition is of Right therefore, must incorporate both the elements of power and interest. In this sense Allen's definition can be considered better one because it embodies both elements. Allon says: 'A Right as the power of man applied to a utility or interest recognized and protected by a legal system. Thus, Right is a legally guaranteed power to realize an interest'.

The Supreme Court, in State of Rajasthan v/s Union of India Observed thus:

'In a strict sense, legal Rights are correlative of legal duties and are defined as interests which the law protects by imposing corresponding duties on others.

There are certain jurists like Duguit, and Kelsen who do not recognize the existence of any local Right. They say that no one has any other Right than always to do his duty. The theories of law of these jurists known as negative ideas of Rights. But Concept of Right' has its place in legal system.<sup>10</sup>

- **Justification of Rights :**

The grounds of basis as to why one should possess Rights, it may be because it appeals to human nature, may appeal to custom, reason, statute, contract Etc.

Some philosophers have attempted to characterize Rights in terms

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10 "Ibid" pp. 186 -187

of normative categories like duties. According to them, a Right is just a duty seen from another perspective.<sup>11</sup>

## 2.2 Jural Co-relatives :

Modern discussion or Rights has a distinct feature, being that there is attempt by philosophers and jurists to be more precise in their use of concept of 'Right' modern approach to this enter pries begin with Bentham and Austin, though their predecessors had known that Rights was related logically to duty and obligation.<sup>12</sup>

This Right Duty correlation may act in two ways, if someone has a Right; other individual must have the duty of satisfying the claim which is recognized by that Right. If the child has a Right to education, his parents have the duty to provide him that education. So the difference between one's Rights against another's duty is only the difference between the passive and active voice. Now; important thing is - If an individual has a Right than it is his duty to use that Right

For the good of the community of which he is a member. If the child has the Right to education, it is his duty to use his education, in such a way that can be useful member of society.

The matter however fares no better when we move away from duties with out correlative Right and look hopefully in to the other alternative Wesley Hopfield and Davil Yons along with him.<sup>13</sup>

There was no systematic attempt to draw the said relationship. Unlike Bentham who had codification in mind, it was Wesley New - comb Hopfield who had analyzed the concept to facilitate the resolution of practical problems in judicial reasoning. Hopfield expands the lowest

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11 Nailkar L – D "**The Law Relating to Human Rights**" (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 3

12 "**Ibid**" pp. 2 – 3

13 Ray S.N. The spirit of "**Renaissance**" (1999), The Renaissance publications Private Limited; Kolkata p. 184

common denominator of the law in terms of legal relations. These consist of two squares of co-relatives and opposites.<sup>14</sup> Hopfield argues that a Right is not only a claim but also a Liberty, power or immunity. These relationships are designated as 'jural relations'. American jurist Hopfield was the first jurist who elaborated this jural relation and took the analysis of Salmond to its logical end.<sup>14</sup>

**They are:**

<b>RIGHT</b>	<b>DUTY</b>
<b>POWER</b>	<b>LIABILITY</b>
<b>NO RIGHT</b>	<b>NO DUTY</b>
<b>IMMUNITY</b>	<b>DISABILITY</b>

With these squares, every horizontal represents a co-relation and every diagonal an opposition, i. e. the same may be represented as:

For Hopfield - Right in the strict sense, was claim with co-relative of duty.<sup>15</sup>

### **2.3 Category of Rights:**

People know that they have Rights. They also know that Rights must be matched with liberties. There is still the crucial question of formulating a proper taxonomy of Rights, and reflecting on the meaning and foundation of Right.

When present Researcher considers Rights, Present Searcher confines herself to Human Rights. Human Rights given by 'UDHR' has been classified as Civil Rights, political Rights, Socio - economic Rights and cultural Rights.

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**14** Dr. Mynoni S.R. "**Jurisprudence**" (Legal Theory), (2001) Asia Law House, Hyderabad p. 190

**15** Nailkar L – D "**he Law Relating to Human Rights**" (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 3

Broadly Human rights are grouped in four categories. Each category has a special function and 'the societal structure.'<sup>16</sup>

**(i) Civil Rights:**

Preamble of Civil and political Rights say that these Rights derive from the inherent Dignity of the Human person.

These are civil in nature aimed at protecting Liberty, physical and moral integrity of the person. Rights such as Right to Life, freedom from slavery, servitude forced labour, freedom from torture. These Rights are said to arise in the conflict between citizen and Government tyranny. These Rights are formal assurance for the citizens against arbitrary Government treatments. These Rights are on forced and protected through.

The procedural Right of individual equity before the law and by due process of law.

But Civil Rights can be classified also in two ways i.e. first primary and secondary the object of a civil (not 'criminal') proceeding is enforcement the plaintiff's Right. The Right so enforced is either primary or secondary. Secondary Right is which arises out of the violation of another Right; all others are primary, if X enters in to a valid contract with Y, X's Right to have the contract fulfilled is primary Right; if this contract is broken his Right to damages for this breach is a sanctioning Rights.<sup>17</sup>

**(ii) Political Rights:**

Article 1 ( 1 ) International Covenants of Civil and

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16 Ibid p.4

17 Jhabwala N.H. **The element of Jurisprudence**, (2000) – C. Jamanadas & Company,

Political Right,1966 says; ‘All people have the Right of self - determination by virtue of that Right they freely determine their political statues and freely pursue their economic, Social and Cultural development.

In other words, political Rights are the privileges that give to the citizens a share in the exercise of sovereign power of the State some of the significant Political Rights are Rights to free elections and representative institutions. They are established through democratic frame works.<sup>18</sup>

Dr. Myneni calls these political Rights. “Rights of the subjects (or the citizens) against the state.

Dr. Myneni find his expression in. Article 3-:18 of the Universal Declaration of Human Rights - rested, supplemented and modified by companion articles in the. International Covenant on Civil and Political Rights.<sup>19</sup> Ahmedabad, p.120

**(iii) Economic and Social Rights:**

Art 1(2) of the International Covenant on Economic, Social and Cultural Rights, and 1966 provides: “All people may, for their own ends, freely dispose of their natural wealth & Resources, without prejudice to any obligation arising out of International economic co-operation, based upon the principle of mutual benefit and International law. These Rights also recognized under the Universal Declaration through Articles. 22 – 28. “These Rights assume positive

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**18** Basu P.J. “**Law Relating To Protection of Human Rights Under The Indian Constitution And Allied Laws**”, (2002), Modern Law Publications , Allahabad. Appendix 4. p. 946

**19** Dr.Myneni S. R “**Jurispradence (Legal Theory)**”, (2001),- Asia Law House, Hyderabad. pp.205 -206

duties on the government. They assume that the Government should act to secure or provide such things that are for the well being of its citizenry. Thus, Right to work, just and favorable conditions of work; housing, medical, Right to education etc. are included in this group.

Now: all these social and economic Right (here given list) are essential and desirable, they do not exist in natural State.

Civil & Political Rights are offered by nature as a condition of human existence whereas economic and social Rights are created by human in 'Seriousness' to make Life happier.<sup>20</sup>

**(iv) Cultural Rights:**

International Covenant of Economic, Social and Cultural Rights, 1966 specially Article - 15 is mentions about this Right, it says;

- The states parties the present Covenant recognize the Right of everyone.
- To take part in cultural Life;
- To enjoy the benefits of scientific progress and its application.

To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is author.

These Rights arise in response to a threat that in certain are as should be no monopoly either by Government, powerful, or vested interests. Freedom of thought, freedom

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20 Ibid p.967



to take part in cultural Life, freedom of aesthetic experience, Right to benefit from scientific progress, etc is included in this category.

They may be several Rights, which may fall in to two or more categories depending upon the premise against which it is held. Right to assemble and association may be both civil and political, so also freedom thought, creative activity may be cultural and civil. Some political Rights such as Right to vote, elect a Government are included in economic social and cultural Covenant, 1966. Thus this categorization is not strict nor is it an 'exhausted' list.<sup>21</sup>

Present researcher wants to discuss one more category of 'Right' - That is - Imperfect Right' - This is Salmond's view on Right. Imperfect Rights are unenforceable because, as Salmond says, 'a legal enforcement does not pertain to essence of the conception of Right. Therefore, according to Salmond, a legal Right is one that is protected and recognized by the Law<sup>1</sup> but not necessarily one that is enforceable. A legal Right, therefore, need not enforceable at law. But such a Right can't be called perfect or complete. There are certain Rights which are incomplete and unenforceable, e. g., under the Indian partnership Act. a minor who is entitled to share the benefits of partner can ask the partners of the firm to show him the books of accounts, but in case of their failure or refusal to do so the minor can't successfully sue them

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<sup>21</sup> Jhabwala N. H. "The Elements of jurisprudence" (2000) C. Jamanadas & Co. Ahmedabad. p. 112.

‘unless’ the firm is dissolved at the option of the sued partners.

## INTERNATIONAL COVENANTS

One of the purpose of United Nations include ‘promoting and encouraging respect of Human Rights and for Fundamental freedoms for all without distinction as to race, sex, language, or religion.

The charter of, United Nations was a land mark in this unique development. It proclaims the determination of the peoples of the United Nationals reaffirm faith in the fundamental Human Right in the Dignity and worth of the human person.

The UN’s Commission on Human Rights its second session decision to prepare a draft Declaration on Human Right, a draft Covenant on Human Rights and measures for implementation. These documents would together constitute the International Bill of. Rights later changed to International Bill of Rights.

So in this way a Universal Declaration was prepared and adopted.

Now, therefore The General Assembly proclaims; The Universal Declaration of Human fights as a common standard for achievement for all peoples and all nations.<sup>22</sup>

On December 10, 1948 in Paris when the General Assembly adopted the Universal Declaration of Human Rights by 48 votes to none. The declaration has now been accepted by virtually all states today.

When some over enthusiastic states moved to convert the Declaration in to binding legal norms, sharp dissent arose and it took eighteen long years to convert the Declaration in the Convention.

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<sup>22</sup> Sorabjee soil J. ‘Law & Justice’ - An Anthology’ Edited ‘by (2003) Universal Law Publishing Company -Private Limited, Delhi. p. 20.

Doubts, however, lingered about the legal status of the declaration. So the next step was the preparation and passage of an International bill of Human Rights which embodied specific legal obligation and contained adequate machinery to enforce Human Rights.

This was because it was necessary to accommodate bridge, submerge and conceal deep division and differences between Democratic Liberation and Socialist Revolutionary states over the concept of Human Rights.

For the Democratic Libertarians the negative Rights - Civil and Political Rights were the real -Human, whereas for the .Socialists positive Rights — Economic. Social and Cultural Rights were the real Rights.

As a measure of compromise of it was formally agreed to produce separate Covenants. One would cover economic, social and cultural Rights and the other would incorporate civil and political Rights.

The division of Rights concept ultimately led to the making of two Covenants Civil and Political Rights, 1966, and Economic, Social and Cultural Covenant 1966. Thus the Rights grouped are civil and political on one side, economic social and cultural on the other.<sup>23</sup>

## **2.4 Jurisprudence of Human Rights**

The very term of Human Rights indicates both, their nature and their source human beings are rational being. They by virtue of their human possess certain basic and inalienable Rights which are commonly known as Human Rights. These Rights of human beings are not derived from being a national of certain state, but belong to them because of their very existence and are based upon the attributes of human personality.

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<sup>23</sup> Nailkar L.D. 'The Law Relating To Human Rights' (2004) Puliani & Puliani Publishers Private Limited Bangalore p. p.6 - 7

They are derived from the inherent Dignity and worth of human being.<sup>24</sup>

It has been long cherished ideal of mankind to enjoy democracy, justice and human Rights in the full sense of the term. Human Rights are an essential and indispensable component of human progress and human civilization: One thing is certain there can be no sustainable development without promoting human Rights.

The concept of human Rights is rooted in freedom of thought and the Dignity of human being.

Various scholars have attempted to answer the question of defining the terms 'Human Rights'. The Present - Researcher is trying to examine various approaches.<sup>25</sup>

The concept of Human Rights as it is understood today has evolved over the centuries. Though, the expression 'Human Sense' to have modern face, human Rights are as old as human civilization. Human Rights have existed in however nascent form ever since man as gregarious animals has lived in communities family clan, tribe, village town or nation and in an independent world community looking at the concept of human Rights. From a historical perspective, it would be seen that it is neither entirely western nor so modern. It is the crystallization of values that are common heritage of mankind.

Hence Present Researcher led to another conception of Right in term of a different kind of normative element- Richard Wasserstorm and H. J. Mcdoseky have characterized Rights as a basic normal entitlement possessed only by persons. In the words of Mcclosely Rights are explained positively as entitlements, to do have enjoy or have done and not

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24 **Civil and Military Law Journal** — Published by Defense Employee "Welfare Council New Delhi pp. 221-222

25 **University News'** March — April 2005 — published by All India University Association Delhi p.13.

negatively as something against other? Or as something ought to have. Thus, the central notion is 'entitlement' rather than duty and statements about Rights can't be fully replaced by statement about duties. Further Rights as entitlement are intrinsic to their possessors and are held independently of other people - and what else ought to be. In other words, Right are possessed and not conferred.<sup>26</sup>

Now: the present researcher finds;

Dr. Carala M. Zoethout's<sup>27</sup> view about 'Rights and human Rights more elemental. As mentioned just before a Right in this sense can be thought of as consisting of five main elements. At this point, there is something difference between positive Rights and human Rights. What is characteristic of a positive Right is that someone actually has it. Positive Rights are those Rights confirmed and enforced by the system of municipal law specific country. If a man is uncertain as to whether he has a positive Right; he can consult legal documents or a lawyer. If two men dispute a positive Right; a will determine which of them has the Right and which of them has not.

In this way, question about positive Rights can be resolved in to question about positive law, which are question about fact. In short, positive Rights are facts. They are what men actually have. What men ought to have is another question. Now an addition of 'Human to 'Right' in each of five elements signify - That is matter to discuss.

In the first place, the addition 'human' to 'Rights' means that everybody has them. He subject of human Rights are not member of this or that society, but of the community of mankind.<sup>28</sup>

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26     Supra Note 25 P.P. 221 – 222

27     Dr. Carla M. Zoethout, senior lecturer in Public Law Erasmus University Rotterdam, The Neather Lands.

28     'Patil V. T. & Shastry T. N. -' **Studies in Human Rights** '(2002) published by P. R. Books. p.392.

The subjects are not animals, trees, inanimate objects or entities, but human beings belong to all communities. Thus when 'Human' is added to 'Rights' we are speaking of human beings and Rights relating to human beings as human race. Secondly, the objects of human Rights are of great importance. The human Right to Life may be judged to outrank in a situation where there is a contest between them a Right under a particular civil law, say, to use of land or Right to holiday.

That does not mean that human Rights are indefeasible. It only means that in general, of greatest importance or in other words, human Rights give rise to priority over other Rights. In the third place, the exercise of human Right might have a more restricted range than that of civil Right (like for instance the Right to vote) for very human Rights are appealed to when the claims they encompass are not acknowledged in positive law.

In other words, for exercising a Right, it is claimed, asserted, demanded, enjoyed, protected, enforced or. In case of human Rights assertion is important because it is usually not acknowledged.

The argument is first, that they should be so acknowledged. Enforcement would then be the next step. The problem with enforcement is however, that its absence has led skeptics to doubt the very existence of human Rights.

As like Jack Donnelly puts it 'If my car is stolen and thief is not apprehended, I still have the Right to the car, 'that is what he goes to call' possession - paradox having a Right to something but not having in the sense of enjoying the object of it, which he rightly suggests is the characteristic of human Rights. That is human Rights are in the nature of 'possession' possessed by individuals but may not be in the position to enjoy because of variants such as culture, religion, morality, law which

very from religion to religion, region, to region state to state, culture to culture.<sup>29</sup>

It everyone holds Right to holiday it means it is held against a particular Government and duties are laid on the responsible authorities. And if everyone holds, say economic and social Rights, it is against a particular.<sup>30</sup>

This formulation reveals that there may be 'negative Right', which may require positive action from the bearer of duties, say Government. There are scholars who emphasize that the distinction lie in the duties as co-relatives and not in Rights themselves. There it is said that all human Rights have there co-relative duties:

1. Duty to protect - to avoid deprivation.
2. Duty to protect - protect from such deprivation
3. Duty to avoid - to the deprived.

Finally for justification of human Right there are some characteristic. It is, of course, not an appeal to this statue or that contract, for if the Rights in question were written into statutes or contracts, those provision under municipal law would by themselves be sufficient justification.<sup>31</sup>

The justification of human Rights goes up one level higher to regional International law (e.g. European Convention on Human Rights or the African charter on Human and peoples Rights 1981) or moves up two levels to global International law (e.g. the International Covenants on Civil and political Rights, and on Economic, social and cultural Rights) so, the appeal is that standard Internationally recognized should be met

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29 Naikar L – D the **Law Relating to Human Rights** (2004) Puliani & Puliani Publishers rivate Limited Bangalore p. p 5 - 6

30 I bid P. 6

31 Patil V.T. & Shastry T.S.N. '**Studies in Human Rights** ', (2002), P.R.Books, Delhi. p.47

by domestic practice. Ultimately, there is a level above these which is the final justification of human Rights. It is the level at which, what is appealed to, is not any kind of positive law but it is level of Natural Law.<sup>32</sup>

The ultimate appeal is suggested to lie in the human nature, or Natural Law.

There of, as the civilization progressed, attempts were made to enlist certain Human Rights by philosophers, social and political thinkers from time to time.

While introducing the concept of human Rights, a well known scholar says “Human Right is twentieth century name for what has been traditionally known as Natural Rights, or in a more exhilarating phrase the Right of men; woven in to the woof of human history, the concept of human Rights has a variable and dynamic one.” The concept of Natural Right came in to prominence with the rise of individualism: Natural Rights are abstract of version; of claims: liberties and immunities and at this level of generalization are akin to principle, standards and doctrines.<sup>33</sup>

A modern case for ‘fundamental Rights’ has been argued by Prof. Drown kin. He said that legal Rights are institutional Rights to decisions in court.’

The proposition of Drown kin has two important points;

(i) Rights belong to individual as individual.

Any policies connected with collective goals e.g. promoting the general welfare, are only destined for aggregate benefit rather than for the individual, therefore, any claim based on such policies lack the necessary individualized character.

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32 Naikar L – D the **Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 7

33 Barrister RWM Dias “**Dias: Jurisprudence**”, (2005), Aditya Books, New Delhi. p.-501



(ii) Secondly, it follows from that when Right give as a justification;

For acting in a certain way. This justification is not dependent on maximization of any collective good.

Now, if the all analysis is correct it can also give as a rewarding in Right in to the edifice of Rights. Man is essentially a creative human being; an angel of surplus and his self-expression demands that he should not be interfered within some basic way in achieving his intended project.<sup>34</sup>

The next approach, which has gained much acceptance, is as provided by Maurice Cranston. Altman Rights are those, which are important, moral and universal.

Cranston being his arguments by asking what does it mean to say all men have Rights.

First, there is a sense in which it is conceded and enforced by the law of realm. Rights of this kind are positive Rights. The characteristics of them is they are recognized by positive law, that is the actual law of actual states; e.g. I have Right to leave the country, Right to bequeath my estate to anyone.

But, will these Rights - to purchase estate in any corner of world, or to leave and return to one's country are not in any sense universal Right. Some philosophers like eighteenth century philosophers Jermy Bentham for example', State this fact more dramatically! That is not actually enjoyed. Because Natural Law is not real law, It is an imaginary law. Imaginary law gives us Imaginary Rights, which we can never enjoy. In other words, those Rights are qualified as positive Rights; they are enjoyable and enforceable by state law. .In second sense of word Right,

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**34** Ray N. S. 'The spirit of Renaissance', (1999) Published by Renaissance Publication Pvt., Kolkata, p. 14.

it is different from positive Right e.g., I have Right to know what is going on in my houses this person is making a special kind of claim. The Right he speaks of is 'moral Rights'. A moral Right is an interest recognized and protected by a rule of natural justice.<sup>35</sup>

Prof. Holland say about moral Right, "If the public opinion would view with approval or at least with acquiescence, a person carrying out his wishes, with disapproval any resistance made to his doing it, then he has 'a moral Right 'so as to carry out his wishes.

It is this second sense of word ( i.e. moral Rights) are said to be the nature of human Rights under universal declaration .But this is not to deny that they are not positive Rights, when human Rights are upheld by positive law they are both moral and positive Rights. Thus dividing Rights in to legal and moral. Cranston classifies three categories of moral Rights as:

1. Moral Right of one lesson only; I have moral Right to be told what is going on in house. In such Rights -justification of Right is the central question.
2. Moral Rights of particular situation e.g. Rights of parent or a tutor claims to such Rights are passed by providing that one does not being to the appropriate category.
3. Moral Rights of all people in all situations. These Rights are Universal because they are few in number and expect them to be highly generalized in their formulation. In all these categories human Rights occupy the last category and difference from other moral Rights. By definition of human Right is universal moral Right, something which all men

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35 Naikar L – D 'The Law Relating to Human Rights' (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 8-7

everywhere all at times ought to have something of which no one may be deprived without grave affront to justice something which is owing to every human being simply because he is human.<sup>36</sup>

An individual can seek human Rights only in an organized community i. e. state or in other words, where civil & social order exists. No one can imagine to invoke them in a state of anarchy where there is hardly any just power to which a citizen can appeal against the violation of Rights.

If then human Rights are something held by men against all and universal question arises how to find such Rights. To this Cranston says there are three tests.

- a. Test of practicability
- b. Test of paramount importance, and
- c. Test of universality

For the first test Cranston derives arguments from the critics of Natural Law namely Bruke and Benthams 'noted phrase,

Right is child of law, from real law come real Rights, from imaginary law, imaginary Rights. Rights for Burke and Bentham were should be, really enjoyed and should be really enforced.

When Kant wrote the celebrated phrase 'ought to implies can' he meant that it is not a man's duty to do what is not physically possible for him to do. What is true of duties is equally true of Rights. It is utterly impossible to provide holidays with pay for everybody in the world especially in the third world at best it is a hypothetical Right. Therefore the so called Right to holidays with pay is no Right at all since, Rights to Life and Liberty are easily securable by legislation they are real Rights.

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<sup>36</sup> Dr. Myneni S.R, "Jurisprudence (legal theory)," (2001)Asia Law House Hyderabad p- 201

Hence the various attempts that have been made to set down lists of human Rights. John Locke, the philosopher most often quoted as an authority on the subjects, wrote of the Rights to 'Life, Liberty and property', 'Locke's reasoning and the 'English -Bill of Rights had a great influence on political and legal thinking through the world.

For the second test of paramount importance says Cranston<sup>1</sup> it is paramount duty to relieve distress, as it is not paramount duty to give pleasure. Holidays with pay are excellent; they contributing to the greatest happiness to greatest number. But they are not matter of paramount importance like freedom of speech or Equality before the law. To pass the third test, Right should not be limited as in case of Right to holiday, where it is restricted only to employees class; since not everyone belongs to this class, the Right to holiday with pay can't be a universal Right, a Right which in the terminology of Universal Declaration' everyone has'. Thus, according to Cranston, Civil & political Rights (negative Rights) are the real Human Rights.<sup>37</sup>

But, Present Researcher wants to mention some more definition and views about human Rights i.e. g. prof. Louis Henkin, a Professor and western scholar, defined human Rights as claims asserted and recognized as of Rights against society as represented by governments and its officials.

In another definition, a Soviet International Legal Scholar, Vladimir Kudrygutse state, That human Rights are an opportunity guaranteed by the state to its citizens to enjoy the social benefits and values existing in the given society."

All these definition shows that Human Rights present claims which

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37 Agrawal H.P. "**Implementation of Human Rights Covenants with special reference to India.**" (1983) Kitab Mahal, Allahabad. pp. 1 – 2

individuals or groups make on the society.

Human Rights are the birth Rights of people the world over. Hence their fulfillment does not lie in the reproduction of institutions of the advanced world; but on the consciousness in the developing world ensure the respect and protection of human Rights. This will forestall the ease their denial as an incident of valid structural change.<sup>38</sup>

Another approach to know which human Rights are is proposed by Abraham Adel. His model is based on law in whole pool of Right to pick up human Rights; in answer to it he says the following candidates rush forward.

1. There are properties which mark the difference the properties, being

(a) General (b) Importance (c) Essential and eternal (d) Individual.

2. There is a special states to human Rights, being they are grounded in reality and not existing only by Convention.

3. There are some special job claims, in the way in which they function in relation to broader field of value such as human interests, purposes, aspirations.

**(a) General:**

Human Rights are said to be general. They are generic and not specific. Yet, we see Declaration on the Rights of women, children, the aged etc. which are being particular and specific and subcategorized, to avoid this he says to insist that such insurances are derivable from general human Rights that pertain to any human being.

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38 Basu- **Law Relating To Protection on Human Rights under the Indian Constitution and Allied laws** (2002) Modern law Publication - Allahabad, p. 5

**(b) Important:**

Important for him in the practical sense is comparative value measurement. Thus Right to communicate freely with one's fellows may have greater instrumental value than Right to work, and Right to work greater value than Right to travel.

Thus, those Rights, which support the system of the good Life, are human Rights.

**(c) Eternal :**

- (i)** For some of the Rights, which were not included earlier, like slavery in 10th Amendment, or freedom of association so in French Declaration, the countermove would be to simply say the earlier view were wrong and held biased grounds.<sup>39</sup>
- (ii)** The second move would be to treat with continuity with older human Rights like, for the guarantee against interference with correspondence; it is a continuity of Right to 'privacy. Right to privacy is a part of article 21 (Right to Life) Govind V/s. State of M. P. AIR 1975 Sc 1378. Right to travel as continuity to freedom of movement.
- (iii)** The third move is to accept novelty and regard it not as the emergence of new human Rights but as the new discovery of a truth hitherto unknown. Example, Rights asserted for a crowded globe, Right to population, or concerning organ transplants.
- (iv)** The fourth move is to regard that the whole process as

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**39** Naikar L – D **the Law Relating to Human Rights** (2004) Pliant & Pliant Publishers Private Limited Bangalore p. 9

continuing search. The real human Rights will be those that emerge at the end of human quest just as truth emerges as the ideal limit of the process of inquiry.<sup>40</sup>

**(d) Individual:**

Human Rights are inalienable individual Rights; Adel distinguishes individual Rights in to;

1. Rights of individual as freedom of thought and conscience.
2. Rights of individual in virtue of unavoidable condition e. g. Rights of children and women.
3. Rights of individual in virtue of probable though avoidable condition e. g. Rights of the sick.
4. Rights of individual in groups, C.S. Rights of the slaves.
5. Rights of group individuals from.
6. Regarding group Rights the author says it is difficult to construct and doubts whether one could be comfortable with idea of human Rights of group made out of groups /or example human Rights of a regional federation of nations.

Regarding in alienable character, he doubts it can be strictly maintained, if the concept is excluded and doubts whether any general criteria could settle it. However, he says “there does seem to be an alienable core in the character of human Rights” -In the sense that some Rights would always have to be maintained to have a self that judges and decides. In this sense the determination inalienable among the human Rights is at the same time the determination of the kind of individually men are minimally to possess.<sup>41</sup>

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**40** Bakshi P.M. “**The Constitution of India** “(2002) Universal Law Publishing Company Private Limited Delhi.p. 49

**41** Nailkar L – D **the Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 11

So, there are many of view variously discussing by well- known scholars. But including Adel and other scholars assigns some jobs & functions to human Rights concept. The Present Research Scholar wishes to discuss them one by one.

## **2. Human Rights as offices or functions:**

Rights are recognition of the freedom, the freedom of every individual to realize his best. Thus, when Rights are threatened people feel their very freedom and existence have been threatened.

The upholders of the social contract theory considered human Rights as the natural Rights for the reason that human Rights are based upon the contract; concluded by the people with the state. They explained that when men entered in to contract to form political society, they renounced some of their natural Rights which had previously been enjoyed by the man free state of nature but certain basic Rights such as Right to Life, freedom and Equality were preserved by them. These Rights so preserved constituted their natural and inalienable Rights; which must be respected by the state or a governor. Thus, in effect one of the purposes of the social contract was to preserve by them.

This Right so preserved constituted their natural inalienable Rights to men and at the same time, to prevent the state from interfering with the exercise of those Rights by the people.

The teachings of the social contract theory had not only strengthened and revitalized the concept of natural Rights but provided it with dynamic contents. As such it exercised great influences upon American and French Revolution.

As mentioned prior. Adel assigns jobs or functions, as the identifying features of the human Right concept, like we try to justify to having a Government at all, so too human Right in their special



fundamental sense constitute system, constitute offices of functions within domain of Rights. We may ask for roles and tasks pertaining to this Right. We may ask for roles and tasks pertaining to this office, for the conditions and models of education among Rights to be elevated to the office.

Now, person has to choose to go to a campaign for or against a human Right. For example; privacy should not be elected because it can be deduced from Dignity or its very definition involves Dignity. Dignity would be a more powerful office bearer.

The ultimate constituency is that of human needs, interest, purposes in a world values, and times these values may compete to occupy office. The other idea is to see justification in terms of the effectiveness and adequacy of the job in Rights fields and in the values in general that they are advanced.<sup>42</sup>

The author, Adel says, "Instead of arguing whether human Rights are absolute or relative, we should analyze those positions to see them as a controversy over the degree of definiteness and scope that Rights should be assigned. "The political Analogy again proves helpful. A political system distinguishes, Constitutional rules not to be.

But Watson who strongly critical Cranston, on some philosophical and logical signs, argue for inclusion of group Rights in human Rights.

For Cranston first test of practicability i. e. if is impossible for a thing to be done, it is absurd to claim as Right, 'it is logical impossibility for man to present at two places at the same time. This logical impossibility cannot become possibility in time. It may be possible for India at present to provide employment to all its citizens, but it can be conceived as a

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42 Dr. U. Chandra "Human Rights", (1999) Published by Allahabad Law Agency Publication Private Limited Allahabad.

Right being guaranteed. Therefore, if only logically impossible can fail the test the Economic, social and cultural Rights pass the test, as they are not logically impossible but only for time being. On the same line of arguments he attacks Raphael When Universal Declaration says that every man has Rights to work it does not imply that there is corresponding responsibility to provide any particular man with work, it implies that this responsibility on behalf of all its members of his state and government of that state has a duty to carry out the responsibilities on behalf of its members. It this statement implies personal responsibility, meaning 'personal' of every other man independently to guarantee these Rights for every particular man then civil and political Rights also fail this test, because at present it is not possible for every individual to guarantee such. On the other hand if it implies what is claimed as responsibility of all men, collectively against all men, social and economic Rights pass this test of practicability. Further says, 'Cranston admits that there is paramount duty to relieve great distress'. Given the correspondence between Rights and duties there must then surely be a paramount right to the relief of great distress or rather there must be a group of paramount Rights each to the relief of different distress, they then must also include relief of social and economic distress. Because Cranston does not deny that social distresses, 'human Rights is something of which no one may be deprived without a grave affront to justice.'<sup>43</sup>

Some of these human needs are elemental for sheer physical survival and health.

Therefore, there is no distinction between the traditional human Rights and economic social Rights for the test of paramount importance.

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<sup>43</sup> Naikar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 12

For the test of universality, Cranston says Right to holiday is restricted to class namely, employee class. That is being universal; they should not be restricted to a 'class' In that case even 'fair trial' can't pass this test. Because they also are restricted only to the persons on trial i. e. accused class, meaning, it also cannot be human Right in meaning of 'everyone' under Universal declaration. Therefore, argument of Cranston is untenable.<sup>44</sup>

There is a very ancient western tradition of belief both in the reality of Natural Law - a law higher than the edicts of princes and of the universal Rights that his law confers on all rational beings. This idea has been elaborated in to the conception of basic moral Rights that every human being possesses simply by virtue of human being human. They are not Rights that are conferred exclusively on its members by a particular society. They are universal. They are inherited, so to speak, with men's humanity, itself. Their very generality however, makes it hard for us to discern these Rights clearly.<sup>45</sup>

Like Watson, who argues to Rights of both Covenants on the same footing, so, also argues Peter Schneider from a different angle, for whom 'Dignity' of human being is the source for this he takes the principle formulated by International Commission of Jurists (held at New Delhi) section 1, which says that Dignity requires not only the recognition of his political and civil Rights, but also the creation of social, economic educational and cultural conditions which are essential for the full development of the personality. From this principle, he says that, there is no hierarchy of value between these Rights, they are equal ranked 'One would not be justified in acknowledging a lesser rank for specific group Rights.

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44 I bid P. 6

45 Patil V.T. & Shastry T.S.N. '**Studies in Human Rights**', (2002), P.R.Books, Delhi. p.47

Finally directed towards an image of man as social being. “Among these Rights the relationship of interdependence of reciprocal conditioning are important; to develop the principle of human Dignity. Without elementary guarantees in economic matters, the other Rights lose meaning without an entitlement to elementary education there can be no question of self - determination, without freedom of association, the economic freedom of worker is a formality.”

In other words, human Rights are fundamental Rights not subject to change over time, since they express the essential nature of human beings. Therefore it is said, they ought to be recognized all over the world. In a nutshell, this is the notion of universality as it has found expression in the Universal Declaration of Human Rights.

At a certain level, the principle of universality has attracted wide spread recognition. Governments whose human Rights policy is under scrutiny may deny the veracity of specific allegations, they may question the motivations of their accusers, but they virtually never suggest that the relevant standards are not applicable in their societies.

Further says, ‘Social Rights are creators of conditions under which individual can achieve self - determination and develop his personality. “However when it comes to significance of Right he, says, “when these conditions (i.e. conditions under which man can develop personality) are fulfilled they cease to be of urgently significant i. e. in respect of claims against state. Only from this point of view, one can talk of primacy of so-called Political Rights as opposed to entitlements, which take subsidiary significance.

Lastly he says ‘since individual can’t be conceived of without multiple group connection, and groups are based on same concept of values, Human Rights must be comprehended as a unity, the Rights of

man, Rights of citizen and social Rights in all their interdependence and in their difference.<sup>46</sup>

Justice V. R. Krishna Iyer also agrees with individuals Advancement in every field.

In simple terms, J. Krishna Iyar<sup>51</sup> wants to say. “Human Rights and fundamental freedom allows us to develop fully and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs simply they are the sum total of the opportunities which ensures adequate development and expressions of individual personality. Without such opportunities man can’t lead decent Life.”

Like wise, R. S. Downie argues for the unity of both set of Rights, combining ‘Economic, Social and Cultural Rights’ to a single term, for convenience, as ‘as social Equality’ he distinguishes this Equality in to

**(i) Equality of opportunity and**

**(ii) Equality of satisfaction,** Equality of opportunity - in the starting and running conditions of the race of Life. Equality of satisfaction - the ideal, proceeding side by side through the roll to ‘tie’ at the finish if ‘Equality’ is considered to secure not only ‘equal opportunities’ but also ‘equal satisfaction.’

Social justice requires treating people equally in sense of giving equal consideration to the claims of all. But each and every person may not have equal satisfaction. For solution of this problem, Downie looks to the nature of Rights and classify them as consumer Rights - to something for the good - in the last resort of happiness - of the person whose Right it is, and produces or Rights to the conditions for the efficient performance of a job presumed to be worth doing He say. ‘In producer Right there is

<sup>46</sup> Nailkar L – D The **Law Relating To Human Rights** (2004) Puliani & Puliani publishers, Bangalore.

scope of justifiable inequality such as special rations in times of scarcity for special class of workers 'there is no such scope or difficulty to see any such inequality in case of consumer Rights. 'One person's satisfaction seem neither less nor more important than that of any other. In this Consumer Rights are real Rights. He further says, 'IF social justice is concerned with<sup>47</sup> securing for the people for what they have Right to, it will be only concerned with consumer Rights. 'It is here that, social justice and social Equality coincide. In other words social and economic Rights coincide with social justice therefore, they are the real Rights. Thus, for the scholars like Watson and Browine, economic Rights or group Rights are human Rights.<sup>48</sup>

But; present researcher wants to describe the view of Prof. Jaytilak Guha<sup>53</sup> which is similar to Downie. Prof. Roy Opines, "Human Rights are those" fundamental Rights to which every man woman inhabiting any part of the world should be deemed entitled by virtue of having been born a human being. Human Rights, thus conceived, constitute two categories of Rights.

(i) Rights which are essential for the dignified human existence, viz, the Right to have basic human need like food, clothing, shelter and medical care, and

(ii) Right which are essential for the adequate development of human personality such as Right to education, the Right to freedom of culture, the Right to freedom of speech and expression, and the Right to free movement.

Human Rights, therefore no longer imply merely. Civil and political liberties for the individual conceived as some kind of protection

<sup>47</sup> Sorabjee Soli J. "Law & justice – An Anthology" (2003), Universal Law Publishing & Company Private Limited, Delhi. p.1

<sup>48</sup> "Dr. Jaylak Guha Roy Associate professor of criminal Administration, Indian Institute of Public Administration New-Delhi.

or safeguard against state power by the classical as well as contemporary western liberal scholars from John Start. Mill to John Rawls. The because of human Right in contemporary society, must have implicit Right to be and remain human. They must have not merely the Right to Life, but rather the Right to subsistence. They must have some autonomy of choice in planning their own survival. This is in fact, the new trend in human Rights thinking with results in growing recognition of the idea that economic and Social Rights are prerequisite for the enjoyment of Civil and Political Rights.

All these different approaches and criticisms there of go to show how difficult it is to find a set of Rights which are truly human Right. This difficulty is due to differences underlying between the east socialist and west democratic ideologies. To This difference, another difficulty is added by the poor nations third world by insisting to include group as human Rights, and making it more difficult to arrives at a set of human Rights universal to all times.<sup>49</sup> At last, Present Researcher aggress with view of prof. Roy that Economic and Social Rights are a prerequisite for the enjoyment of Civil and Political Rights.

Various Western and Indian scholars have scholars have contributed in development of concept of Human Right. Present research student wants to discuss about them one by one.

At first western philospheres. The western philosophers can be classified in two categories.

- [1] Ancient Western Philosophers and
- [2] Modern Western Philosophers.

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**49** Nailkar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 13 – 14

At first ancient western philosophers.

## **2.5 Western Philosophers.**

### **2.5.1 Ancient Western Philosophers,**

#### **2.5.1.1 SOCRATES**

Socrates was born in the outskirts of Athens: He studied sculpture, his father's profession: But soon abandoned this work to seek 'truth' in his own way.

Our knowledge of Socrates is almost wholly derived from the dialogues of Plato.

From his youth up Socrates was keenly interested in the religious, philosophical and scientific movement of his time.

Socrates wrote nothing and neither sought to found a school nor a system of philosophy. His plan was to mix with men freely in any place of public resort, and to question them and suggest the Right path to real knowledge.

He dwelt on his mission to convict men of their ignorance for their ultimate benefit :<sup>50</sup>

The result was that he framed the theory of 'forms'. According to this theory the world of sense is related that of thought by the participation of things in the 'forms' or pattern which alone are permanent. This theory perhaps of Pythagorean origin was developed by Socrates. Both in its logical aspect and also the key of morals: since, for example, just for courageous actions were viewed as becoming such by participation in the 'forms' of justice and courage.

In his respect Socrates stamped on philosophy and character which it has never lost. The main out lines of his philosophy of

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**50** Edited by: Gordon stovvell; **The Book of knowledge'** The Waverly Book Company limited\* London Vol. p. 82.



conduct are fortunately quite certain and could be discovered if we had no more material than the Platonic ‘Apology’ and the ‘Memorabilia’ of Xenophon.<sup>51</sup>

He defined the soul as in man which has knowledge and also ignorance, good and bad. Socrates believed that he had a divine mission to convict men of {i.e. ignorance} by question or answer: To examining systematically the fundamental assumption from which discussions of conduct and morality arose and insisting upon strict definition of terms. In this method Socrates may be regarded as the founder of formal logic.

Men’s striving after knowledge, he opined should be directed to the human relationships as involving men’s practical concern self - knowledge is the condition of practical excellence.<sup>52</sup>

Self-knowledge, the fulfillment of the requirement of the Delphic Apollo, ‘know thyself-is the condition of practical excellence. External goods, do not advance their possessor, to want nothing is divine to want least possible brings one nearest to divine perfection virtue is capable of being taught, and all virtue is in truth only one : no man is voluntarily wicked; all wickedness simply resulting from ignorance. The good is identical with the beautiful and useful.

Know thyself was his motto, and he held that wisdom is that the wise man is moderate in all things for only so can, he enjoy the keen delights of the mind. He said that all men should be taught for the knowing man would never choose to do wrong. Evil would thus disappear from an educated world, and men would be happier for their

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51 Founder Editor, Sir Hammerton “**The Universal Encyclopedia**”. The Education Book Company Limited. London. Vol. -14 pp. 7634-7635

52 Edited by: Ridgway Athlestan ‘**Everyman’s Encyclopaedia** (III Edition ) J. M. Dent & Sons Limited. London. Vol. XI p. 732

knowledge. The details of his Life and his doctrine are preserved in the writings of the Greek Historian Xenophon (430-354 B. C. ) and the philosopher Plato, both of whom were his pupils. It was chiefly through Plato that the influence of Socrates was passed on to succeeding generations of philosophers.<sup>53</sup>

He said that Our happiness or well being then depends directly on the goodness or badness of the soul. To make one's "as good as possible" thus means to attain the knowledge of good which will prevent us from 'using' strength, wealth, health, opportunity, wrongly. If a man has this knowledge, he will always act on it: since to do otherwise would be to prefer known misery to known happiness and this is impossible. All the virtues are one thing, "knowledge of good and all wise is one thing, ignorance of true good."

But if virtue is knowledge, what has this knowledge for its object... To this question Socrates replies, its object is the Good, what then, is the Good...it is the useful, the advantageous-Utility, the immediate utility of individual, thus becomes the measure of conduct and the foundation of all moral rule and legal enactment.<sup>54</sup>

The fundamental thought of his political doctrine is that authority properly being to the intelligence to him who possesses knowledge. The good ruler must be, as it were appeared to those whom, he rule| his business, his virtue' is to make them happy.

From his view of politics, does not differ in principle from ethics. The Business of the states man also is the 'tendencies' of soul though his task is to aim at making, not only his own soul, but the souls of all his fellow citizens 'as goods possible'. The knowledge of good is also the

<sup>53</sup> 'Encyclopedia Britannica', **Encyclopedia Britannica** Limited ; London Vol – 20 pp.919 – 920

<sup>54</sup> **The Encyclopedia Britannica** 'A Dictionary of Art Sciences Literature and central Information "(Eleventh edition)"

‘royal’ science or science of governing the foundation of all statesmanship.<sup>55</sup>

His main criticism is that though in some departments at least the democracy refuses to take the advice of any one but a qualified expert, on the question of the morality and justice of a proposed policy it treats any one’s citizen’s opinion as of equal with another’s. Cicero’s well-known saying that Socrates called.

Philosophy down from heavens to earth and introduced it in to cities and houses of men, Compelling men to inquire concerning Life morals and things good and evil.

It is not virtue of our allegiance to a particular city, nor even of our place in a particular city, nor even of our place in a particular historical civilization, but in virtue of our universal humanity, that we have the task of ‘making the soul as good as possible or as Socrates also said in language influenced by Pythagorasmism ‘making it like God’.<sup>56</sup>

The importance of Socrates ‘philosophy was capital both in logic, through the theory of ‘forms which implies that thought deals with universal and in morals.’ His famous doctrine that ‘virtue is knowledge ‘Rightly understood means that true goodness can be based only on a full realization of the nature and faculties of the soul of the man. From this flow all virtues, e. g. the brave man in he who know what ought and ought not to be feared.<sup>57</sup>

Socrates was not appreciated by the Athenian mob and their leaders. At last there of his political fres accused him of impiety and of corrupting the minds of youth, and he was sentenced to death by the drinking of Hemlock,{the form of capital punishment then

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**55** Cambridge : at the University Press. Vol – 25 P. 336 Supra Note 58 pp. 919 - 920

**56** “**The Encyclopedia Americana**”, Americana Corporation New York . Vol – 25 p. 210

**57** Founder Editor, Sir Hammerton “**The Universal Encyclopedia**”. The Education Book

prescribed by law}.

At the appointed hour he drank the Hemlock and died as he had lived a man of unsurpassed courage.<sup>58</sup>

### **2.5.1.2 Aristotle**

‘Human Life is not static but an active phenomenon from birth the person strives to become fully human - to live a full Life. Everywhere we see men seeking pleasure, wealth and honor, is this not at all human Life’-said Aristotle.

Both the need for authority and restraint on freedom of action were stressed by him. According to him man is by nature a political animal. The family is instituted by nature for the supply of his daily wants but for other and wider need men unit in communities and ultimately in the state. The state is therefore, the creature of nature to enable man to realize the good Life that is living according to virtue. After starting this, Aristotle slightly diverts the topic. He says “Happiness is the end that alone meets all requirements for the ultimate end of human action, indeed we choose pleasure, wealth and honor only because we think that ‘through their instrumentality we shall be happy’. Happiness is another word or name for the good for humans. Since like good, happiness is the fulfillment of our distinctive function. In fact, claims Aristotle, we experience happiness when we act virtuously. “Happiness” is a working of the soul in the way of excellence or virtue.”

Aristotle says, “He, who bids the law or rule may be deemed to bid God and ‘Reason’ alone rule, but he who bids man rule adds an element of the beast, for desire is a wild beast and passion perverts the minds of the rules even when they are best of men. The law is reason unaffected

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**58** Morrison Wayne - ‘Jurisprudence’- From the Greeks to post – Modernism” (1997) Law man India Private Limited, Cavendish Publishing Limited, Delhi p. 44.

by desires. Thus, law of reason embodies the basic principle of justice and morality which were of universal validity and independent of time and place.

Aristotle however, was conscious of the fact that in the administration of a system of law situations may arise, where the universality and rigidity of legal rules may cause hardship in an individual case. Aristotle proposes to cure such hardship by means of equity (epieikeia). In his definition equity is 'a rectification of law where law is defective because of its generality'. The law takes into consideration the majority of cases, the typical and average situation, but it can't condescend upon particulars; it is frequently unable to do justice in the unique case.

The free man participates in the political creation of the state; he is part of the living construction of the state. Thus, we might say, law is ultimately a sub - section of politics and jurisprudence a subsection of political philosophy. In 'politics' Aristotle was clear that, since the law was the order of the political community, justice was a function of the state and the task of law was to determine, what is just. Justice then must be a part of the function of politics. The state itself is governed by justice.

Aristotle distinguished between a 'particular justice'. They are; 'distributive and corrective'.

In simple terms, 'corrective justice seeks to provide remedies; it punished criminals thus restoring social equilibrium and provides restitution or damages for civil injuries. It is remedial justice. Distributive justice is an entitlement to a share in social goods relative to a persons' function in the social body Distributive justice provide Equality of opportunity

and equitable treatment. Equal man must have equal Rights<sup>59</sup>

But Aristotle here clearly admits the possibility of an ‘unjust’ law, giving or an example an enactment by a majority dividing among its members the possession of a minority. He also points that other acts of oppression, whether committed by the people, the tyrant, or the wealthy are man and unjust Aristotle also thought, as was stated earlier that Rightly constituted laws should be the final sovereign But he does not give as his opinion on whether bad laws must under all circumstances be enforced by the judiciary and observed by the people.

In this particular justice is Equality. The Equality is between what each gets and what he deserves.

Aristotle’s great contribution to legal theory in his distinction between ‘natural justice’ and ‘legal justice’ or ‘positive justice’. Positive law should try to incorporate in itself the rules of ‘Natural Law’. He argued that slaves must accept their lot for slavery was a ‘natural’ institution. Aristotle gave ‘Natural Law’ a very solid ground to stand upon. He did urge humanitarian treatment of the slaves.

The term ‘unjust’ is held to apply both to man who breaks the law and the man who takes more than his due, the unfair man. Hence it is clear that law abiding man and the fair man will both be just. The ‘just’ therefore means that which is lawful and that which is equal or fair and the ‘unjust’ means that which is illegal and that which is unequal or unfair.

If persons are equal they must have equal shares: If persons are unequal they must have unequal shares. Contravening to this principle amounts to injustice. So in this way. Aristotle favours Right to Equality.<sup>60</sup>

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59 Dr. Myneni S. R. “**Jurisprudence (Legal Theory)**” (2001) - Asia Law House, Hyderabad p.p. 377-378.

60 Ibid pp. 377 – 378

### 2.5.1.3 Plato

Plato is the greatest literary artist of all Western Philosophers. He writes Not only with clarity, but also with charm and th ‘Republic’ of Plato is an exceedingly attractive book.

The teachings of Plato are cast in dialogue form. The dialogues are discussions usually between Socrates and a few followers. Plato to present ideas by name Socrates.

In his Republic, we find discussions on justice. But although the nature of justice is thus the formal subject of the Republic, the two main themes in the dialogues are the construction of Plato’s ideal state and exposition of his theory of ideas. Thus Plato, a pupil of Socrates, enunciated the doctrine that justice is harmony of man’s inner Life and harmony is the quality of justice and it is achieved by reason and wisdom over desires. In his ideal state Plato is of the view that it is the intelligent men - the philosophers who should be the kings.<sup>61</sup>

It was with Plato that Greek philosophy came to make the notion of justice into an ethical principle for human conduct, a specifically human virtue. Yet even then justice was the virtue of all things; and Plato’s famous formula of justice, that each do what pertains to him. suum agree’ expresses merely this general idea.<sup>62</sup> Plato said, “The ideal state has to attributes”,

- (1) It is founded upon justice,
- (2) All the citizens within it are happy.

Plato presents a narrative of the development of the city Life£ While the first city came about purely as the result of material self -interest,

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61 Bodeneimer E. - '**Jurisprudence' (Revised Edition) - The Philosophy and Method of the law's Reprint** 1997- Universal Book Traders, Delhi pp 10-11.

62 Edited by: Stowell Gorden “ **Practical knowledge of all'** The Waverly Book Co. Ltd.,London -p.995.

It soon began to pursue the idea of 'Common Good'.

Democracy has the appeal of freedom of thought but this also the reason for its self-determination. Democracy exposes 'Liberty' whereby" every individual is free to do as he likes. (Republic, 375).<sup>63</sup>

In his' Republic ,Plato does not discuss positive laws-But, in later The laws' *plato* advocated legal regulations, for human activities.

Justice meant in Plato's eyes that a man should do his work in the station of Life to which he was called by his capacities. Every member of society according to him has his specific functions and should confine his activity to the proper discharge of these functions. Some people have power of command, the capacity to Govern, The others are capable of helping those in power to achieve their ends as subordinate members of the Government. Other are fit to be trade men, or artisans, or soldiers.

Plato was deeply convinced of the natural inequality of men which he considered a justification for the establishment of a class system in his common wealth. He exclaimed you in this city are all brothers but God as he was fashioning you, put gold in those of you, who are capable of ruling, hence they are deserving of most reverence. He put silver in the auxiliary and iron and copper in the other craftsman. For the most part your children are of the same nature as ourselves, but because you are all akin, sometimes from gold will come a silver offspring or from silver gold and so on all round. So, Plato had not favoured water - tight compartment between different classes of society. Actually, it was a division of labour.

Each class said Plato must strictly confine its activity to the

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<sup>63</sup> Bodeneimer E. - '**Jurisprudence**' (Revised Edition) - The Philosophy and Method of the law "Reprint 1997, Universal Book Traders- IInd, Indian Reprint, Delhi p 7



performance of its own specific functions. A rigorous division of labour among the three classes is to prevail within his common wealth. Each citizen must fully discharge the duties which have been assigned to him by government, according to his special capabilities and qualifications. The ruler, the auxiliary, the farmer, the craftsman-each of them must keep to his own calling and not interfere with the business of anyone else”.

Plato realized that even in his ideal common wealth disputes will arise which must be decided by the ‘Public authorities’. It is the theory of ‘Republic’ that deciding such controversies, the judges of the state, should have a large amount of discretion. Plato does not wish them to be and by fixed and rigid rules embodied in a code of laws. The state of ‘The Republic’ is an executive state, governed by the true intelligence of the best men rather than by the rule of law. Justice is to be administered ‘Without Law’,<sup>64</sup> we need a comprehensive social vision that assures as that social structure is just. This runs counter to the liberal image of freedom - finally, he submitted So Plato submitted his views in favour of Right to Equality & Liberty.<sup>65</sup>

### **And now; Modern Western Philosophers,**

#### **2.5.2 (Modern Philosophers)**

##### **2.5.2.1 Jean Jacques Rousseau**

Rousseau ;the French philosopher, like Hobbes and Locks enunciated the theory of natural Rights resting on ‘Du contract social’ (social contract), Rousseau set out on evolve a community in which the community as such would protect the individual, but in which at the same time, the individual would remain free from oppression - All should

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<sup>64</sup> Ibid p.8

<sup>65</sup> W.Mprrison , Jurisprudence “**From the Greeks to post Modernism**” (1997), Lawman (India)private Limited, Cavendish Publishing Limited. Delhi. p. 34

participate in policy making. He argued that in original contract the individual's did not surrender their Rights to any single sovereign but to society as a whole and this is their guarantee of freedom and Equality. Society having come into being for this purpose; is expected to restore these Rights to its members as civil liberties. Their basic is a moral one.<sup>66</sup>

As Rousseau belonged to the classical tradition of Natural Law in the sense, that he firmly believed in the existence of 'natural Rights'. There Natural Rights are today as Human Rights.

Rousseau began with the state of nature in which man was free and independent in all respects.

According to Rousseau, the original freedom, happiness, Equality and Liberty which existed in primitive societies prior to contract was lost in modern civilization. Through social contract a new form of social organization. The state was formed to assure. Guarantee of Right & liberties, freedom and Equality. State and law which were one and same thing. According to him sovereign is not only source but the essence of law because the sovereign acts only by means of law.<sup>74</sup>

It is not altogether easy to follow the rather complex deduction of Rousseau. To him the fundamental political problem was 'to find a form of association which will defend and protect with the whole common force the person and goods of each associate and in which each while uniting himself with all may still obey himself alone and remain as free as before. Order to achieve this goal each individual must by a social contract alienate all his natural Rights without reservation to whole community.

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<sup>66</sup> Dr. Myneni S. R. '**Jurisprudence**' (legal Theory) (2001) Asia Law House. Hyderabad pp. 396-397

From this state of nature in which man was free and independent in all respects. From this state of nature. According to him there emerged a political society by the separate acts of individuals, where by they under took with one another to set up government which would be responsible to promote their common interest.

This government sovereign has no other force other than legislative power. In short, he say ‘ each giving himself to nobody, and there is not one associates over him we do not acquire the same Rights which we concede to him ourselves, we gain the equivalent of all that we lose and none. Power to preserve what we have by this device the individual relinquishing his natural Rights in return received civil liberties - freedom of speech, assembly , press and Equality.<sup>67</sup>

As regards, Roseau’s theory on ‘General will’ (Volonte general) it was the will of the whole community. It was the general will instead of Right reason which became the standard of the Right justice and Equality.

The Majority was accepted on the belief that majority view is Right than minority view, each individual is not subject to any other individual but to the general will and to obey this is to obey himself. Government and law are both dependent upon general will on popular as distinct from parliamentary sovereignty which may revolve or overthrow them.

To express this theory in legal language, government is nothing but an agency which may be revoked, limited or modified at the will of sovereign people. The depositaries of public power are not the masters of the people, but merely their officers.<sup>68</sup>

The social contract was not some event of the past but a living

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67 Bodenheimer E-‘**Jurisprudence (Revised edition) – the philosophy and method of law**’ (2<sup>nd</sup> Indian Reprint 1997) Universal Book Traders. Delhi. p.53.

68 Boden heimer & “**Jurisprudence (Revised edition) the Philosophy & Method of law**” (1997), Universal Book Traders, Delhi – p.55

reality present wherever there was legitimate government. The living contract is the fundamental principle underlying a political association in that it provides a mechanism whereby everybody adjusts their individual conduct to harmonise with the legitimate freedom of others- Man tracks his natural Liberty for a 'civil Liberty' and the enforcement of property Rights. In a famous phrase Rousseau defines the social contract in terms of each individual putting his person and power into a common holding under the supreme direction of 'general will where by we prelate 'to each other as constituent parts of an 'invisible whole'.<sup>69</sup>

As mentioned prior the political society so created would by majority will proceed to appoint governors who would govern in accordance with term of contractor the instrument of trust or an act of delegation by which he was so empowered. The governor was to act on the behalf of the people thus protecting their general interest and respecting their natural Rights. The violation of terms of social contract on the part of the governor would justify not only is disobedience but also rebellion against it.<sup>70</sup>

Rousseau lays emphasis on the community. He is in favour of people's Authority. His Natural Law theory stands for freedom and Equality of man-Rousseu's theory inspired French and American Revolution and given impacts to nationalism.<sup>71</sup>

#### **2.5.2.2 John Locke**

Locke's theory of social contract means that authority of the state

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69 Wayne Morrison, "(1997) "**Jurisprudence from the Greeks to post moderanism**" Lawman India Private Limited. P.517"

70 Dr. U. Chandra, "**Human Right**"(II<sup>nd</sup> C!., 1999), Allahabad Law Agency, Allahabad pp 4-5

71 Dr. Myneni S.R. "**jurisprudence (Legal Theory)**",(2001), Asia Law House, Hyderabad. pp. 396-397

rests on the consent of the subjects.

In general Locke took the help of the notions of social contract to explain the relationship between individual and the society. Initially he claimed that superior power either manual or legal was established in pursuance of the social contract under which the people collectively undertook to obey the command of such superior power so long it governed them in their common interest and kept itself within the terms of contract.<sup>72</sup>

In wide sense or descriptively the Present Researcher try to explain this general view of social contract theory of Locke-before contract as mentioned prior.

In the first place the enjoyment of the natural Rights of Life, Liberty and property was uncertain and constantly exposed to invasion of others.

Second, punishing infraction of the law of nature, each man is a judge in his own cause and liable to exceed the rule of reason and avenging transgression.

Locke asserted that men in establishing a political authority, retain in those natural Rights of Life, Liberty and property which were their *in* the pre-political stage. Only the Right to enforce the law of nature was given up to the organs of the body politic.

In other words, the individual retained the natural Rights to Life, Liberty and estate for they were the natural and inalienable Rights of man. The purpose of government and law is to protect and uphold the

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72 Dr. U. Chandra j '**Human Rights (2nd Ed. 1998)**' Published by Allahabad Law Agency. Allahabad.pp. 4-5.

natural Rights so long as the government fulfils their purpose the laws given by it are valid and binding but when it ceases to do that its laws have no validity and the government may be overthrown. The state of nature which proceeds the social contract was not one of anarchy as Hobbes had imagined. But was a state of Liberty not of license. Locke advocated a state for the general good of the people the subject conditionally surrendered his Liberty to the sovereign.

This supreme power can't take away from any man any part of his property with out his own consent. If it deals arbitrarily and improperly with the lives and fortunes of the people, it violates the essential conditions of the social compact and trust relationship under which it holds its powers.<sup>73</sup>

As a political philosopher, Locke enunciated the Whig theory of government. His ideas are contained in two treatise on government, in which he states the case for ultimate sovereignty of the people Which is the basis of all - democratic government. His letters concerning' toleration.<sup>74</sup>

While the separation of the legislative from the executive power of government will accomplish a great deal in the way of preventing governmental tyranny and arbitrariness, it does not in itself constitute a full and complete safeguard against the violation of individual Rights. Locke was aware of this fact and therefore was willing to Recognize one additional and final guarantor of the law of nature) .

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73 Bodeneimer E. **“Jurisprudence (Revised Edition) The Philosophy and the method of Law”**, (1997). Universal Book Traders, Delhi pp- 45 – 46.

74 Edited by: **“JANI – LOGG” New Universal Encyclopedia**”, vol. 9 The Educational book Company limited London p. 5220.

The people as a whole. They may remove and replace a legislature forgetful of its trust. When the executive or the legislative power Attempts to make its rule absolute and to enslave or destroy the people the last resort of an appeal to Heaven is open to the people. By the exercise of the Right of resistance or revolution, the Natural Law may than be recidivated against an oppressive positive law which negates and denies it.<sup>75</sup>

The idea of natural Rights plays an important part in the legal and philosophy of Locke. He in fact made in Life, Liberty and property his three cardinal Rights, which prelate dominated and influenced the Declaration of American Independence 1776. Locke's view was that state was designed to guarantee and protect natural Rights of individuals. His alienable Right's of the individual came to be embodied in many Constitutions and were guaranteed also.

### **2.5.2.3 Kant / Immaneul**

German Philosopher, one of the most important thinkers of modern times, the exponent of critical 'transcendental' or formal idealism.<sup>76</sup>

The philosophy of Kant has profoundly influenced all Subsequent philosophical speculations. According to him part of our knowledge is" knowledge of priori 'or original transcendental and independent of experienced. What he calls the 'pure reason<sup>1</sup> has to do with the former. His great work named the 'Kritik der reinon vernaft' [critique of pure reason]. Contain the foundation for his whole system of philosophy. In the preface to a later work the 'Kritik der reitvn the ilsleraft'

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75 Dr. Myneni S.R. "**Jurisprudence (Legal Theory)**", (2001), Asia Law House, Hyderabad. pp. 395 – 396

76 **Encyclopedia Britannica** - vol. 13- Published by Encyclopedia Britannica limited U. K. p. 266.

[critique of the power of judgment] he defines pure reason.

This very briefly was Kant's position. Our knowledge of the external world he held is limited and conditioned by the limit and conditions of our minds. It is knowledge not of reality but of appearances. The reality which lies behind those appearances is unknown and remains unknown.<sup>77</sup>

Kant is often described as an ethical rationalist and his description is clearly not whole inappropriate. It is true that Kant proceeds in the ground work from this formulation to others which are on the face of things less formal he introduces the nations of man as an end in himself; And of a he introduces the nations of man as an end in himself, and of a Kingdom of ends in which he moral agent is at once subject and lawgiver to give body to his moral thinking. But rightly or wrongly he believed that these nations could be derived from that of the moral law and its to characteristic impartially.

He certainly never suggested that they were attained through rational institution.

In his applied ethics Kant has been criticized as unduly rigorous his views on capital punishment in particular are often cited as those of a reactionary. It is true that he was keenly aware himself of the call of the duty and never tired of reminding of their moral responsibilities. But that he was such should be described neither to moral piggery nor to inhumanity it was rather that he saw an essential connection between moral freedom and human Dignity and constantly wished to bring the connection home. As some of his occasional writings show he was certainly not in sensitive to the extent to which external factor beyond

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77 Edited By : Patterson and Douggal – "The Compact Encyclopedia" The Gresham Publishing Company Limited -London pp. 138- 139.



their central shape men's actions and inhibits their moral effort. He thought all the same that normally at any rate have the power lift themselves out of their natural environment and adopt the moral point of view and he believed that they were most truly themselves when they did so this belief is the key both his general philosophical outlook.<sup>78</sup>

Kant favours personal Liberty. The study of human minds the subject to which Immanuel Kant devoted his great gifts has attained the deepest thinkers in all age.<sup>79</sup>

#### **2.5.2.4 Jeremy Bentham**

Ethical philosophers may be broadly divided in two types;

- (1) Those which assess the morality of action in terms of some intrinsic property of properties alleged to belong to the action or sometimes in terms of the motive from which it proceed.
- (2) Those which assess the Tightness or wrongness of an action in terms of the consequences which follow from that action.

Theories of second type usually known 'as utilitarian theories, the theory of utilitarianism were first advanced in its modern form by Jeremy Bentham the sociological reformer (1784 - 1853). It involved two separate sorts of assertions.

- (a) The ethical value of actions depends entirely upon their consequences.
- (b) Of these consequences only pleasure of happiness is to be regarded as valuable. The doctrine involved by this or second Hedonism.

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**78** **The Book of Knowledge** published by Waverly Co. London Vol. VI p.393

**79** **Encyclopedia Britannica** - vol. 13- Published by Encyclopedia Britannica limited U. K. pp 270 - 271.

“ The greatest happiness of the greatest number” this is the Phrase generally associated with Bentham and this was the keynote of his Life work.<sup>80</sup>

He was an English Utilitarian, Philosopher Economist and Theoretical Jurist One of the principle influences on the reforming thought of the 19th century, both in his own country and abroad. A writer on law and political economy whose subsequent influence even greater than his fame.

The prophet of utilitarianism and the herald all manner of social and legal reforms the greatness of Bentham grows with time and with the realization of his amazing grasp of so many and diverse subjects.<sup>81</sup>

Bentham’s first book the fragment on government-appeared in 1776. The subtitle an examination of what is delivered on the subject of government in the introduction to Sir William Blackstone’s commentaries indicates the nature of work. Bentham found the grand and fundamental fault of the commentaries to be Balckstone’s antipathy to reform. ‘Bentham’s book written in a clear and conscience style different from that of his later works maybe said to mark the beginning of philosophic redicalisation. It is also a very good essay on sovereignty.

He argued that everyman was the best judge of his own advantage that it is desirable from the public point of view that he should it without hindrance and that there was no reason limiting the application of this doctrine in the matter of lending money at interest. His later works on political economy followed by ‘laissez faire’ principle though with modification. In the manual of political economy he gives a list of what

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**80** stowell - '**Practical knowledge for**' Published by Waverly Book Company limited, London Vol.2,pp.129 - 130 ‘ Hedonism’ from the Greek word ‘Hedone’ meaning ‘pleasure’

**81** “**Hutchinson’s Pictorial Encyclopedia**”, Hutchinson and Company, Publishers Limited; London. Vol. I p.503

the state should and what it should not do, the second list being much longer than first.<sup>82</sup>

In ethics -Bentham must be regarded as the founder of modern Utilitarian in polity and criminal law. He anticipated or suggested many practical reforms and his whole influences were stimulating and humanizing.

These reforms include the reforms of the representative system of parliament, the mitigation of the terrible criminal law the abolition of transportation and the improvements of the prisons. But this was followed by long list of works. They are:

- The abolition of imprisonment for debt.
- The overhauling of the jury system.
- The introduction of uniform and scientific methods of drafting acts of parliament.
- The reform of poor laws.
- The abolition of religious tests.
- Cheap postage.
- Real property registration.
- National education Protection of inventors.
- The public health litigation.
- The hard labour bill.<sup>83</sup>

Bentham was deeply interested in prison reform and for years his chief concern was his inspection. This was a penitentiary building for the reformation of criminals.

Bentham however must be reckoned among the pioneers of

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**82** **Encyclopedia Britannica** - Encyclopedia Britannica Limited , London Vol.3 pp 417 – 418  
**83** Edited by Annandale Charles,"**Blackie's Modern Encyclopedia,**" Blackie & Sons, London Vol. I. p. 460 “

prison.-reform. It is true that the particular scheme that he worked out was bizarre and spoiled by the elaborate details which he loved moral reformed, health, prisoner, industry, invigorated, instruction, diffused and other similar desiderate would he thought the result if his Scheme for a model prison. The ‘panotipcon’ were to be adopted and for many years he tried to include the government adopts it.

The prophet of utilitarianism and the herald of all manner of social and legal reforms the greatness of Bentham grows with time and with the realization of his amazing grasp of so many and diverse subjects his power of unerring prophecy and his universal tolerance in age which judged by modern standard was harsh in extreme.

The human and sensitive Bentham was forgotten in this hasty appraisalment.

The reforms for which Bentham was directly or indirectly responsible in the process of time eloquently proclaim catholicity of his learning and the liberality of his opinion.

It is also to be remembered that Bentham in his proposals for perpetual peace in the shape of congress or diet working towards disarmament and the abolition of secret diplomacy gave what was practically an outline of modern Covenant of the League Nation .So Bentham also played on inconsiderable part in the building up of the British Empire in, which connection the colonization of Australia and the Indian penal code both owed much to his inspiration. His total output would probably till some volume.<sup>84</sup>

Many of the reforms urged by him for instance universal suffrage, voting by ballot and payment for members of parliament

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**84** Edited by Athlestan Ridsway, "Everyman's Encyclopedia." Vol.II (III Edition), Published by, "J.M.Dent & Sons Ltd. London. Pp. 236 - 237"

have since been achieved.<sup>85</sup>

Bentham's aim of Life was the reforms of legislation but his whole influences was stimulating and humanizing. He suggested many practical reforms. His standard of ethical judgment he expressed in his become famous phrase. "The greatest happiness of greatest number"

So, Bentham's thinking is very much similar to today's human Rights concept.<sup>86</sup>

#### **2.5.2.5 Thomas Hobbes**

In different terminology Hobbes theory proceeds from 'social contract Before the social contract man lived in a chaotic state. According to Hobbes man's Life in a state of nature was one of fear and selfishness. The idea of self-preservation and avoiding misery and pain are inherent in his nature. He desired society also. This natural inclination induced him to enter into a contract and surrender his freedom and power to some authority.. The law of nature can be discovered by 'reason which says, what a man should do and what he should no to do.'

Natural Law actually consists of a natural Right in the natural condition to exercise basic power and preserve Life and Liberty. The Right of nature is the Liberty of each man hath to use his own power as he wills himself for the preservation of his own nature.....

'Liberty is the absence of external impediments which hider a man using his power according to as his judgment and reason shall dictate to him.

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**85** Edited by Stowell Gorden, "**The Book of Knowledge**" Published by Waverly Book Company Limited London. pp.431 – 432

**86** "**The Compact Encyclopedia**", The Greshan Publishing Company Limited, London. p. 239

The law of nature can be discovered by 'reason' which says what a man should do and what he should not do - that is already mentioned. Man has natural desire for security order. This can be achieved only, by establishing a superior authority which must be common obedience. Hobbes thus, is a supporter of absolutism - subject has no Rights against sovereign and that the sovereign should be bound by Natural Law it is not more than a moral obligation.<sup>87</sup>

But man realizes that part of his natural Liberty needs to be given up to the war of the natural state. Reason tells us the first Natural Law to seek peace and follow it. Then we discern a second Natural Law a man is willing as long as all others be contended are also willing to let down this Right to all things and be contended with so much Liberty against other man as he would allow otherman against himself.<sup>88</sup>

Hobbes pointed out that however that man have certain passions that incline them to prefer peace to the war like state of nature these are first a strong fear of death-second the desire for things necessary to commodious living and third the hope of obtaining these things by industry Since these passions can't be satisfied in the state of nature, Reason suggests to mankind convenient articles of peace termed by Hobbes the laws of nature.

Hobbes third law of nature is most important it concern with contracts. Hobbes appears to argue that a primitive sense of contractual negotiation inheres in individuals in the natural state.

Men can mutually transfer their Rights by contract. The contract Provide the mythology for attaining goods for achieving power. But

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<sup>87</sup> Myneni, S.R. '**Jurisprudence (Legal Theory)** (2001) Asia Law House -Hyderabad p. 394.  
<sup>88</sup> Morrison wayne - "**Jurisprudence from the greeks to post mordenism**" Lawman India Pvt. Ltd. New Delhi. p. 392.

contracts need a regime of power to be effective. Contracts need the power of law and this law needs a fountain of power to exist. - To define that justice is the keeping of the contract and injustice is the breach of the contract. This is a vicious circle of foundation legitimizing Constitution. Although there may be some natural tendency to use contracts. Contracts are of no use unless some power is in existence to enforce them - to punish for breach but this power is itself created by Covenant.

It is the most fundamental law of nature according to Hobbes that peace is to be sought wherever it can be found. From this law a number of more specific precepts are derived. Everybody must divest himself of the Right he has to do all things by nature everyman must stand by and perform his Covenants. All men should help and accommodate each other as far as may be done without danger to their persons, No man should reproach, revile or slander another man There must be an impartial arbiter in controversies and above all men should not do with others what they would not wish others to do to them. These laws are declared to be eternal and immutable.

Now from the Covenants Hobbes switches over to the sovereign. He said that the sovereign is created by the event of social contract. The sovereign will be one institution, one body but this oneness is artificial - a creation in reality the sovereign is an institution comprised of the powers given up by the individual members of the *society*. To act as allowed by the powers given up the multitude so united in one person is called a COMMON WEALTH in Latin CIVITAS.... this is the generation of that LEVIATHAN or rather (to speak more relatively) of the mortal God

to which we own under the mortal God our peace and defense.<sup>89</sup>

He then connected this common wealth with contract-Hobbes said that in order to secure peace and to enforce the law of nature. He argued that, it is necessary for men to enter into a compact mutually by everyone agrees to transfer all his power and strength upon one man or upon an assembly of man on condition that everybody else does the same. The sovereign power thus constituted called 'Leviathan' or the 'Mortal God' - By Hobbes should use the combines power and strength of the citizens for the purpose of promoting peace safety and convenience of all.

The chief instrument by which Hobbies sovereign imposes its will on the people by 'civil laws (as distinguished from laws of nature which are laws in non-technical sense) Civil laws are to every subject those rules which common wealth hath commanded him by word writing or other sufficient sign of the will to make use of for the distinction of Right or wrong. It appears from this definition that the contents of Right or wrong are determined by solely by the imperatives of the civil laws there can be no 'Right' or 'wrong' justice or injustice. Part from commands of the sovereign power no law can be unjust.<sup>90</sup>

The sociological basis for his philosophy was a common wealth consisting of equal individuals who were endowed with private property lived by their own industry and regulated in their mutual relation by way of contract being protected. In their Life & possessions by a strong government. Life, Liberty and property were not recompensed as inalienable Rights immune from governmental interference they were

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89 Bodenheimer E. - '**Jurisprudence**' (Revised Edition ): The Philosophy and The of Law (2nd Indian Reprint )"(1997) Universal Book Traders Delhi p.39-40

90 Ibid p.41



subject to benevolent regulation by the state. In spite of this fact, certain distinct elements of individualism and liberalism are discernible in Hobbes theory of Natural Law this philosophy of government duties. It is a liberalism whose enforcement is entrusted to an 'enlightened' absolute monarch. He is to be faithful guardian of Natural Law. He is to secure the Life property and happiness of his subjects. Their welfare not his own self aggrement is to be his highest concern. But in executing his functions he is not bound by any legal curve on his power. Thus in its practical effect Hobbes law of nature is nothing more then a moral guide for the sovereign for preservation of natural Rights of his subjects. There natural Rights are today called, 'Human Rights'.<sup>91</sup>

#### **2.5.2.6 John Rawls**

A through going attempt to formulate a general theory of justice is that prof. Rawl's since its publication in 1971 it has received wide attention.

He made an attempt to receive the social contract theory and the Kantian philosophy of law in a modernized grab and to oppose them to the utilitarianism of Bentham and on is represented by the Theory of Justice.<sup>92</sup>

In his own words Prof. Rawls says in theory of justice a society is well ordered when it is not only designed to advance the good of is members but when it is also effectively regulated by a public conception of justice.<sup>93</sup>

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**91** Dr. Myneni S.R. "**Jurisprudence (Legal Theory)**", (2001), Asia Law House, Hyderabad.

pp. 394

**92** Barrister RWMDIAS"**Dias;jurisprudence**' (1999) Aditya book stores, New Delhi pp. 480-481.

**93** Morrison Wayne '**Jurisprudence from the Greeks to post Modernism**' (1997) Lawman India privet limited, New Delhi p. 393.

Like Kant Rawls defines Liberty as absence of constraints and the first of his two fundamental principles of justice requires that each person is to have an equal Right to the most extensive total system of equal basic liberties compatible with a similar system of Liberty for all.<sup>94</sup>

Going beyond liberty, Rawls then incorporates the notion of Equality into his theory of justice by means of this axiom. Social and economic inequalities are to be arranged so that they are both (a) greatest benefit of the least advantage, consistent with the just savings principles and (b) attached to offices and positions open to all under conditions of fair Equality of opportunity". The question of determining what kinds of social and economic inequality will work out of everyone's advantage is to be resolved according to the hypothetical concept of the 'original' position, (which is Rawls's new version of the social contract theory).

Rawls constructs a thought - experiment in which we are asked to imagine ourselves meeting together to form a social contract covering the principles which will bind us in real life. Rawls asks us to imagine choosing principles for determining the principles of justice of your society from an original position located behind a Veil of ignorance'. The aim of the original position is to 'nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Thus, Prof. Rawls emphasizes the Right to Equality.<sup>95</sup>

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94 Bodenheimer R - '**Jurisprudence Revised Edition The philosophy and method of the Law**'(1997) Universal Book Traders, Delhi p. 157.

95 Wane Morrison '**Jurisprudence : From the Greeks to the Post Modernism**', (1997), Lawman India (Private) Limited. Delhi. p. 201

### 2.5.2.7. J.S. Mill

Mills most famous work is his essay 'On Liberty' published in 1859 when he was 53 ( Fifty three) and the well respected author of leading texts on logic and political economy.<sup>96</sup>

Mill in his essay made an eloquent plea on behalf of freedom of speech, assembly and religion.

Mill first announces that he is going to assert one principle as the touch stone for the relationship of Liberty (autonomy) and authority. His actual principle has come to be known as the 'harm principle' (or the Principle of Liberty).

In his well-known essay 'on Liberty', John Strut Mill had set forth a principle which in his opinion should guide the actions of the state in delimiting and cubbing the freedom of the individual. That the only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

Adherence to this principle makes possible a form of social Life which maximizes Liberty; conversely : If individuals or the collective (the government) continually interfere with others, a liberal form of social Life is impossible. This has come to mean so long as the individual does not interface with the Rights of others

This is a vital principle which has become one of the Fundamental principles of modern liberal states.<sup>103</sup>

First, the inward domain of consciousness, demanding Liberty of conscience in the most comprehensive sense, Liberty of thought and feeling absolute freedom of opinion and sentiments in all subjects practical

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96 Wane Morrison 'Jurisprudence : From the Greeks to the Post Modernism', (1997), Lawman India (Private) Limited. Delhi. p. 201

or speculative, scientific, moral and theological.

We must be true to see our lives as projects and each of us 'ought' to have the social space to develop and follow our individual Life projects free from interference so long as we do not harm others.<sup>97</sup>

differently expressed, the feeling of justice is the urge to retaliate for a wrong, placed on a generalized basis. This feeling rebels against an injury not solely for personal reasons, but also because it hurts other members of society with whom we sympathize and identify ourselves. The sense of justice, Mill pointed out, encompasses all those moral requirements, which are most essential for the well-being of mankind and which human beings therefore regard as sacred and obligatory.

Thus individuals should also enjoy freedom of interaction, the coming together of people acting consensually among themselves, again, so long as they are not harming other individuals. Mill summarizes his doctrine.”

The only freedom which deserves that name is that of pursuing our own good in our own way.<sup>98</sup>

The Benthamite programme was developed by older Mill (James Mill) which based on individualist assumption: Actually it was Expressed in. younger Mill's (J. S. Mill) 'On Liberty'. In which Mill's Assumed .diction between a man's conduct which concerns only Himself, where his Liberty was to be absolute, and that which concerns Others, which law might regulate.

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97 Morrison Wayne - 'Jurisprudence' From the Greeks to the Post - Modernism"(1997) Lawman India private limited, New Delhi p. 201

98 Bodenheimer E - 'Jurisprudence Revised Edition' The philosophy and method of the Law (1997) Universal Book Traders, Delhi's p. 58. Foot Note No: 16.

Mill admitted that even if without family or friends, a man should not be permitted to sell himself a slave; since freedom cannot be used for its own distraction.

Life in a society that allows diversity in opinion is a different existential phenomenon than Life in a closed society. Mill is concerned to create the conditions where freethinking people can develop and where thought can be freed from the depositism of custom.

Among the works of man which human Life is rightly employed in perfecting and beautifying, the first in importance surely is man himself.

So, Mill gives more importance to Liberty & freedom as a human Right.<sup>99</sup>

India has a rich heritage of different philosophical schools There Schools are pioneer for advent of concept of -Human Rights. Various Schools are established *by* different scholars. So It is necessary to ‘ learn about there scholars and its contribution for the development of the concept of human Rights.

Indian Philosophers can be divided in to two categories:

- (1) Ancient - They are’,Manu & Yagnavalkaya And
- (2) Modern - They are M. K. Gandhi, Tilak etc.

Present Research Student wants go discuss about turn , one by

## **2.6 Indian Philosophers Ancient**

### **2.6.1 Indian Philosophers**

#### **2.6.1.1 Manu**

Manu was the son the Brahma. He is the first man on this earth. So, he is an orator of Divine Law. Manu is famous because of its work

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<sup>99</sup> Stone J. “**Human Law amd Human Justice**”,(2000) Universal Law Publishing Company Private Limited. Delhi. pp.148 -149

‘Manu Smiriti’ - An authorised book on Hindu law.<sup>100</sup>

The Vedas and the Smiritis are the most important sources of Hindu law. According to tradition the Vedas called ‘Sruti’ (what is heard) represent the direct word of God heard by the sages while the ‘Smirities’ (what is remembered) represent what was recorded by the sages, in their own words what they have heard from deity .<sup>101</sup>

It also became the chief authority in Hindu jurisprudence. It has served as a variable store house of information for the social, cultural and religious Life of people.<sup>102</sup>

The oldest Smiriti is ‘Manu Smiriti’. The code of Manu in its present form of 2694 slokas dates from 200 B. C according to Max Muller. The Code deals with many matters, but the part bearing upon law deals with subjects fewer than 18 titles.

Manu’s code was accepted as final. In this code the description of civil and criminal Rights and their remedies suited to the needs of the time.

As for example disputes related to deposits, recovery of debt, relationship of partner etc.,

Manu has discussed on various subjects but most important is his political thoughts. The Present Research scholar wants to discuss it first.<sup>103</sup>

Manu ordained that ‘Law is the king of kings’ and he recognizes

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**100** Brahma, One of the Deity of Hindus. Who originates/creates this universe.

**101** Prof. Subba Rao, G. C. V.- “**Family Law in India**” (2003) S. Gogia & Company, Hyderabad, p.41.

**102** Edited & Translated by “Dr R.K. Panda” **Manu Smiriti**(1998), Paramount Prakashan Baroda/From preface.

**103** Dr. Myneni S.R. “**Jurisprudence (Legal Theory)**”, (2001), Asia Law House, Hyderabad. pp. 23

the divine power of kings to enforce the law through 'Danda'. He gave importance to custom, as a source of Dharma .

Manu says, 'If justice destroys, everything will destroy'.

The eighth chapter contains rule of king. King's duty is look- to the Administration of justice, Constitution of Assembly (SABHA) kings duty to look after minors, widows, and helpless people creditor's means of recovering his debt, grounds on which the claimant may fail in his. But, methods of corporal punishment.

Like protection (of property) should be (given) in the case of barren woman, or such as have no sons or have no families or (who are) true to the conjugal vow or (are) widows or ill.<sup>104</sup>

"If while these women are alive their relatives should take away this (property), let a just king punish those relatives with the punishment awarded to thieves."

If the king did not untiringly inflict punishment on those to be Punished the stronger would roast the weak, like fish on a spit"<sup>113</sup>

It means the king should perform his punitive duties without delay for the case of protection of the weak.

A king punishes those under serving of punishment and even failing to punish those deserving of punishment, attains great infamy and also goes to hell.

Then Manu talk about people's Right. Manu suggests in some passages that people have the Right to rebel against oppressive king. An analysis of the coronation oaths in the Vedas and the Brahman literature shows that Hindu kingship at that time was regarded as a human institution.

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104 Hopkins E.W. "Hindu Polity & The Ordinance of Manu" (1972), Kalyani Publishers, Ludhiana p.150

A king they show was elected. By becoming a king one entered into a contract with the people. Ruler ship was a trust placed in him. He could not be arbitrary but had to work in co-operation with a council. After the coronation and a ceremonial drive, a newly made king was enthroned and silently touched on the back with a rod- the scepter of justice. This was to show that the king was not above law but subject to it and that he was (TASMAT RAJA DANDYA).<sup>105</sup>

Manu raises a wife to the rank of Goddess. He has raised the Mother to the rank of divinity (matter - deva). He says( mother is very much in higher position than father and teacher.)<sup>106</sup>

Also he says, The God rejoices when women are honoured, the tears of dependent women blight a family, their grateful smile make it blossom into fortune.'

So Present research student humbly submit here that Manu in his famous code ' Manav Dharma Smruti' is very mull clear about distribution of justice.

### 2.6.1.2 Yagnavalkaya

Yagnavalkaya is also an ancient Hindu Jurist. He has also prepared a code named 'Yagnavalkya Smiriti 'Yagnavalkaya can be regarded as next to Manu in importance and authority The text of Yagnavalkya was based on Manu's code. It is, indeed a code of duties comprehensive and secular in nature which attempted to enthuse, all people for the subordination of PREYAS TO SHREYAS', of material earthly possession to moral values called 'Dharma.'

Now, the 'Yagnavalkya Smriti' (2<sup>nd</sup> Cen. A. D. ) which contains 1010

**105** Edited by Chattopadhyaya D. P. and Kumar .Ravindra- "**Science, Philosophy and Culture in Historical perspective**' (1995) , Indian Council of Philosophical Research, Delhi, p.563

**106** Dr. Mayneni S. R. -"**Jurisprudence (Legal theory)**", (2001) , Asia law House, Hyderabad. p.23



shlokas is divided in to 'Achara' (Ritual) and 'Vyahara<sup>1</sup> (Secular) and Prayaschitta' (Expiation), 'Kands' (Parts).

Yagnavalkya Smriti provides that king was subordinate to law through endowed with 'Power of Danda' (punishment) relatively he was less harsh towards Women and Shudras.

"In modern Hindu Law as administered by in the British courts in the whole of India, the 'Smriti of Yagnavalkaya' has become the guiding work.

The paramount position of 'Yagnavalkya Smriti' is largely due to the commentary on it by Vignaneswara. This commentary known as 'Mitakshara' holds way through India. The Mitkashara School "of law is paramount outside Bengal. Even in Bengal the Mitkashara rank only next to the 'Daybhaga<sup>1</sup> which is accorded primacy in that part of the country. For this reason the 'Yagnavalkya Smiriti as expounded by Mitakshara holds a dominant position amongst the various Smirities.

At last, again and again Manu and Yagnavalkya both say when justice is destroyed, it destroys, when justice is protected, it protects.' Therefore, justice must not be destroyed. Justice is the one friend who follows even after death.<sup>107</sup>

## **Now, Modern Indian Philosophers**

### **2.6.2 Modern Indian Philosophers :**

#### **2.6.2.1 B. G. Tilak**

The loss of political freedom - loss of one's self confidence. Slavery leads to moral degradation and it thus becomes essential to restore self - confidence in the people so that they become fearless enough to

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**107** Translated by Doniger W. & Smith B. K. "The Laws of manu" , (1992) ,Penguin Books,New Delhi. p.153.

participate in the struggle for freedom. In this respect, Tilak played a pioneering role in India's freedom struggle for nearly four decades. He directed his energies to the task of creating the consciousness in the people the 'Swarajaya' "Home rule" was their birth Right.

Tilak's patriotism, fearlessness, fighting qualities, upright character, and above all spirit of sacrifice won him a place in the hearts of the people and he came to be known as popularly as 'Lokmanya Tilak'.<sup>108</sup>

By Kesari 'and Maratha' he entered on the religious scene of Maharashtra. But his priority was political & social reforms.

But ; Tilak's opposition mainly sprang from the assumption that the social reform would create a division among the people which would hamper their progress towards freedom. So, Tilak was particularly opposed to the foreign government forcing social legislation on a subject people.<sup>109</sup>

His thinking about social reforms was very much developed by basic concept of Human Rights. He strongly opposed dowry and child-marriage.<sup>110</sup>

Tilak was also very much sensitive about social evils like untouchability. Once he was delivering a speech, in Baroda in conference about untouchability prevention. His words show us, how he was enthusiastic to fight against this problem. "The vedic religion didn't recognize untouchability. It is a traditional evil. If nation's interest and welfare lies in this movement. I am ready to recognize untouchables in common stream.<sup>11</sup>" then he told very emotionally, this

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**108** Pradhan G. P. '**Lokmanya Tilak**', (1994) National Book Trust India Ltd., Delhi. From ward.  
**109** Edited by sen. **Social and Religions Freedom Movement in the Nineteenth & twentieth Centuries**(1979) Institute of Historical studies. pp. 263-264.

**110** Deshpande P. G. '**Shri B. G. Tilak**' (1956) Published by Gujarat Vidyapith Ahmedabad. pp.68-69.

untouchability never exists after death, if we follow this custom in our society, it would be a sin; because it is not binding in a heaven - God's home. And if this untouchability established by God. I will not call him The God - Almighty.' So ; Tilak's view were very much revolutionary about deprived & weaker section of the society.

For this purpose; he was convinced that nationalism would take its roots in the Indian soil only if the people become conscious of their glorious past and the role played by heroes like Shivaji Maharaj. To develop an Equality among educated and illiterate people he arranged 'Ganapati Utsav' and Shivaji Festival both these festivals have their religious, cultural and political importance.

He emerged as a "Champion of the down trodden "and the oppressed." His bold stand and success in bringing pressure on govt. on implementation of the famine Code captivated the imagination of people.<sup>111</sup>

Another illustration of Tilak's sympathy towards oppressed class is 'Viranvali Rape case'. In this case, he asked government for equal justice for Indian woman. His belief was that freedom of press must be equal for Anglo-Indian and local papers.

In 1893, there are Hindu - Muslim riots in some towns of Maharashtra in 'Kesari' He severely criticized the British for 'instigating the Muslims. Tilak wanted the Hindus and Muslims to have the freedom to follow their religions but not at the expense of the Hindus being meted the unjust treatment. He severely criticized those who advised the Hindus to be move tolerant. He asked the Government to be impartial and allow justice to all.<sup>112</sup>

Tilak made people realize that nothing could, be achieved

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**111** Pradhan G. P. '**Lokmanya Tilak**'. (1994) National Book Trust India Ltd., Delhi, p. 22.  
**112** Jog. N.G. **B.G. Tilak**, (1913), Government of India's Publications. p.23

without discipline, unity and strenuous effort. He had not merely coined the slogan 'Swarajaya is My Birth Right and I will achieve for it. He blazed the trail for it through – Life long struggle and sacrifice through so many activities. He was the first to house and mobilize public opinion for national end.

Succeeding Generation, which enjoy that birth Right can't but cherish Tilak;s me many with respect & gratitude.

### **2.6.2.2 Rabindranath Tagore**

Tagore's influence was not so - sudden or so-earth - showing for Indian humanity. and yet like the coming of the dawn in the mountain-pit crept on us & permed us.

In the years of colonial slavery & artificial isolation from the rest of the world a period that was extremely difficult for India, Tagore it can be said opened a window to India, for all man kind. Specially, his legendary work - 'Gitanjali' - resounded like a passionate appeal for the universal peace, love & harmony.

Tagore in varying degrees, were against the bondage of tradition & denounced superstition -.&even though they attached the greatest importance to our heritage from the past. He is a poet of humanity of freedom of every where.

He described the condition of his people hungry, naked & homeless in their own land, bereft of human Rights. The rise of poet give voice to these dump & stupid faces bring hopes to these tired, emptied broken hearts.<sup>113</sup>

At the time of translation of Gitanjali in Russia, we hear condemnation of caste system, from the Poet's own mouth.<sup>114</sup>

Tagore was a strong believer in the Dignity of the individual

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113 'Rabindranath Tagore - A contemporary volume (reprinted in 1986) + Sahitya Akademi –New Delhi p. B

114 A. P. Gntyug Danil Cituk, **Tagore, India & Soviet Union - A Dream Fulfilled** ( 1996) Firma Kim Ltd., Colkata.

and the value of freedom & initiative for all action.

Tagore's stories were imbued with humanistic and democratic world outlook sympathy for the anxieties of the ordinary people ability to see the 'great' in the 'little'. The power & the light of the writer's humanism even the tragic events of the stories reflecting the real Life of the Indians in colonial India fettered by the burden of traditions & customs.

The present researcher sees a direct statement of Tagore for Unity in human society regardless of race, color & creed.<sup>115</sup>

Almost all the major novels of Tagore depict the inevitable conflicts and contradictions of India. Hindu society in transition.

Especially his words of 'chandalika' drama expresses his emotions for untouchables. "They are outcastes; the dealers of religion keep them out side the temples doors... My offerings do not reach the Deity imprisoned in Temple... I have hungered for man's comradeship'

He believed that root of India's bondage lay in neglect of the individual and her acceptance of a Social system, which had condemned millions of her children to in Dignity & humiliation. Tagore extended the principle of the Right to Dignity of the individual to the case of nations as well. In 1919, it was again he who first raised the voice protest against the atrocities at Jalianwala Bagh.

He renounced his Knighthood after this tragic event. He had deepest sympathy for the. Exploited and oppressed Asian people and bitter hatred against the Western Imperialists.

The same way, he was against of industrial revolution. He said that the machine must be used as man's slave not as him master. It

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**115** 'A Life of Tagore' by Krishna Kripalani Published by Director, National Book Trust, India, New Delhi p. 221.

was the theme of many of his poems, plays and essays: Tagore was unhappy at the increasing concentration of the people of urban.

The identity of woman as a person and not merely as man's Partners of Life, was yet too received due recognition.

It was also inevitable that Tagore should feel keenly for disabilities which woman have suffered through the ages.<sup>116</sup>

His stories fully expressed his deep sympathy and strong sense of justice particularly with women, who were suffering under the yoke of feudalism. With his severe and sharp pen, he criticized the dark oppressive system to ward women such as child marriage, burning alive with the deceased husband and enforced widowhood after the husband's death.

His stories indicates the problems of dowry i.e. one of his created character... ' the unfortunate Nirupama'<sup>1</sup> whose young Life was crashed merely because her poor father could not pay enough dowry.

Tagore had even forward view for peasants also.

Especially in his drama 'Muktadhara' he talked about labour's rebel in Gold mine. He said,"that terrible machine of a highly organized and mechanized society which turns men in to robots reducing names to numbers". The age old struggle between the individual and the Sate, between the liberative impulse and the compulsive will, between free intelligence and cold calculating intellect. Which has sinister proportions with the development of the scientific technique is the theme of this play.

He had much sympathy for this suppressed class. He founded a parallel institution adjacent to the educational colony and named "Shri Niketan - a nucleus for experiments in rural community development.

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**116** Rabindranath Tagore "A contemporary volume (Printed in 1986) " Published in Sahitya Academy .New Delhi. p.130

He believed that persons rooted in the soil are the solid core of Indian economy and society.<sup>117</sup>

The handsome amount which he received as Nobel Prize in 1913 was donated by him to “Shanty Niketan and invested agricultural co-operative bank both was established by him. The peasants got loan at cheap interest from this bank.

Rabindranath was not a social reformer at least not primarily. But his writings and speeches are strewn with humanitarian ideals. He dreams of a society which will be free from all sorts of domination and discrimination, a society marked by equity, justice and co-operation. Rabindranath has a deep sense of Dignity. And he said that our civilization should take its firm stand its basis of social co-operation and not upon that of economic exploitation and conflict.<sup>118</sup>

His political thought also derived from humanism-.

He said that in politics local autonomy offers greatest scope for such expression of freedom and creativity of individual. Tagore was a strong believer in the Dignity of the individual and the value of freedom and initiative for all nations.<sup>119</sup>

He also said that. A man may be completely free from inner tensions From envy, anger or greed’. He was totally against of wars.

Because he found a war is a crime against humanity. His ‘o bloody’ poem seems to forestall the political lyric of the last years of his Life, which pours for thin angered condemnation of fascist barbarism and brigandage of wars.<sup>125</sup>

He said that “The wheels of fate will someday compel the

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117 Ray S.N. “**The Sprit of Renaissance**”(1999) The Renaissance Publication Private Limited, Kolkata pp.628

118 Kripalani “**Tagore – A Life**” (II ed. 1986) Published by National Book Trust, India, New Delhi. p.85

119 Gnatyug Daniel Chuk **Tagore India and Soviet Union - A dream fulfilled**” A.P.(1986) Firmaklm Pvt. Ltd., Calcutta p. 86.

English to give up their Indian Empire. “So, he was seeking welfare not for India, alone but for the entire world. He signed of ende a voure and the co-operative re-construction of human society, in which every individual will be guaranteed the Dignity and the Rights of a civilized world.

He firmly believed that the time would come when there would Be no war, no slavery and no oppression on earth.

The Indian National Anthem which is one Tagor’s greatest gift to India thus reflects his ideal of a world where there will be friendship and co-operation among all men and mutual regard and respect among all peoples.

### **2.6.2.3 M.K.Gandhi**

Gandhi could be termed as the greatest champion of the Human Rights. He fought for the Rights of the exploited the humiliated in the society. He established a correlation between the Rights, duties & obligation.<sup>120</sup>

A strong believer of equal Rights for all men, he defended the human Rights and raised the voice against the illegal, illegitimate and unjust social norms, political Conventions & colour prejudices. For a due recognition of the individual Rights his action were directed towards the moral norms of Life.

But, Gandhi’s another view is also very important in favor of Human Rights. Present researcher wants to explain them one by one. Progressive criminologists across the world will agree that the Gandhian diagnosis of treating offenders as patients and his conception of prisons

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120 G. Verraju. ‘Gandhian & philosophy it’s Relevance Today’ (1999) Published by Decent Book, New Delhi p. 170



as hospitals-mental & moral - is the key to the pathology of delinquency and the raupic role of punishment.

The holistic jury's prudence of Gandhi abolition of Capital punishment implies victory of love over hate of and Human Rights over all forms of tyranny & dictatorship.

In talking the problem of untouchability Gandhiji did not call upon the untouchables to join in the struggle for assertion of their Human Rights. They were incapable then of doing so. Untouchability is a cruel and inhuman institution. It violates human Dignity.<sup>121</sup>

Untouchability is against the spirit of democracy which makes no distinction among citizens.

The Equality that Gandhiji claimed for the untouchables in Hindu society included the Right to enter in Hindu Temple.

When in South Africa, Mahatma gave the name 'Satyagraha' the unique kind of resistance he offered in injustice & in Equality.

He held that Civil Liberties stand as the very basis of democracy.<sup>122</sup>

Gandhian Doctrine of Trusteeship is also very interesting especially; it relates the Rights to Equality. To understand this doctrine, present researcher's attention on the Gandhian model of industrial relation system and its relevance to the present relation system of India. In this view, truth & non-violence and 'Aparigraha' non possession are the guiding principles of the Gandhian approach for industrial relation system. The practice of 'Aparigraha' through trusteeship humanizes social relations between the capitalists and the

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121 Kripalani J..B. **Gandhi His Life & Thought** - (Reprint 1971)' Publication Division, Ministry of Information & Broadcasting, Govt. of India. Delhi, p. 383.

122 "Editors; Das B. C. & Mishra G. P. '**Gandhi in Today's India**' (1978)"Ashish publishing House'. 'Delhi p. 15.

workers because the former will act as trustees and later as co-trustees of all wealth. In this case, class interests are not expected to be conflicting.<sup>123</sup>

The blind use of machines without any sense and technological advancement erodes moral fiber and badly affects the value system. So Gandhi vehemently opposed the growing use of machines. He knew that heavy industrialization growing result in exploitation. The beauty of human life is not felt. Industrialization breeds violence class - conflict & misery. Now, Gandhi's thought on women's Liberty.

He declared himself uncompromising in the matter of women's Right because in order to bring about social justice the recognition of the Equality of woman in imperative. In a plan of Life, he maintained woman has as much Right to shaper her own destiny as has man.

Compassionate & sensitive he was, Gandhiji Condemned in the clearest terms possible all form of social, religious, economic injustice. Specially, among the social evils he exposed and condemned were the customs of purdah, dowry, child - marriage, bondage of jewels and the social & family compulsion of wearing of them: The condition of those women with regard to the emphasis on chastity and the condition of unfortunate women who had no choice to prostitution.<sup>124</sup>

Even his another suggestions were very rebellious and demanding for women a Right to Equality & Dignity in every sector of Life. i.e. 'A daughter's share must be equal to that of a son... if a husband is unjust to his wife, she has the Right to live separately.'

So, Gandhi's view was much more near to morden concept of

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123 G. Veeraju, **Gandhian & philosophy & it's relevance Today**", (1999) Decent Book New Delhi p. 17

124 Anima Bose **Mahtma Gandhi - A contemporary perspective** -"B.R. publishing corp. New Delhi p.76

Human Right. His attitude of social affection helps to reform the society to establish a class less & caste less society, bridging the gulf between the haves & have notes to promote integrity, brotherhood, communal unity & harmony which are relevant in recent times.

At last, his revolutionary sentence is enough to understand his clear concept of Human Right - 'Law is for Life, not for death'.

#### **2.6.2.4 Raja Ram Mohan Roy**

The first hundred years of the British rule in India. (1757-1858) despite political and economic revolution was memorable for, it witnessed a remarkable out burst of intellect activities, which brought about a radical transformation in India's social and religious ideas.

Actually. Ram Mohan was no more religious reformer, but a stout social reformer who sought to eradicate the prevalent social evils and to introduce what was good for society and the people.<sup>125</sup>

Probably from the third decade or nineteenth century Ram Mohan came in close in context with English utilitarianism as represented by J. Bentham and James Mill which became subsequently closer in spite of some basic difference of outlook. Through his personal intimacy with these philosophers in England.

Up to the end of third decade, Benthamite liberalism had a firm grip upon the reformers and man like Raja Ram Mohan Roy expounded the idea of nationality ordered society a long the Bethamite lines...For social reform the attack on traditional practices and institutions which now loomed as blind irrational and unjust, 'Sati, ban on widow marriage, polygamy, child marriage, depressed status of women, caste

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125 Chowdhary K. C. "**History of Modern India**" , (1993) New Central Book Agency Private Limited Allahabad p. 283.

- restrictions etc' The main goal was the relative liberation of women and a relaxation of rigid social rules without a sustained reform movement injustice would be prolonged our conscience dead end and the national Dignity rewarded.<sup>126</sup>

It is a significant that at the beginning of the 19th century when R. M. Roy spear headed the liberal, humanistic and rationalist movement, the society he founded was Brahmosamaj. This was the beginning of social reforms. This society followed liberalism and humanism.

The most glaring example of the social evil of that time was the inhuman practice of burning practice The Hindu widows in the Funeral pyre of their deceased husbands know as 'Satee'. Between the short span of 13 years (1815-28) as many as 8000 widows were burnt-Ram Mohan denounced the practice in strongest term and showed from the scripture that was contrary to religion. The British were hesitant at first but at last Lord William Bentick suppressed the practice in 1829. Bentick's hand was strengthened by Ram Mohan advocacy for the suppression of the inhuman practice.<sup>127</sup>

Actually the custom of burning down widows with the corpses by this regulation of their deceased husband as also of using bamboos to press down those who wanted to escape from the torture, was condemned as being nothing short of deliberate woman - murderer.

Ram Mohan advocated other progressive social reforms: That did not fail to form the subjects of agitation in succeeding generation and accomplish desired results of these were his agitation for the prevention of sale of girls in marriage, abolition of the caste system, introduction of widow remarriage etc. Closely connected with his agitation

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126 Sen S. P. "Social and Religious Freedom Movement in the Nineteenth and Twentieth Centuries" ( 1979) , Institute of Historical study p. 23.

127 "Edited Biswar. Dilip Kumar -'"The correspondence of Raja Ram Mohan Roy" p. 10

for the abolition of 'sattes' was Ram Mohan's attempt to meliorate the conditions of Hindu females. The extant law of the Hindus depriving the females from inheriting any share of the property or their husbands or father Ram Mohan found this unjust or deviation from the original law or practice.<sup>128</sup>

Ram Mohan's political ideal is nothing less than political independence of India as a final goal.

In the Constitutional government the rule of law ought to be supreme. Among them, there must be included Right to Life and Liberty, freedom of expression, opinions and of religious worship.

Ram Mohan's idea of freedom embraced all countries of the world. To him humanity was one family and the sorrow or happiness of one nation constituted the sorrow or happiness of the rest of the world.

Ram Mohan Roy was also a champion of the peasants pointed out that the permanent settlement had while increased the wealth of 'Zamindars' . (Land Lord) impoverished the peasants and made them put miserable.

He firmly believed the Indian people to be capable of improvement and progress like any other civilized nation of the earth, once they would shake of their age old obscurantism'

To take a glance of Raja Ram Mohan's works only Rabindranath Tagore's words are enough;

"There was a day, when, all alone, Ram Mohan Roy took his stand on common claim of humanity and tried to unite India with rest of the world. His vision was not dimmed by obsolete Conventions and

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128 Majmudar J. K. '**Raja Ram Mohan Roy and progressive movement in India**' ( 1985) Brahma Mission press p. 31.

customs. He braved the war the of his countrymen in his attempts to import to them universal Rights of man as man”.<sup>129</sup>

### **2.6.2.5 Swami Vivekananda**

One of the most interesting episodes in the history of modern Indian religious thought is the contrast between Ramakrishna and his famous disciple Swami Vivekananda. The master is seen as sensitive, emotional, absorbed in devotion and love of God. The Disciple is looked upon as an intellectual, a rationalist, a philosopher with analytical mind.

Vivekananda’s deep knowledge of misery of the people and their sufferings made him exclaim ‘The only God in whom I believe my God is afflicted, my God is the poor of all races.

See each man, woman and soul as a God. You can’t help, but you only serve. An existence of poor and miserable people only for our freedom. We should provide service to lunatics, deceased, leprosy-victims, and sinner in form of God - service for the purpose of God.

His words show us, how he had favoured for Dignity of poor. He said ‘“Daridra-Narayana’ ... the only God exists the only God, whom I believe .... My God is the miserable. It may justly be said that India’s destiny was changed by him, and that this teaching re-echoed through but Humanity.” These striking words have been taken up again by Gandhiji and constantly used by him.<sup>130</sup>

He sought to rouse a spirit of heroism and love of the people, particularly, the distressed, the deprived, the down trodden and the poor, in who service, he saw a service to God. He said ‘Do not forget

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**129** Narvane V. G. ‘**A Cultural History of Modern India.**(1991), Northern Book Center’  
– New Delhi. p.29

**130** Romain Rolland , “**The Life of Vivekananda and the Universal Gospel**” p.285.

your society, the varies shadow of the great illusion, do not forget the lonely, the poor, the ignorant, the courier, the sweeper, are your blood, your blood, are your brother.’ Oye, brave one take courage, be proud that you are an Indian and proudly proclaim I am an Indian every Indian is my brother... The soul of India is my highest heaven. India’s good is my good.<sup>131</sup>

To promote these sentiments, in 1891, he went to Chicago in the USA. For the purpose of address the parliament of Religions, where he projected the Indian spirit of universality and broad mindedness, which captivated the hearts of the congregation of representatives of different religions of different parts of the world.<sup>7</sup>

Subhash Chandra Bose said ‘Modern India is operated by Swami Vivekananda.<sup>132</sup>

His religion is to serve the country by serving its people. Spiritualism has merged into humanism. We know that Vivekananda was not a politician, yet his patriotism and humanism had no limits. As a patriot and humanist Vivekananda wanted to rouse the soul force India for rebelling against the age old political subjugation, social slavery, economic exploitation and moral degradation. He thought that Indians should regain their spiritual force. Love and Liberty , self-confidence and courage to break the shackles of bondage.

Swamiji said that ,”Hindus do not need any social reform. The days of exclusive privileges and exclusive claims are gone... and it is one of the great blessing of the British rule in India.”

Swamiji said, “we should not fight for castes. It will divide up

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131 Chowdhary K.C. “**History of Modern India**”, (1993) Now Central Book Agency Pvt Ltd. Allahabad p.295.

132 Sen Gautam “**The mind of Swami Vivekananda - An anthology and a study**”. (1984)Jaico publishing House Kolkata. -p.3

all more; weaken us; all the more degrade us all the among move. “There is one more characteristic of Swami Vivekananda -Teaching of socialism - by Vedanta - every individual would be free from exploitation by his follow being. He was a universal man. His love for the poor and the downtrodden finds it’s echo in socialism.

He said, „That Liberty is the first condition to Growth. To Advance oneself towards freedom, physical, mental, and spiritual and help other to do so is a supreme prize of man”.<sup>133</sup>

Swamiji advised to destroy social rules which stand in the way of enfoldment of the freedom.

According to Swamiji, „Unity in Variety’s a plan of nature and the Hindus have recognized it.

The Sanskrit word ‘JATI’ which is usually translated as ‘caste’ means species. The original idea of ‘Jati’ was the freedom of individual to express his Nature. Nature meant ‘ THE PRAKRITI’

But he declared that ‘a misery, degradation and poverty that has filled the Indian atmosphere. India herself had failed to apply Vedantic Humanism energetically and extensively to her own problems. She had failed to evolve a fully humanist social order upholding the glory of man and his freedom, quality and Dignity as ‘ATMAN’

Otherwise no religion on earth preaches the Dignity of humanity in such a lofty strain as Hinduism.

The idea seized upon the imagination of Indian and relief works for famine, flood, fire and epidemic such as practically unknown in a 19<sup>1</sup> century. A Ramkrishna mission — a charitable trust founded by Swami Vivekananda a still works for all these purpose specially Calamities

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133 Ibid p.4  
Prakriti - Prakruti - Premardial matter of nature



and causalities in 2001 in Kutch Earthquake and in 2004 Tsunami tragedy of south east 'Asia'. This mission' has contributed much in relief and rehabilitation works.

### **2.6.2.6 S. Radha Krishnan**

The theory of outstanding philosopher S. Radha Krishnan is known as universal religion also called 'The religion of spirit.' It is based on the idea that religion is one of the most important factors that determine the Life of man and that humanity in general as well as every particular individual need faith.<sup>134</sup>

In Radha Krishnan's opinion 'Humanism is legitimate, protest against those forms of religion which separate the secular and the sacred, divide time and eternity and break up the unity of soul and flesh.' Every religion should have sufficient respect for the Dignity of man and the Rights of human personality.

"The basic principle of 'dharma' is the realization of the Dignity of the human spirit which is the dwelling place of the Supreme" He said.<sup>135</sup>

"We should not do to others what will offensive to us, and who by action, mind and speech is continually engrossed in the welfare of others and who is always a friend of others."

He added "To corporate humanity is as necessary as personal modest." The belief that freedom is an essential component of human nature imparts a truly humanistic quality to Radha Krishnan's theory.

The problem of man is central to Radha Krishnan's philosophy

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**134** Edited by Marietta step an yants. "**History of Indian philosophy, Russian view point**", (1995) in Co. of PHR.p.2000

**135** '**HUMANISM**' - English monthly - International Journal on Gandhian objectives issue III, March 2005. Bangalore p.7

due to its essential humanism.

Radha Krishnan sees the only way freedom in transforming man's inner self.

He said that ,it is not enough to have institutions or instruments or democracy .but we should also find ready to hand the spirit of democracy. We have to promote the unity of aim and solidarity of sentiment which will help individual to sink personal or group advantages for common good. Only formal declaration of political Equality or Constitutional provisions is not enough. Political Equality can be sustained only, if it is for self development is granted to communities formally enfranchised.'

His sense of religion is also very wide and advance. He expressed various views about women and untouchables also. They can be described as "If these temple suggests to us, inspires us with this ideals of self knowledge and love of humanity it will have done a useful service."

He added that," Humanism assumes that man is by nature good and that evil rests in society, in the condition which surrounded man, and if these are removed man's goodness will emerge progress will be achieved"<sup>136</sup>

In the same way, the opposition to the removal of untouchability is not grounded in the better foundations and the religious beliefs which trouble us so much today on such question will not retain are long more than pathological interest.

Though we may formally emancipate women and depressed class from their disabilities true sense is unfreezing so long as the conditions of mental freedom are not put within their reach.

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**136** Radha Krishna - **The Foundation of Civilization Ideas and Ideals** (1990) Orient paper Back edition pp. 77-78.

Radha Krishna blamed capitalism for common man's frustration and described it as anti-human. He told that "Capitalist exploitation and oppression are contrary to genuine humanism"

The capitalist system of society does not foster healthy relations among human beings. When a few people own all the means of production, the others though they may be nominally free in the sense that they are neither slaves nor sorts have to sell their labour under conditions imposed on them.

So, Radha Krishnan suggests the solution to this problem: Men who have little natural capacity for theoretical studies such as law and literature, politics and philosophy, take to them on intellectual powers which ought to be devoted to the Life and material condition for the mass of population."

S. Radha Krishnan upholds noble moral ideas and egalitarian, secular pacifist principles which contributed to the social and cultural advancement of his country.

Of all contemporary Indian thinkers, S.Radha Krishnan is undoubtedly the greatest and is so recognized all over the world. He is also recognized as also one of the greatest thinkers of the country. In his teaching that the spirit in man as real as his body and that without recognition of this reality; there will be complete displacement of humanity, there can be no democracy, no freedom, no morality and no religion.<sup>137</sup>

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137 Raju P.T. -'"**Structural Depts. of Indian Thought**"', (1985) South Asian Publications India p. 543.

### 2.6.2.7 DR. B.R. AMBEDKAR

(14 April 1887-6 Dec 1956)

Dr. B.R.Ambedkar belongs to the galaxy of such imminent men, who spent their whole Life in the cause of the uplift of the lower caste. Besides being a harbinger of social - resolution, Ambedkar was the architect of free India's Constitution.

The central theme of Ambedkar's Life and thought Revolves round the evils of the Hindu religion and social organization. He concerned throughout his Life with the eradication of these evils and usher in a humanitarian social order based on justice, Equality and fair play. He was born *as* untouchable and in spite of his academic achievements, he has to suffer insults and humiliations at the hand of upper caste Hindus. It was crusade against the injuries inflicted by Hinduism which prompted Ambedkar to renounce Hinduism and embrace Buddhism towards the end of his Life along with thousands of his followers.

So; in the same way Dr. Ambedkar was very much against ancient Hindu (codes like 'Manu Smiriti' , 'Narad Smiriti' Yagnavalkaya Smiriti and even Shrimad Bhagvad Gita.' Among all these codes," Manu Smiriti' is most authentic source of Hindu law so he step by step resist/made counter against provisions of 'Manu Smiriti'. In all Hindu code he saw much inequality for 'shudras' and for women -so he repudiated the authenticity of all Smirities.'<sup>138</sup>

Dr. Ambedkar said that, "Manu Smiriti" has done so many misdeeds like;

- (i) It made the Brahmins a class of privileged persons, that is against Right to Equality.

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138 Editions Gupta U.P. And Raomohini **BHIMRAO RAMJI AMBEDKAR** (1998) - published by Ambe Books from preface.

- (ii) It converted –Varna into caste ,
- (iii) It brought about a conflict and anti-social feeling between different castes.
- (iv) It derogated the ‘Shudras’(Lower Caste ) and the woman.This action violated Right to Dignity
- (v) It forged the system of graded inequality and it made legal and rigid the social system which was Conventional and flexible.

Because of these “Misdeeds of Manu Smiriti”The Untouchables’ were segregated and had no Rights - civics, religions and political. So he generated many political and social activities to raise these oppressed section of the Hindu society.

For the same purpose, he established ‘Bahishkrit Hitkarani’ SABHA also established Mahar Hockey Club and published a magazine ‘MookNayak’.<sup>139</sup>

He arranged “Mahad Satyagraha.The conference passed a number of resolution and appealed to the upper caste Hindus to help the untouchables to secure their civic Rights.

After this event, Dr. Ambedkar took one more bold step; Chowdar Tank Satyagraha’. The committee decided to visit Chowdar Tank. ‘Where depressed classes could not take water. The delegates marched peacefully towards tank. It was a thrilling experience in history of the depressed people. On reaching the tank Ambedkar took water from it and drank it.

The both incident evoked India wide controversy. Savarkar supported Ambedkar ‘s struggle. He said,’that Untouchability must

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**139** Edited by Ahir D.C.”**Buddhist Revolution & Counter Revolution in Ancient India**”(1996) Published by D.K.Fine Art Press (P.) Ltd. p.83

be Condemned and abolished not only as policy but as a matter of justice. It was a pious duty of the upper caste Hindu to restore full Human to the depressed class.

Ambedakar decided to launch a ‘(Satyagrah struggle.” Temple Entry” in Amaravati. Then he declared that “Manu Smriti “ should be publicly burnt as it decried the shudras. This book is a symbol of inequality cruelty & injustice from point of view of the depressed class.”

So, Ambedakar has applied the test of justice and the test of utility to judge the philosophy of Hinduism Justice to him is simply another name for Equality, Liberty & & fraternity. According to Ambedakar, Hinduism does not recognize Equality. The caste system is *a* violation of Equality. In the scheme of Manu the Brahmin is placed first in the rank.... than Kshatriya, than Vaishya & then Shudra & Ati - Shudra (extreme untouchables). This system of rank & gradation is another way of enunciating the Principal of inequality.

Manu has introduced and made in Equality in vital force of Life in every phase. Liberty to be real must be accompanied by certain social conditions like social Equality, economic security & knowledge made available to all-Hinduism not satisfy any of these condition. The sentiment of fellow feeling is lacking among the Hindus. The number of castes is very large. They are divided in to sub - castes. The hierachcal organization of the caste - system is responsible for a spirit of rivalry among the different castes for Dignity.

The Hindu social order is indifferent to the doctrine of Equality. It refuses to recognize that men are equally entitled as human being to consideration & respect.

Ambedakar regarded, the advent of the British in India as

providential: It was responsible for intellectual awakening. It made the Indians feel the shame of the social customs. It forged upon them the revolution of their social values.

By all these statements & activities the government began to pay more attention to the grievances of the depressed class. The name & fame of Ambedkar as the undisputed leader of the depressed classes spread far & wide.

He represented the interest of the depressed class before 'Simon Commission'.<sup>140</sup>

On August 29, 1947 the Constituent Assembly appointed Drafting Committee, with Ambedkar as its chairman It was great achievement. New India entrusted the work of framing her new laws to a man who had a few years before burnt the Code of Hindus. The burden of drafting Constitution fell on Ambedkar and he achieved the task in manner that was indeed commendable,;

Many Theories have participated for evolution the concept of Human Rights. It is important to study all These theories for the student of Human Rights.

Present researcher will mention them on by one.

They are

- (i) Religion
- (ii) Natural Law
- (iii) Positivism
- (iv) Marxism
- (v) Utilitarianism
- (vi) Modern Theories

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**140** Edited by Gupta V.P. & Rao Mohini 'Bhim Rao Ramoji Ambedkar'  
(1998) Publishe by Ambe Books, Delhi pp. 50 -51.

(vii) The Sociological Approach

## **2.7 Role of Different Sources in development of Concept of Human Rights.**

### **2.7.1 Religion**

However useful the all approaches may be the whether justificatory questions remains what are the sources, any of human Rights claims, is there scope or content and how do they relate to one another... Such questions have been the concern of every scheme of jurisprudential thought, theological, Natural Law, positivist, historical, utilitarian, Social Science, realist etc. Each theory contributes insights. The Present Research Student here few of them which are more pertinent to the development of human Rights.

#### **2.7.1.1 Judism / Chiristinism**

Whether we think of the 'Torah' as transmitted by through Moses, or of the Prophetic writings, the classical Hebrew teaching were rather Precepts for man's daily social conduct, than ideas to prod or satisfy their intellectual questions. It is clear that the Mosaic code addresses itself to correcting the individual and social moralities and customs of its age. The domestic animal, the slave, the servant, the wife, the child, the orphan, the widow, the people themselves, are the subject No doubt of broad and noble protective proclamations based on the blessed nature of all creation.

This concept, if any single one is to be chosen, is the distinctive, Jewish contribution to thought about justice. 'Love thy neighbour as they self said Rabbi Akiba is the supreme Principle of Torah'.

The exact term 'Human Right is not found in traditional religions. None- the less, theology presents the basis for a human Rights theory stemming from a law higher than state and whose source



is the Supreme Being.<sup>141</sup>

However, comprehensive and detailed the written law (Torah) the unwritten laws (Halakha, or oral tradition) was given a place beside it. Being deemed to have been transmitted to Moses by God, also on Mount Sinai, for further transmission from generation to generation to throughout time, with all that is implied.

### **Entry to Hebrew Concepts Into The West Through Christianity.**

Although the Hebrew contributions of reason and due process are of unquestioned importance/, undoubtedly the most important contribution of the Jewish tradition was the overriding' concept of love which was developed in 'the rabbinic Period and by the post-captivity prophets and expressed in teaching of Jesus. Through the development and spread of Christianity this element in thought about justice came to pervade all of western thinking.

'Love thy neighbor thyself.' This is attributed to Jesus in St. Mark's Gospel. 'What is hateful to you, do not to your fellow man'. According to Christian perspective, respect for human Rights, flow for the Dignity of a human being as a creature of the Lord Almighty. These Rights are prime to the society and must be recognized by it.<sup>142</sup>

Also it is said that ,”A common father gives rise to common humanity and from this flows a universality of certain Rights.” For Example; Bible prescribed various human Rights concepts such as; limitation on slavery.

#### **2.7.1.2 Islam**

In Islam, in the realm of human Rights (or rather human Dignity)

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**141** 'Lex /Tailons' Law declared by the scholars as a command of the Lord.

**142** Edited By Dr. Ponnaianm. Ips- & Mrs. Poonain Rani '**Human Rights For Third Millenium**'(2001) pp. Books Delhi p. 155

what matters is duty rather than Rights]”Human Rights can not be translated into the language of Islamic holy works. Human Rights in Islam are the Privilege of Allah, because the ultimate authority belongs to him. A specific feature of human Rights in Islamic religion is they constitute obligations connected with the Divine and derive their force from this connection.<sup>143</sup>

Scholars like Nadri and Tabdenh claim, that contemporary human Rights doctrines merely give recognition to the 1400 years Islamic idea. Islam has laid down some universal fundamental Rights for humanity as a whole, while are to be observed and respected under all circumstances.<sup>144</sup>

Believing that fundamental Rights and universal freedoms in Islam are an integral part of Islamic religion and that no one as a matter of principle has the Right to suspend them in whole or in part or violate or ignore them as’ much as they are binding divine commandments, which are contained in the Revealed Books of God :That were sent through the last his prophet to complete.

Khalid Isha Que, argues that ,”Muslims are enjoined constantly to seek ways and means to assure to each other what in modern parlance we call human Rights’.’ He formulates some fundamental Rights contemplated in Quoran.

1. Right to protection of Life;
2. Right to justice
3. Right to Equality
4. Duty to obey what is lawful and Right to disobey what is unlawful.

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**143** Edited by Patil V. T. & Shastry T. S. N. '**Studies in Human Rights**' (2000) Published by P. R. Books. Delhi,p. 54-55

**144** Naikar L. D. "**The Relating To Human Rights**" (2004)Puliani Puliani publishers Private Limited, Bangalore p. 15.

The preservation of human Life throughout the term of time willed by God is a duty prescribed by 'Shariah.' i.e.g. safety from bodily harm is a guaranteed Right. It is the duty of the state to provide safely guards. It is notable that woman is equal to man in human Dignity;

The second Khalifa appointed woman in high public offices. Also the Prophet said, The girls should taken particular care of. Any Muslim who rears two daughter of and takes good care of them will be given paradise as a reward.<sup>145</sup>

It is a fact that the modern term 'Human Rights' neither approved in the Holy Quoran in the tradition of the Prophet (pbuh) or the work of prominent jurist. But if we study the care attentively and without bias we shall find some good matter.

In Islam human Rights are concerned with Dignity of the individual the level of self esteem that secures personal identity and promotes human community. Islam recognizes freedom in the context of community of Islam. 'Individual possess certain obligation towards god, fellow humans and nature, all of which are delineated by the shariah.

The Prophet (pbuh) of Islam has also affirmed need for the solidarity of the human society to forestall injustices and act according to equity and fairness. He says in this connection, 'If People see the unjust and do not stop him , "God will end them torments for punishment."

Islam is the religion of unspoiled nature. It is prohibit to exercise and form of compulsion on man or to exploit his property or ignorance

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**145** Edited by: Brownlie Ian and Gill Goodwin Guys '**Basic Documents on Human Rights**' (2002) Oxford University Press Delhi pp764-765.

in order to convert him to another religion or to anthem.

Human Rights in Islam are not prescribed in favour of a certain nation or a country but for the whole of humanity. From the first day they were prescribed they were universal beyond regional borders and sovereignty of States.

Islam equally condemns physical terrorism because its instrument is violence the killing of innocent people and epilling of human blood. The Quranic principle is very clear in this regard, 'whosoever kills a human being for other than punishment' for man slaughter or corruption on earth it shall be as if he had killed all mankind and who saves the Life of one it shall be As if he had saved the Life of all mankind.

Islam accepts diversity and pluralism and views them as a natural parts of this Life. One of the famous sayings of the Prophet Mohammed in this connection was. The best people are the people who are most useful to others.

### **2.7.1.3 Hinduism**

Hinduism can be subdivided into Sikhism, Jainism and Buddhism also. But, Present Research Scholar wants to start discussion at first with Hinduism.

The religion that has come to be known as 'Hinduism' is Certainly the oldest and most varied of all the great religions of the world. The word 'Hinduism' it self is a geographical term based upon the Sanskrit name for the great river that runs the northern boundaries of India known as the Sindhu. For those living on the other side of this river, the entire region to the south-east of the Sindhu which the Greeks called the 'Indus' came to be known as the land of the Hindus. The vast spectrum of faiths that flourished here acquired the generic name Hinduism. In fact, Hinduism called itself the 'Sanatan Dharma' the

eternal faith because it is based not upon the teachings of a single preceptor but on the collective wisdom and inspiration great seers and sages from the very dawn of civilization.<sup>146</sup>

In the Hindu philosophical thought the concept 'Dharma!' pervades thought and law is considered as a branch of Dharma India being the mother land of the oldest civilization of the world and the birth-place of diverse cultures and religions has very rich heritage of human Rights values. Many Centuries ago when the western civilization did not even see the light of the day it was from his holy land that the highest ideal of human Life was echoed; "Sarve vai sukhino santu", that is Let all people be happy. "In fact, protection and promotion of human Rights are possible only in a society where all people, irrespective of their castes, creeds, sex & religions, live happily. The 'Rigveda' which is considered to be the oldest document of human civilization declares that all human beings

'Dharma' - Religion' A Sanskrit Word from & Origin . A literal meaning of 'Dharma' is that which sustains. It meant Custom, Law, morality, virtue, religion, duty, piety, justice and Righteousness. Dharma includes totality of rules governing the social order. are equal and they are all brothers. The present Researcher wants to mention some illustration of Vedic verses here prove Hindu concept of Human Rights.

**SAMANI PRAPA SAH VAH AEN A BHAGAHA  
SAMNE TOKTRE SAH VAH AYU NAJAMI  
AA RAHA HAM BHI MIVA ABHITAVA**

The vedic verses forcefully declare Equality among human beings. The last of them impress that Just as no spoke of a wheel is Superior to

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146 Singh Karan 'Essay on Hinduism' (1990) Ratnasagar Private Ltd Delhi p. 1.

other, no individual can claim to be or regarded as “superior to others. Equality of all human beings and the duty of each individual as also the equal Right over food, water and other natural resources are found incorporated in these declarations.”

All Hindu Philosophers have expressed concern to secure human Rights and fundamental freedoms for all human beings everywhere since the very early times of vedic age. What the west has discovered today in the field of historical tradition and culture since time immemorial which is evidenced by the declarations in the Vedas.

Unlike Western Civilization and culture which are based on the Rights of the individuals. Indian Civilization and culture have been based since time immemorial on duty not merely the duty of every individual towards other individuals but also the duty of the state. (Earlier, the king) towards citizens. The great thinkers of ancient civilization and culture believed that enjoyment of Rights by every individual would be secured only when every individual including the king performs his duties, for, they considered that sense of Rights always emanates from selfishness where\$ the sense of duty always generates selflessness.<sup>147</sup>

The Vedas & Smirities, has spoken highly of Equality of brotherhood e.g. “Vasudhaiv’ Kutumbkam” (deem the whole world as family)”The modern Utopia of a global village is more or less akin to this concept.<sup>148</sup>

In the whole eighteen Puranas, the great Vyasa has said two things: Doing good to another is Right, causing injury to another is wrong.’1  
Manu Says; ‘The king should’ protect and support all his subjects without

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**147** "Civil & Military law Journal" Published by Defense Welfare Council, New Delhi p. 222.

**148** Edited by: Patil V. T. & Shastri T. S N. ‘Studies in Human Rights’(2002) published by P. R. Books pp 62-63.

any discrimination in the same manner as the earth supports all the living beings.’

Then unforgettable Ramayana epic & Mahabharat epic which talked about Human Rights. In ‘Mahabharata’ Maharshi Ved Vyas emphasized that nobody is greater than human being. In Mahabharata, We find most beloved text of all Hindus. ‘SHRIMAD BHAGWAT GITA’.

Shrimad Bhagwat Gita taught in her chapters that a person secures the highest perfection [emancipation] by being intent on carrying out the duties appropriate to him. a man, secures perfection by worshipping with the performance his peculiar duties appropriate to him.<sup>149</sup>

One of the great messages of the Bhagvad Geeta was (Your Right is to perform your duty) KARMANYE VADHIKARASTE

Five thousand years ago ‘Kautilya’ in his famous and immortal work, ‘Arthshastra’ define and described the human Rights of war prisoners. The human Rights were referred to as civil Rights, political Rights, personal Rights, legal Rights, economic and social Rights and natural or divine Rights in ancient period.

To quote justice Jois, The Vedas including ‘Upnishads’ (Shruti) were the primordial source of ‘Dharma’, a compendious term for all human Rights and duties; The observance of which was regarded as essential for securing peace and happiness to individuals or as well as society.

Hindu ‘Dharma’ instead enjoining people to transcend ‘religious’ linguistic and regional or sectional diversities, and to develop the scientific temper, humanism and the spirit of inquiry and reform.<sup>150</sup>

Whether it is ‘Mahabharata’ or ‘Arthasashtra’ or Manu’s institute or ‘Narda’s School’ there is great emphasis on the Institution of kingship’ and ‘Rajdhrama’ in order to escape from political disorder social chaos

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149 Edited by Brownlie Ian and Gill Goodwin Guys, “**Basic documents on Human Rights**” (2002) , Oxford University Press, New Delhi p.766.

150 Present Research Scholar’s View.

and injustice .Kings are required to take a pledge never to be arbitrary and always to act according to ‘whatever’ law there is and whatever is directed by ethics and not opposed to politics.’

There was, however a downfall of human Right jurisprudence in post vedic age. But with the rise of Buddhism and Jainism there was revival of human Rights jurisprudence. But Present Research scholar wants to discuss Jainism and Buddhism later in detail as separate topics.

Then the Study of Mudra Raksha’s<sup>151</sup> shows that dispensation of justice was considered as one of the important duties of the rulers. Since law was not separated from religion it is obvious that, Hindu Philosophy spoke of ‘Righteousness’. Certain virtues were necessary for good Life. In fact, ‘Sada charas’ , behaviour or usages of good man furnished a criterion for asserting nature of approved conduct. They were also treated as one of the sources of laws, Hindu Sages thus, propound some freedoms and virtues mentioned here;

1. Freedom from Violence (Ahinsa)
2. Freedom from Want (Asteya)
3. Freedom from Exploitation (Aparigraha)
4. Freedom from Violation or Dishonour (Avyabhichara)
5. Freedom from early Death and Disease  
(Amritva and Arogaya),

The Bhagvad Geeta, one of the most sacred texts, Prescribed “Karma Marga’( action-path) as one of the ways to liberate oneself. Duties not only prescribed toward God, towards fellow human beings also.

As observed here, religions usually prescribed various duties and obligations, which limits individual freedom. Religion seems to be

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**151** ‘Mudra Raksha’ A famous Sanskrit play “based on story of Kautilya’s era. Vishnu Gupta, Chankaya, Kautilya - all names are only one person. He was a Chief Minister of Emperor Chandra Gupta Mauraya.



attractive when human beings are visualized in God's image for it gives rise to the concept of Equality.<sup>152</sup>

Now, when scholars talk about Vedas, Upanishads, and Shrimad Bhagwat Geeta, the Present Research Scholar wants to talk about Tamil literature, it is full of thoughts related to human Rights.

When we dating back the Sangam period i.e. 300 B.C. - 100 A.D. one finds that in Tamil literature, there are innumerable examples, glittering land marks depicting the human feeling and practice of human Rights profusely. One of the poems in 'Purananoru' in Sangam. Tamil literature gives a coloration call to the universal brotherhood with seated human philosophy.' The concept of 'global village', this was visualized a few centuries ago by the great poet Kamn yan pungkudrant He wrote; "Our home the whole world All men our kinsmen".

If we further turn the pages of Sangam Tamil literature a number of Rights had been preached and practiced a long with duties. To quote but few are:

1. Right to rule,
2. Right to justice ,
3. Right to Life
4. Right of woman
5. Equal Rights at home.
6. Right to feed oneself
7. Birth Rights.

'Ainkurunnuru'-a famous Tamil literature speaks about the well-being of all the human beings without hunger and diseases as follows, May hunger be banished forever and disease expelled far away."<sup>153</sup>

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**152** Naikar L.D. "The Low Relation to Human Rights", (2004), Pulani & Pulani Publishers Private Limited, Banglore. p.17

The historical retrospection of the human Rights practiced in India can be depicted in the chronological order.

Human Rights concept was preserved in high esteem by Hinduism and its sects. Especially by Buddhism, Jainism and Sikhism. The Present Research Scholar wants to discuss about them one by one. At first , Buddhism.

### **2.7.1.3.1 Buddhism**

In a crystal clear manner, Human Rights was practiced scrupulously for the first time, in the whole by Gautam Buddha - the Tathagata, by bringing about social revolution during 562 BC to 483 BC it self. He was a great revolutionary of dynamic thoughts and human philosophy. It was Gautam, Buddha who respected all the human beings; irrespective of caste, colour, creed, race etc. and preached universal brotherhood. He always stood by the side of the sufferer.

Gautam Buddha was a man of strong and attractive personality. He wanted to mould the character of the ordinary men and women; they were moral precepts laid down by Buddha. They were known as 'Panch Si la' or five precepts. They are :

- a) Not to kill
- b) Not to steal
- c) Not to lie
- d) Not to be unchaste
- e) Not to drink intoxicant.

Of these the most important one was the precept of Not to kill. Buddha took care to make it clear that the present did not merely mean abstention from taking Life. He insisted sympathy, good will and love

for every thing that breaths.<sup>154</sup>

Undauntedly, it was he who for the first time raised his finger against the victimization of the poor and downtrodden Violations of basic human Rights to the community at large and well-settled practice of organized exploitation, in the name of God was the order of the day. He was the pioneer and crusader for 'distributive justice' and stood as a dawning personality against all type of superstition, violence, barbarism, brutality and cruel practices in the society.

Gautam Buddha showed the Right path to peace and enlighten to men and women from different walks of Life rich or the poor, the lowest and the destitute literates and illiterates, princes and paupers, saints and criminals and to every common.

The Champion, who has advocated the human values to the humankind have expressed the human pain and sufferings and have always, shouldered the social responsibility and solidarity as fundamental intensive values of humanity. The preaching of path of peace, showering love and bountifulness non-violence and such like ambling ideals are glittering landmarks in the annals of human Rights movement.

It is the he, who paid special attention in the upliftment and the emancipation of the Indian woman.

The doctrine of non-violence according to Gautam Buddha is tied with invaluable, peerless and esteemed values Equality, fraternity and Liberty.

Buddha emphasized the social virtues which are basically the human Rights i.e. relations between parent and children, husband and wife, friend master and servant, laity and clergy, womens' Rights had been

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**154** Edited by : Gupta V.P. Rao Mohini ,**BHIMRAO RAMJI AMBEDKAR** Member to Modern Indian Stories •) (1998) Ambe Books Delhi p.73.

exemplified by lord Buddha where ordination of woman was not contemplate by him.

Then next came Lord Mahavira, the last “Thirthankar” of Jains “The Mahavira was a fruit of Brahminical Society. This Brahminical society was full of useless rites and rituals and also racial arrogances of two major communities - Brahmins a Kshatriyas. It was a fall-down of great vedic values. It was also a days of monopoly of Brahmin community on every source of Life. But, Lord. Mahavira and Lord Buddha both were kshatriya - the warrior community. They denied all present customs and fostered the concept of Equality among human kind.<sup>155</sup>

Proponent of a religion which preaches for mans freedom for all sorrow, pain, bond age and death. “Ahimsa” or non-hurting of Life irrespective of its distinction into higher and the lower is the cordinal

Principle. It is placed on record for posterity to understand and appreciate that for the posterity to understand and appreciate that the human Rights against discrimination of the higher and the lower. The welfare and the well being of the human society has been aimed by Jainism with the doctrine ‘Hurt no one’ which includes not only physical but also the sentimental feelings. Lord Mahavira had also discussed about ‘Animal’s’ Rights’-The three ideals.

“Samyag – Darsh - Right Path All three elements Samyag - Jyan - Right know Samyog - Charitra - Right conduct Triratna.”

When we turn the pages of the religious literature of India, we Find Sikhism enlighten Concept of Human Rights.

### **2.7.1.3.2 Sikhism**

Teaching of Sikhism -All men are the same’ Some of the excerpts

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**155** Edited by : Dr. Poonaian Mr. IPS. Mrs. Poonaian Rani, ‘Human Rights in Third Millenium’ (2001)’ P.R. Books. Delhi p.63

from the Book, the Sikh way of Life by Ramvir Singh depict that human Rights had been up held the mender in Sikhism 'When the Divine call came to Nanak the words that were first on his lips, were : Thou is no Hindu , no Mulsim'

The dauntless Personality, who brought about and exemplified social Equality had always set an example. In as much as Guru Nanak and the nine Gurus who succeed him set a wonderful example in the art of living spiritually. In an age, when class distinction was very rigid, when the bonds of caste in India had strictly divided the people , "Guru Nanak taught Equality and brotherhood so much. So, in age when the inferiority of women was taken for granted the Guru spoke out against the custom of 'Purdah' and 'Sati' and gave woman equal Status with man. There is no denial of the fact that women's Rights were crusaded by the Guru.

According to Sikhism the whole humanity is one family and every man must be honoured not in terms of his birth or his caste or creed or colour but as a man. Because caste, country, creed or colour could , have no place in God's Scheme of things. Guru Govindsinh, the tenth 'Guru' after Said in 'Akal Ustat'.<sup>156</sup>

**"All men are the same  
It is only through error  
That we see them different"**

So, Guru Nanak <sup>157</sup> and his successors had to hit at the heart of the artificiality, established a liberal and free common kitchen known as Guruka-Lungar It was the injunction of Guru Amar Das that none was to see him unless he had first part-taken of the Bread of Grace at the Temple of Bread'. There by Guru Amardas intended to remove the caste

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<sup>156</sup> Ibid , p . 131

<sup>157</sup> Nanak - a character like Phophet Mohammed - A founder of Sikhism and Probably Sindhi Sect also.

restrictions, caste prejudices and curse of untouchability. When king of Haripur or even the Akabar, the emperor of India, came to see the Guru. They had to sit with other common people and time together with them before the master could consent to see them. Thus Sikhism opens its doors to all men and women and looks upon them as brothers and sisters.<sup>158</sup>

The remarkable thing is that by the Guru's preaching, the Sikh principles were whole heartedly adopted even by those of other faiths and even by men who had been hither the most backward and unlettered.

So, in conclusion.

A concept of the unity of all religious faiths, divine is in each of us then we are all members of a single family and for those of the greater consciousness the world is family. Our seers should have realized the essential unity of entire human race.<sup>165</sup>

Indian vision of, human Rights that emphasis's not the individual But the total person; A person where inter dependent Rights and duties are determined by his or her position within a hierarchical network of relationships that constitutes an all embracing cosmology.

(Truth is one; the wise call it by various names)

In conclusion we can say that Ancient-Indian jurisprudence stood for enlarging and encouraging human freedom, Liberty and Equality for all people, times and situations, consistent with reason, truth and justice. It has developed common idea is bared on human Unity and harmony which transcends diversities of race, colour, language and religion.

Religion can become a great unifying force in a world torn by suspicion and hatred, rather than a source of conflict which it is increasingly becoming.

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**158** Present Research Scholar's views.

Finally, there is the reconstruction of society.. It is our duty to work for the betterment of the society’.

**“Bahujan Hitay, Bahujan Sukhay”**

**[Maximum Interest and good for maximum people.]**

**2.7.2 Natural Law**

In contemporary sense human Rights correspond to the nature of man and of human society to this psychology and its sociology. This is evident in the language of the principal International instruments. :

(R) ight derived from the inherent Dignity of the human person...

(R) ecognition.. Of the equal and inalienable Rights of all members of the human family is the foundation of freedom justice and peace in the world..

(R) espect for and observance of human Rights will create condition of stability and well being...

Because of this reflection many writers simply take human Rights today as a reinstatement of much older doctrine of Natural Law and remains one of the most powerful concepts to motivate juristic, social, political and philosophical thoughts, modern states interpreter in their Constitutions the concept of natural (human) Rights.<sup>159</sup>

**- Concepts of Natural Law :**

Certainly there was time (and perhaps we are at risk to assert that it is not still with us) when nature imposed itself so imperatively on humanity as almost totally to control humanity. So called primitive mankind shared in the Life of nature was initiated via rituals and ceremonies into its routine, in order to participate in the structure of that Life and thereby keep within nature’s grace. The natural-conceived as

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**159** Finch J.D. ‘Introduction to Legal Theory (First Indian reprint(2000) ,Universal Law publishing Company .private limited Delhi p.22

the numinous and the sacred-imposed respect and became the source of norms for their behavior. Life involved norms and practices, rituals and ceremonies regarding agriculture finishing hunting, mating, giving birth the transition from childhood to adulthood, coping with illness, death and burial. The same natural imperatives they were believed to operate throughout nature- the climate the terrain (mountains, rivers, the sea, the desert, the forest) the sun and the moon bound or one minor power amongst many, they felt embedded in nature, but contrast modern man understands nature as a site for man's activities an arena where man may impose his will via technology. For the modern person, Natural Law can no longer be felt to be unjust there, since nature is no longer just there. The modern man understands that a view of Natural Law as man is wrong in obedience to the dictates of nature downplays the aspect of man's collective and individual will; The modern wants to assert his/her "Rights" and sees the world as a space to play and construct, to develop Individual Life projects. Conversely, classical, Natural Law did not imply natural Rights rather it implied natural functions, ends and duties. It constructed a web of translations which was existential death.<sup>160</sup>

Here mentioned views are of two different scholars about Natural Law. They are: At first Wayne Morrison and second is John D. Finch. But Present Research Scholar wants to present an opinion of Indian Author : Dr. S.R. Mayani.

Dr. S.R. Mayani introduces the concept of Natural Law from various names, he says Natural Law means 'Jus Nature' it has various other names such as the 'Moral Law' "Divine Law" "Law of God", "Universal law" "Law of Reason" Common Law etc. The law of nature is written

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<sup>160</sup> Wayne Morrison, "Jurisprudence: From the Greeks to Post Modernism", (1997), Lawman India Private Limited p.27



by the fingers of nature in the hearts of mankind. It consists of the principles of natural Right or wrong or the principles of justice in its widest sense. It is based on moral or religious ground. Generally, it presents a picture of ideal law or what the law ought to be.

The Natural Law is true for all times and at all places. It emanates from virtue. Its supreme sanction is the perfect conscience or the Righteous moral sense of man. No physical force, punishments or restraint necessary. God made the world and all things in it where as primitive humanity may be felt either powerless before nature.

Beautiful and free. The freedom of the human soul is the soul of Natural Law. A good man is good because he is good and loves being good. His own self is the sanction of the 'Jus Nature'.

Natural Law thinking has occupied a pervasive role in the realms of ethics, politics and law from time of many ancient civilizations like Greeks & Hindus. At some periods its appeal may have been essentially religious or supernatural in modern times. It has formed an important weapon in political and legal ideology. Essentially, it has afforded a moral justification for existing, social and economic systems and their legal system. By arguing that what "is" the law is based on higher law dictated by reason and so is also what the law "Ought: to be-positive law is thought to acquire a sanctity that put it beyond question.

The question to understand about concept of Natural Law provokes so many different answers. The expression 'Natural Law' has continuity does not mean that the concept has remained static. It has had different meaning and has served different person. There have been different doctrines of Natural Law yet what has remained constant is an assertion that there are principles of Natural Law, e.g. these common principle about the idea of Natural Law we find from very early times. It is present

in Greek, Roman, about the idea of Natural Law we find from very early times. It is present in Greek, Roman, Mesopotamian and Hindu ( Ancient name “Indus”, “Indus valley civilization) legal thought. The Greeks conceived the Law of nature as a body of rules binding upon human beings as the result of Nature’s decree. The stoics identified law with Nature, Justice, they proclaimed was by nature and not by imposition. The conception of Natural Law caused the growth of a set of principles and rules which were known in Roman Law as “Acquitas” and in England they were called “Equity”.<sup>161</sup>

Natural Law theory has a history reaching back centuries BC and the vigour with which it flourishes not with standing periodic eclipse, especially in the 19th century, is indicative of its vitality.

There is not only one theory. Many versions have evolved throughout this enormous span of time. No other firmament of legal or political thereby is so bejewelled with stars as that of Natural Law, which scintillates with contributions from all ages. Old ideas have been abandoned or refurbished and new one put foreword while forgotten lessons have blossomed with new significance.

The term ‘Natural law’ like ‘positivism’ has been variously Applied by different people at different times which clarifies, that they are objective moral principles. As for example.

- (i) They are ideals which guide legal developments and Administration,.
- (ii) A basic moral quality in law which prevents a totalSeparation of the ‘is’ from the ‘ought’ ,

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**161** Dr. Myneni S.R. “**Jurisprudence (Legal Theory)**”, (2001), Asia Law House, Hyderabad. pp. 396 - 397

- (iii) The method of discovering perfect law.,
- (iv) The content of perfect law deducible by reason,
- (v) The conditions’ sine quibus non” for the existence of law.

In a different sphere Natural Law theory has tried to meet the paramount needs of successive ages throughout history and an account has been given of the ways in which it supported power or freedom from power according to the social need of the time. All this is part and parcel of its very nature. Further, Natural Law thinking could offer indirect help with two contemporary problems, namely, the abuse of power and the abuse of Liberty.<sup>162</sup>

These principles of justice and morality constitute the Natural Laws which are logically connected with truth concerning human nature. This connection enables us to ascertain the principles of Natural Law by reason and common sense.

### **2.7.2.1 Development of Natural Law**

A distinction should be drawn between two kinds of Natural Law thought, Natural Law of method and Natural Law of content. The former was the order, dating from ancient time and was also prevalent in early middle ages. It concerned itself with trying to discover the method by which just rules may be devised to meet every circumstance. It is a prescription for rule-making, not a catalogue of rules.

All people and nations of this world would begin with the early stages of their history, have formed certain ideas and conceptions of varying concreteness and articulateness about the nature of justice and law. By subjecting nature as well as society and its institutions to a searching; fundamental analysis, the Greeks became the philosophical teacher of

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**162** Barrister RWM Dias “**Dias Jurisprudence**”(1999), Aditya Books Private Limited; Delhi. p.470

western world philosophy as a whole.<sup>163</sup>

Greeks were the first proponent of Natural Law principles 'omitted to the stoics. It was the Greeks who gave a conception of universal law for all mankind under which all men are equal. Greek Natural Law was both a way of living as well as thinking.

#### **2.7.2.1.1. The Greeks, Romans and Stoics**

The history of the law of nature begins as do many other field studies with the Greeks. Greek philosophy on this subject took the form of a search for the absolute and in particular for absolute standards of Right or justice. The Greeks constructed that as ideal world constructed on rational principles from theory of nature.

The legal conceptions of the archaic age of the Greeks are known to us through the epic works of Homer and the poetry of Hesiod. Law at that time was regarded as issuing from the gods and known to mankind through revelation of the divine will. Hesiod pointed out that wild animals, fish and birds devoured each other because law was unknown to them; But Zeus, the chief of the Olympian gods, gave law to mankind as his greatest present. Hesiod thus contrasted the 'nomos' (ordering principle) of non-rational nature with that of the rational (or at least potentially rational) world of human beings.

Law and religion remained largely undifferentiated in the early period. The famous oracle of Delphi, considered an authoritative voice for the enunciation of the divine will. The forms of law making and adjudication were permuted with religious ceremonies and the priests played an important role in the administration of Justice. The king as the supreme judge was believed to have been invested with his office and authority by Zeus himself.

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**163** Ibid. p.471.

A. F. E. the burial of the dead was regarded by the Greeks as a command of the sacral law; whose violation would be avenged by divine curse and punishment. A famous scene in Sophocles 'tragedy' 'Antigone'; graphically depicts situation where this religious duty came into irreconcilable conflict with the command of a secular ruler. King Ceron forbid the burial of Polyneikes brother of Antigone, because he had offended against the laws of the state : Antigone convinced that her action would expose her to certain death, heroically defined this command and buried her brother in accordance with the prescribed rites of Greek religion. When the king called her to account, she pleaded that in burying her brother she had broken Ceron's law but not the unwritten law;

**“Not of today or yesterday they are;**

**But live eternal; (non can date birth)**

**Not I would fear the wrath of any man**

**(And brave God's vengeance) for defying these.”**

Here, in famous dramatic work, we find one of the earliest illustrations of a problem which has occupied the attention of the legal thinkers of all ages; namely the problem of conflict between two orders of law, both of which seek to claim to the exclusive allegiance of man.

So, the anguished defense, which Sophocles put in the mouth of Antigone has often and justly quoted in this connection. She may have transgressed Ceron's decree but she did not overstep the law of Zeus not the eternal precepts of justice. This in issue is the assertion of the claim of the individual to be governed by a state of conduct of superior to the arbitrary degree of the early authority.

The first real expression of a Natural Law theory in philosophical terms derives from the sixth century B. C. Human laws were described as having their place in the order of things by virtues of the power of fate

which controls everything.

Politically, only the citizens of the city - state less than fifty percent of Athens population were the beneficiaries of Natural Law. In their defense of such inequalities, Plato and Aristotle introduced numerous definitions of Equality which were key elements (perhaps even today); equal respect for all citizens (isotomia) Equality before law (isonomia) Equality in political power (isokratia) in suffrage (isopsaphia) and Equality of civil Rights (isopoliteia). The Natural Law principles were believed to be norms of various social relations.<sup>164</sup>

The concept of Equality was broadened by Stoic and Roman thought. The Stoics postulated a world - state with Equality of man stoics believed that reason governs all parts of the universe, any man - part of this universal nature is governed by reason man lives 'naturally' if he lives according to his reason. The stoic school of philosophy was founded by a thinker of Semitic origin by the name of Zeno (350-260 B. C.) Zeno and his followers placed the concept of 'nature' in the centre of their philosophical system.

The stoics in writing of Seneca accepted that virtue can be attained both by slave and the free and that slavery affects the body only while the mind is of necessity the slaves own and cannot be given in budge.

Aristotle had given a new found philosophical impetus to the doctrine of the law of nature and had got rid of the magic which had characterized the 'pre-revolutionary' doctrines. To this basic frame work the Stoics added the element of religion. The way man ought naturally to behave was to be found not in man's individual reason but in divine reason under the guiding hand and no doubt the eloquence, of the

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**164** Bodenheimer, "Jurisprudence (revised edition)" **The Philosophy and the method of the Law**", (1997), Universal Book Traders ; Delhi. pp.3-4

celebrated Roman advocate Cicero, the Stoic form of the law of nature took rest in the philosophy of Romans.

The same thought also contained in the works of both Roman justices, Cicero and Ulpian. Their ultimate ideal was a world state in which all men would live together harmoniously under the guidance of divine reason (Cicerio 106-43) B. C.) The great Roman lawyer and statesman were strongly influenced by the ideas of the Stoic philosophers. Nature has commanded as to give each other equal respect & maintain equal Dignity in the very fact of our original human brotherhood.<sup>165</sup>

Ulpian taught that whatever may be the position of slave in civil law, this is not so by Natural Law for by it all men are equal. He said ‘So far as the civil law is concerned slaves are not considered persons, but this is not the case according to Natural Law-Because Natural Law regards all men as equal’. In these statements the influence stoics ideas is very apparent. Now, this Equality of Right remains incomplete unless their recognition is supported by two sanction of law nature and law of nature or Equality of men is imperfect unless apprehended as part of an International order.

The Roman married woman in the imperial period was independent of her husband. In some respects, she was more emancipated than women are today under the laws of most civilized countries.

Thus; with Stoic, Greeks and Romans, it was Natural Law as lying behind and above all positive law, which was the transcending authority delimiting the earth power of state in relation to individual.<sup>173</sup>

#### **2.7.2.1.2 The Middle Aged:**

There is striking continuity of thought between stoic and the most

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**165** Dr. Myneni S.R. “**Jurisprudence (Legal Theory)**”, (2001), Asia Law House, Hyderabad. pp. 396 – 397

representative literature of middle ages in the affirmation of the principles of the higher law which is the law of nature as source of the Rights of freedoms and of Government by consent.

The ancient Natural Law of Greece and Rome was demolished during Dark Ages. The Church claimed authority over the secular government also.

Earlier Christian Father, especially Ambrose, Augustine and Gregory postulated the supremacy of Divine Law over all other laws by making the Divine Law over all. They far there made efforts to identity the law of nature with law of God.

For Augustine. Law which is not just is not Law.” According to him, Natural Law is man’s intellectual sharing in God’s truth, or God’s central law or eternal law”.

Perhaps, the most important and influential among the Fathers of the church was St. Augustine (353-430 A. D.) It was his conviction that in a golden age of mankind, prior to man’s fall, an absolute ideal of the ‘Law of nature’ had been realized.

According to St. Augustine “the union with divine is the end of law.’ It was the Natural Law, which was identified with the word of God. Thus; moral precepts of Holy Scriptures were precepts of Natural Law.<sup>166</sup> Christ himself had given a fundamental view of namely. Thou shalt love thy neighbor as thyself.<sup>167</sup>

Another interesting feature is St. Augustine’s acceptance of slavery. He denied that any man was by nature a slave since God’s grace is distributed uniformly. Nor does he categorically state that slaves must, some how be more sinful than free people what he did say is that ,”slavery

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**166** Morrison Wayne - ‘Jurisprudence’- From the Greeks to post – Modernism” (1997) Law man India Private Limited, Delhi p. 54-55.

**167** ‘Christ’ – Jesus Christ a founding father of Christianity



is a form of collective retribution for original sin.”

Producing that central Roman idea St. Thomas Aquinas defined Natural Law as the participation in the eternal law of the mind of rational creature.<sup>168</sup>

According to St Thomas Aquinas Natural Law is (lex Naturalis) is a part of eternal law; In addition, reason reflecting on experience yields further more detailed precepts. Man’s nature is such that he is necessarily impelled to seek goods for his survival, continuity and perfection; therefore, he ought to do things to achieve these. It might seem that this is no more than the functional ‘ought’ behind the adoption of a certain course of action as the effective means to a certain end. The law of nature is the law of morality. It is the Law of Nature so far as it is perceivable by and adaptable to Human beings.

St. Thomas is conceived that the voice of reason in us (which enables us to obtain a glimpse of the eternal law) makes it possible for us to distinguish between morally good and bad actions.

Natural Law as a body of rather general and abstract principles is supplemented Thomism philosophy by more particular direction from God as to how man should conduct their lives.

From this concept there flowed certain Rights, which included Right to government by consent, the Right to freedom from taxation without representation and Right to freedom from arbitrary physical constraints.

The theology and philosophy of medieval Catholicism reached its culmination in the monumental system of Thomism St. Thomas Aquinas (1226 - 1274) was the greatest of the scholastic philosophers of the middle Ages and his teachings may still be regarded as authoritative

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**168** Stone J. - ‘**Human law and Human justice**’ - (2000) - Universal Law Publishing & Company Limited, Delhi p. 44

expressions of the theological, philosophical and ethical convictions of Roman Catholicism.<sup>169</sup>

The identification of Natural Law with reason was denied- in later times to bring about a separation of Natural Law from theology. For With the advent of the “Reformation”, ‘the Protestants denied the authority of the church to be the unchallengeable exponent of the law of God. Man was said to have direct access to through his own reason.

In the era which followed that of Aquinas the dream of an “United Christendom” was finally abandoned; Europe emerged from feudalism and there arose of see the modern municipal state. These developments had to be justified by theories, which were more power oriented than in the preceding age. Then abuse of power by sovereign over their subjects led to revolutionary stirring and serration of fundamental Rights of the individual which called for immunity -orientated theories. Both these movements’ manifested themselves in Successive variations of the “social contract theory. Side by side with this, there was” an international chaos produced by the exercise of unlimited freedom of action by state in their mutual relations, which lead to birth of International Law and schemes for perpetual peace evolved out of reason. These factors fostered the rise of ‘Natural Law of content’ theories which supposed that by appealing to reason perfect systems could be deduced in detail. Throughout this period the emphasis was very much on the individual and his Rights.

#### **2.7.2.1.3 17<sup>th</sup> Century:**

Let Present Research student may repeat that there are two kinds of natural law, called Natural Law of method & Natural Law of content’

The firestone is prescription of rule making -.The ‘Natural Law of

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**169** Dr. Mynani S.R. **Jurisprudence (Legal Theory)**, (2001) Asia Law House, Hyderabad p.384

content was a feature of 17th and 18<sup>th</sup> centuries and was characterized by attempts to deduce entire bodies of rules from absolute first principles. There were manifestations of the then fashionable ascertation of Natural Rights' and were accompanied by international schemes for ensuring perpetual peace.

Natural Law theory, by its assumed foundation in the reason of all men, must obviously bear on the relations between peoples whether organized in states or not. So that its role in the beginnings of International Law is no more historical coincidence.

There were left the mellowed and mature versatilities of Natural Law which also had the merit of cultural continuity. Natural Law, after playing a role in disrupting medieval unity, might serve to base a new framework of community among the fragmented parts.<sup>170</sup>

For Glorious, the Law of Nature involved a metaphysical aspect he gave it a practical function in parts of as international in the legal field the early centuries of the modern age were dominated by a new form of natural - law philosophy, which scholars designated as the Natural Law of classical era. This classical Natural Law philosophy which in various and often discrepant manifestations dominated Europe in the Seventeenth and Eighteenth centuries was a legal by product of, the for us which transformed Europe as a result of the protestant Revolution.

In detaching the science of laws from theology and religion he prepared the ground for secular, rationalistic version for modern Natural Law. He defined the law not just based on reason but on Right reason.

For him Natural Law' is the dictate of Right reason which points out that an act, according to it is or is not in conformity with rational

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170 Stone J. "Human Law & Human Justice" (2000) Universal Law Publishing Company Limited, Delhi p. 111

nature has in it a quality of moral baseness or moral necessity'. Thus he constructed a system of Natural Law independent of theological presuppositions which culminated in making Natural Law secular and non religious.

One of his fundamental doctrines is that of 'Pacta sunt servanda' (treaties must be respected and promises must be kept) is a foundation of modern theories of contract: Grotius posted Natural Law as the principle foundation of international Law. Now; it is necessary here to mention views of Samuel Pufendorf (1632-1694). He was a German Law Professor. Pufendorf was in accord with Thomas Hobbes. He told that, "there are two principles of Natural Law."<sup>171</sup>

The first of these principles tells men to protect Life and limb as far as he can and to save himself and his property. The second axiom demands that he does not disturb Human society, or in his words, that he not be anything whereby society among men may be less tranquil."

From second axiom of Natural Law Pufendorf derived Right to Equality.

Two fundamental compacts are necessary in the view of Pufendorf to maintain society and to guarantee the enforcement of natural and civil law. By the first men agree among themselves to abandon the state of natural Liberty and to enter into permanent community, for the purpose of guaranteeing their mutual safety. After this. Decree of a second contract is needed. This time that made between the citizens and the government. By this compact the ruler binds himself to take care of the common security and safety while the citizens promise obedience to him and subject their wills.

But the obligation of the ruler to observe the law of nature is

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171 Bodeneimer E. – "Jurisprudence; The Philosophy and Method of the law."(1997)- Universal Book Traders, Delhi p.-37

merely an imperfect obligation, because there exists no court in which an action can be brought against the Prince. God alone is the avenger.

He carried into a new age of sovereign states a version of universally valid Natural Law transcending in obligation.

Grotius threw a bridge from the medieval world to the modern secular world by a pragmatic solution and reconstruction among traditional ideas of the capable of bearing modern traffic. According to him, "There is no sovereign to control relations of nations, it is not based on positive legislation but on the law of the nature. The citizens in normal circumstances have no Right of resistance against the sovereign for a breach of the law of nature. Only in the extreme case when the Prince has become a real enemy of the country and in the face of actual danger does belong to individuals or the people the Right to defend their safety against him."<sup>172</sup>

#### **2.7.2.1.4 Natural Law to Natural Rights:**

Especially in 17th and 18th century 'Natural Law in content' was preferred by all philosophers. But this 'Natural Law in content' became manifesto of Natural Rights.

Natural Law Theory led to Natural Rights Theory. That version of the post medieval Natural Law which gained wide acceptance in the United States of America was strongly tinged with individualistic tendencies and postulates.

In this era the chief exponent of 'Natural Rights' Theory was John Locke, who taught that Natural Law can be understood as protective of the subjective interest and Right of individual persons. This law in space of reason obliges every man to preserve his Life and limits his Liberty and possession. This Liberty is natural to man to which man is obliged

<sup>172</sup> Stone J. "Human Law & Human Justice" (2000) Universal Law Publishing Private Limited, p. 64

by his law cannot fail; to a natural Right of man, a birthright. It is a Right without the law of nature and obligation which it imposes would have no meaning.

Through this, he established that individual possess by nature the Right to Life, Liberty and property.” He argued that,” The mechanism of social contract (the implicit voluntary social union of all individuals) justifies the role of the society as preserver of the individual’s natural Rights as well as the institution government as executors of such Rights in society.<sup>173</sup>

#### **2.7.2.1.5 (a) 18th Century :**

In the lineage and development of Human Rights, in 18th century views of Immanuel Kant and Jean Rousseau figure prominently.

It was in the Germany of the eighteenth and nineteenth century that the idealistic strain in Western philosophy was carried to its highest emption. The concept of freedom is central in Kant’s moral and legal philosophy. Kant followed same tradition of rationalism as Grotius and Locke in it appeal to a form, non empirical system of reason and its support of the freewill of national individual as upheld through liberal ideas of American and French revolution. He sought to establish his theory through a ‘*priori*’ principles; unconditional, universal and imperative maxims.

Kant’s theory of the state corresponds to that of Rousseau. Kant recognized the social contract, not as a historical fact but as a postulate of reason and a criterion whereby to evaluate the legitimacy of a state. Kant also adopted Rousseau’s theory of the ‘*General Will*’ by proclaiming that the legislative power can only belong to the union of the people.

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173 Bodeneimer E. – “**Jurisprudence; The Philosophy and Method of the law.**”(1997)- Universal Book Traders, Delhi p.-37

For Rousseau Human Right was ultimately grounded in the ‘General Will’ of the society externalized in the sovereign. Rights were considered private and originating in society not from nature. For him individual Rights would predominate only when people obeyed the laws of society the issue of ‘General Will’. The social contract gives “The body politic existence and Life; but legislation gives it movement and will”. He linked sovereignty with ‘General will’ and Rights of individual to a ‘Collective General Will’ (in rebuttal to Locke).

The contrasting positions of Kant and Rousseau exhibit development of two Human Rights principles of freedom and Equality. Right of individual and society. This dichotomy between Rights of individuals and society led to serious dialectical tension eventually leading to reformulating in political terms and individualism versus collectivism (Marxist Socialism)<sup>174</sup>

#### **2.7.2.1.6 (b) 19th Century:**

In 19th Century there was breach to the doctrine of “Natural Rights”. The reason being attributed to the French Revolution and new social forces that were rapidly transforming the society; the triumphs of science, growth of capitalism, conflicts between working and commercial classes etc. It was actually this ‘Natural Law of content’ which was the target for damaging criticism; resulting in the eclipse of Natural Law thinking through most of the 19th Century, when it reached its nadir and was superseded by Positivism. As long as social condition remained stable, Positivism could flourish. This in turn faltered when those conditions were upset by the convulsions that beset nations since the second half of the last century a rigid adherence to formalism.<sup>175</sup>

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**174** Naikar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 24

From the middle of the 19th Century, to the beginning of the twentieth the theory of Natural Law was at the law ebb in most of the countries of Western Civilizations. It is largely displaced by historical - evolutionary interpretations of the law and by legal positivism.

While the Hegel held that “Natural Rights ‘far from being moral standard, was really a characteristic of primitive level of morality and politics making personal individuality of peoples of nations.” He added, “There can be nothing absolutely to found” Natural Law, except Human rationality. Because Natural Law has dramatic effect”. This showed that legal positivism was to dominate the jurisprudential imagination from the middle of the 19th Century, since with modernity all law that is posited as law becomes real.<sup>176</sup>

Bentham the Utilitarian reformer argued , “Individual natural Rights; had force only if recognised by Conventional law.”

Liberalist Mill based Human Rights on a dynamic theory of individualism holding at first such Rights are best respected when individuals are left alone (lessez Faire) and later postulating a social welfare function of government to government to replace the non - interference function. Mill could succeeded to balance between unitarity and Liberty. Major contribution of 19th Century was Socialism.<sup>177</sup>

#### **2.7.2.1.7 (c) Twentieth Century Revival of Natural Law:**

The Nineteenth century the general environment was not conducive to Natural Law. Towards the end of the nineteenth century a revival of the Natural Law theories took place due to many reasons. I. e. g. the emergence of ideologies such as Fascism and Marxism caused the

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175 Barrister RWM '**DIAS jurisprudence**' (1999) Aditya books private limited Delhi p. 475.

176 Morrison Wayne **Jurisprudence from the Greeks to post modernism** (1997) Lawman India private Limited Delhi p. 134

177 Ibrd pp.86-87



development of counter ideologies and thus contributing to the revival of 'Natural Law.'

The twentieth Century however witnessed a revival of Natural - Law thinking and value - oriented 'Juris prudencia.' Joseph Kohler saw the end of legal regulation in the promotion of culture but held an entirely relativistic view with respect to the ethical values to be served by a law dedicated to culture. Roscoe Pound defined the aim of the law in terms of maximum satisfaction of Human wants through ordering of Human conduct by politically organized society.

The return of Natural Law in the twentieth century was not wholly in old form and fashion. The new approach is concerned with practical problems and not with abstract ideas. The new Natural Law is value oriented and value conscious and relativistic not absolute, changing and varying and not permanent and everlasting in character. It represents a revolt against the determinism of Historical School on the one hand and artificial finality of the Analytical school on the other hand. The point of contact of new Natural Law with old Natural Law is that a moral idealism is its resonant keynote. The Natural Law established the belief that certain moral and ethical ideals of justice are necessary for its existence. The new Natural Law has been called, "Natural Law with a variable content." Among the philosophers who have given the theories of new revived Natural Law are Stammer and Kohler, who hold important place among the jurisprudence.

But Present Researcher wants to mention one more opinion about the revival of Natural Law. It is Julius Stone who denied that there is nothing like "Revival in Natural Law." He said, "The so-called "revival of Natural Law has now been a topic of juristic discussion for nearly half a century. The 'revival' of course is not strictly of Natural Law itself

(which as the juristic branch of the Roman Catholic' philosophia perennis can scarcely be said to have died at all but of general juristic cannon with it.)<sup>178</sup>

The Pioneering attempt was done create a modern natural Law philosophy based on a priori reasoning was made in Germany by a Rudolf Stammler (1856-1938).

Stammler is very much close to Kantian idea of law; but the differs from it is two aspects. First the "Community of individuals takes the place of the individual as such"; this means that Stammler's formula is somewhat us individualistic than Kant's. Second, Stammler's formula in its abstractness leaves more room for verity and diversity in Positive law than Kant's Natural Law definition. There is not a single rule of law; said, Stammler, 'the positive content of which can be fixed a priori' in his view, two legal systems with widely varying rules and principles of law may both be in conformity.

with his social deal. This ideal does not embody a concrete system of Natural Law but represents merely a broad yardstick by which the justice or injustice of positive rules of law may be tested. It is at the most, a 'Natural Law with a changing content.'<sup>179</sup>

His call for "Natural Law with changing content" has become a slogan of twentieth century jurists ministering as it close both to the yearning for a universal ideal, and caution of scientific relativism.

Like, Tammler the Italian legal philosopher Giorgio Del Vechio (1878-1970) distinguishes sharply between the Concept of Law and the Ideal of Law".

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**178** Nailkar L – D **the Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 24

**179** Barrister RWM **DIAS jurisprudence'** (1999) Aditya books private limited Delhi p. 479

The Italian Legal philosopher says, 'Natural Law is the criterion which permits us to evaluate Positive law and to measure its intrinsic justice. He derived Natural Law from the nature of man as rational being.

He is both Hegelian as well as Kantian in the sense he conceives Human spirit and Human reason by emphasizing that evolution of Human spirit has been for the realization of equal freedom for all men. The aim of his theory of law is realization of perfect autonomy for the Human spirit leading to Human Liberty and autonomy of the individual such an ideal content is postulated by inner conscience of all men.

### **Gustav Rad Bruch (1879-1949)**

The German legal philosopher Gustav Rad Bruch started out from a Neo-Kantian philosophy of values which erects a strong barrier between the 'is' and the 'ought'.

Prior to the Second World War .Radbruch adhered to an essentially relativistic view of law of justice.

This German philosopher revised his earlier philosophy after the fall of Germany in Second World War.

Rad Bruch is the principles exponent of the revival of Natural Law doctrines in the post - war Germany. As the reaction against the horror of Nazi period, he expounded the doctrine of 'Higher Law' to demonstrate that all the Nazi acts were contrary to all canons of Natural Law. He declared that a general acceptance of positivistic philosophy in the pre-Nazi Germany made smoother the route of dictatorship. He declared the Right of the citizens to disobey such positive laws if, they are contrary to ultimate rules of justice.<sup>180</sup>

## **Jean Dabin (b. 1889)**

A significant contribution to Neo- Thomistic thought has been made by Jean Dabin, a Belgian Jurist. Thomas Aquinas's modern followers are known as Neo-Thomists. They also adopt the Humanism of Aquinas.  
a.<sup>181</sup>

According to Jean Dabin,' Law of Nature is deduced from the nature of man as it reveals it self in the basic inclination of that nature under the control of reason. As Human nature is identical in people everywhere the percepts of Natural Law, universal in spite of historical geographical, cultural and other such variations.'

Dabin's theory of justice contemplates three different from of justice:

### **(i) Commutative Justice:**

Aimed at proper adjustment of relations of private individuals particularly by means of legal remedies designed to award damages is contract and tort cases restore stolen or lost property etc.

### **(ii) Distributive Justice:**

Determines what is due from collectively to its members it governs the legislative distribution of Rights, powers honors and rewards.

If a law fails to conform to this principle it is not morally binding because everybody admits that civil laws are contrary to Natural Law are bad laws.

He declared that positive law has to be in conformity with rules of justice and ethics. He identifies rules of Natural Law with higher rules of ethics postulated by reason. The positive law ought to reflect the

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**180** Naikar L – D **the Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 24-25

**181** Stone J."Human Law & Human Justice" (2000) Universal Law Publishing Company Limited, Delhi p. 180

higher values of society and be reflection of public good and justice. He added, “Natural Law dominates positive Law in the sense that while positive Law may add to Natural Law, or even restrict it, it is prohibited from contradicting it.”<sup>182</sup>

A Natural, Law theory with strongly sociological overtones was propounded by the French jurist Leon Duguit (1859 - 1928). This doctrine was diametrically opposed to Natural Law doctrines of the age of enlightenment in that Duguit repudiated any natural or inalienable Rights of individual.

His theory is: “every individual has a certain task to perform in the society and his obligation to perform this function may be enforced by law. The only Right, which any man might be said to possess under this theory is the Right always to do his duty.”

The social function of the law, according to Duguit, is the realization of ‘Social Solidarity.’ This is the central concept in Duguits theory of law. The fact of ‘Social Solidarity’ becomes, however, converted in to a normative principle under Duguit’s ‘rule of law’ (regie de droit). The rule of law demands of everyone that he contribute to the full realization of social solidarity, No statute or administrative order is valid which is not in conformity with the principle of social solidarity and social interdependence.

The outstanding fact of society is the interdependence of men. People have common needs which require concerted effort. They’ve also dissimilar needs which require mutual adjustment and accommodation. No one can live at the present time without depending on far reaching web of services provide by his fellowmen. This social interdependence

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**182** Nailkar L – D **the Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 24-25

is not a conjecture, but an inescapable fact of Human existence. All organizations therefore, should be directed towards smoother and fuller co-operation between people. This Duguit called the 'principle of Social Solidarity'.<sup>183</sup>

The Law of Nature is respectively binding independently and adversely to positive law.

Duguit's views have had considerable influence. Their adaptation by Nazi, and fascist jurists, has been alluded to Soviet jurists, top found parts of his work congenial.

Lon Fuller (1902- 1978) has turned a critical searchlight on both Juridical Positivism and lead to Realism.

Fuller is a renowned contemporary jurist of new Natural Law in the twentieth century. The core of his thesis concerns the conditions 'sine quibus non' for the functioning of laws. The temporal approach is in line of 'Natural Law with variable content'.

For Fuller, Law is a collaborative effort to satisfy or aid satisfying the common needs of man "According to Fuller," The integrity of law is determined permanently by the process, which it uses in order to accomplish its goals. The morality makes law possible requires the satisfaction of eight conditions which may be summarized like this;-

- a) "These must be rules formed to guide particular actions.
- b) These rules must be made known to the public, or at least to all those to whom they are addressed.
- c) The rules should, in most instance be prospective rather than retroactive.
- d) They should be clear and comprehensible.
- e) They should not be inconsistent with one another;

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**183** Dr. Mynani S.R. **Jurisprudence (Legal Theory)**, (2001) Asia Law House, Hyderabad p.500 - 501

- f) They should not be required the impossible;
- g) They should be reasonably sable.;
- h) There should be congruence between the rules as announced and their actual administration.”

These eight canons were the procedural versions of Natural Law.<sup>184</sup>

‘A failure to satisfy any one of these canons, Fuller says is something’s that it is not properly called a legal system at all, except perhaps in the Pickwick ion sense in which a void contract can still be said to be one kind of contract!

The next scholar is Filmer Northrop

**Filmer Northrop (b. 1893)**

According to Northrop, ”The positive law enacted by State should be tested with respect to is conformity with the living law or people or culture. Only a Positive law, which meets the social and legal needs of the people and is in general, accepted and acted upon by then, can function as an effective legal system.

Northrop is of the opinion that Natural Law of modern world cannot be based either on Aristotle on Thomistic conception of this law or on the natural Rights philosophy of Locke and Jefferson. It must be grounded on the conception of nature and natural man supplied by modern physics, biology and other natural sciences. He insists on building and effective international law to secure the survival of mankind, based on scientific foundation the Natural Law provides. Only a true universal law can mitigate and alleviate the hostility and tensions endangered by living law pluralism of the present world and bring about that modicum of mutual understanding between peoples which is indispensable to word peace.

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<sup>184</sup> Bodeneimer E. – “**Jurisprudence ; The Philosophy and Method of the law.**”(1997)- Universal Book Traders, Delhi p.152

Prof. Hart, while defending Positivism, has evolved the initial dimensions of 'Rights theory.' Starting with the modest 'a priori; proposition that survival is the central indisputable element which gives empirical good sense to the theory of Natural Law; He argues, "If there are any moral Rights at all, it follows that there is at least one Natural Right, the equal Rights of all men to be free. By this he means that any Human being capable of choice."<sup>185</sup>

- I. He / She has the Right to forbearance on the part of all other from the use of coercion or restraint against save to hinder coercion or restraint against him/her save to hinder coercion or restraint; and
- II. Is at Liberty to do any action which is not coercing or restraining or designed to injure other persons. He has two reasons for this.
  - a. This Right is one which all men have if they are capable of choice, they have humane and only if they are members of some society or stand in some special relation to each other.
  - b. This Right is not created or conferred by man's voluntary action, other moral Rights are'- Hart sees this Right to be 'free' as one, which is logically presupposed when other types of Rights are invoked. That is without the presupposition of the Right of freedom, the important segment of our moral scheme would have to be relinquished and various political Rights and responsibilities could not exist.

Thus, ultimately, Hart's thesis of the minimum content of Natural Law can only work as narrative foundation for the legal order not for

<sup>185</sup> Morrison Wayne **Jurisprudence from the Greeks to post modernism** (1997) Lawman India private Limited Delhi p. 439



morality.

So present ' Research scholar wants to submit some of Basic tenants of Natural Law school in conclusion. They are:-

- I. "Law is related to justice reason, Human nature and ethics;
- II. Rules of Human conduct emanate from a supreme authority and are binding on all men everywhere,
- III. Natural Law is often opposed to written law;
- IV. Natural Law demands Equality for all men. and
- V. Rules of law can be studied on the basis of a 'p priori' method i. e. to accept a thing without an enquiry or observation."<sup>186</sup>

### **2.7.3 Positivism – The- Authority of State**

In the middle of the nineteenth century a string counter movement against the metaphysical tendencies of the preceding contains set in. This movement may be described by the loose but comprehensive term "positivism." "Positivism", a scientific attitude rejects a priori speculations and seeks to confine itself to the date of experience. It turns away from the lofty heights of the spirit and restricts the task of scholarships to the analysis of the 'given' it, refuses to go beyond the phenomena of perception and denies the possibility of a comprehension of nature in its 'essence'. The basis for Positivism had been prepared by the immense success achieved in the domain of the natural sciences during the first half of the Nineteenth century. This success brought about a strong temptation to apply the methods used in the natural sciences to the realm of the social sciences. A careful observation of empirical facts and sense data was one of the principle methods used in the natural sciences. It was expected that in the social sciences this same method would prove to be

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**186** Dr. Mynani S.R. Jurisprudence (Legal Theory), (2001) Asia Law House, Hyderabad p.361

fruitful and valuable.<sup>187</sup>

Beginning with the second half of the Nineteenth century : Positivism involved all branches of the social science, including legal science.

Ronald Dwornkin is of the view that all the positivists agree on what he calls the ‘Skeleton of positivism- According to Ronald Dwornkin, the key tenets are as follows;

1. The law of a community is a set of special rules used by the community directly or indirectly for the purpose of determining which behavior will be punished or coerced by public power.
2. The set of these valid legal rules is exhaustive of ‘The Law’ so that if someone’s case is not clearly covered by such rules then that case can’t be decided by applying the law. It must be decided by some officials like judge.
3. To say that some one has a legal obligation is to say that his case falls under a valid legal rule that requires him to do or to forbear from doing something.<sup>188</sup>
4. The set of these valid legal rules is exhaustive of ‘The Law’ so that if someone’s case is not clearly covered by such rules then that case can’t be decided by applying the law. It must be decided by some officials like judge.
5. To say that some one has a legal obligation is to say that his case falls under a valid legal rule that requires him to do or

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**187** Morrison Wayne **Jurisprudence from the Greeks to post modernism** (1997) Lawman India private Limited Delhi p. 391

**188** Nailkar L – D the **Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 27-28

to forbear from doing something.<sup>189</sup>

After checking the Drown kin's view the Present Researcher wants to mention views of Dias Barrister Dias said that,"The start of the nineteenth century might be taken as marking the beginnings of the positivist movement. Prevailing theories of Natural Law shared the feature of turning away from the realities of actual law in order to discover in nature or reason principles of universal validity. Actual laws were then explained or condemned according to these canons. Unverified hypothesis of this sort failed to satisfy the intelligence of an age nurtured in the critical spirit of new scientific learning. Scrutiny of Natural Law postulates had damaging results, for they were shown to be without foundation or else the products of extrapolation.

Then Dias agreed with Prof. Hart's views.

Prof. Hart may be regarded as the leading contemporary representative of British Positivism. He gave five meanings of the term 'Positivism!

1. "Law as commands (Austin and Bentham),
2. The analysis of legal concepts is,
  - a) Worth pursuing,
  - b) Distinct from sociological and historical enquiries,
  - c) Distinct from critical evaluation."
3. Decisions can be deduced logically from predetermined rules without recourse to social aims, policy on morality,
4. Moral judgments cannot be established or defended by national arguments evidence or proof,

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189 Ibrd pp. 27-28

5. The law is actually laid down. It has to be kept separate from the law that ought to be.”

The fifth meaning given here seems to be the one currently associated with Positivism. It may be spring from a love of order which aims at the clarification of legal conceptions and their orderly presentations.<sup>190</sup>

According to Austin ‘Law is command’. The laws of a society are the general commands of sovereign - the supreme political authority to govern the conduct of the society’s members. The Sovereign is that individual or determine group of individuals (a) towards whom the bulk of the society has a habit of obedience and (b) who is in turn not habitually obedient to anyone. A command of the sovereign (a law) imposes an obligation or duty on the persons who are directed to act or not to act in certain way. The Present Research Student wants to analyze these abstract words of Austin’s theory The most essential characteristic of Positive Law according to Austinian doctrine, consists in its imperative character. Law is conceived as a command of sovereign. Every Positive law is set given by a sovereign to a person or persons in a state of subjection to its author. ‘Not every type of command’ was considered a law by Austin. Only general ‘Commands’ obliging a person or persons to acts or forbearances of a class, merited the attribute of law in his opinion.

A command may be particular (addressed to one person or group of persons) or general; General commands are addressed to the community at large and enjoin classes of acts and forbearances. They are also continuing commands. A particular command is effective when the

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**190** Finch J.D. '**Introduction to Legal Theory**' (2000) ,Universal Law publishing Company .Private limited Delhi p.40-41

Commanded person or group obeys. A general command is effective when the bulk of a political society habitually obeys it. A commander, who receives 'habitual obedience' from the bulk of a given society, is sovereign in that society. From all this Austin concluded that "A law is general command of a sovereign backed by a sanction."

Then much refinement to the positivist philosophy is done by an influential moral Professor H.L.A. Hart. He may be regarded as the leading contemporary representative of British Positivism.

The work of HLA HART 'The concept of law' is widely recognize as providing the zenith of legal positivism.

He approached his concept of law as here mentioned. 'Where there is law' he says, there Human conduct is made in some sense, non-optional or obligatory! Thus, the idea of obligation is at the core of a rule. He commences his book by taking Austin's command theory to task. The idea of command will explain a coercive order addresses to another in special circumstances, but not why a statute applies generally and also applies to its farmers.

Hart argues that Austin's analysis confuses having an obligation to do something with being obliged (forced) to do it. When gunman sticks a gun on my back and says 'handover your wallet' he has issued an order backed by threat. I might described this situation by saying that, 'I was obliged had no choice but to handover my wallet, but I would hardly say that I had an obligation to do so.'<sup>191</sup>

There are two minimum conditions which are both analytical and empirical;

- I. Valid rules 'must be generally obeyed; this conditions involves the behavior of citizens/legal subjects,

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191 Morrison Wayne - 'Jurisprudence'- From the Greeks to post – Modernism" (1997) Law man India Private Limited, Delhi p. 351

- II. The Secondary rules of a system must be effectively accepted as common public standards of official behavior by its officials this condition relates specifically to the behavior of officials.

Thus Prof. Hart says, "Rules are in two form; Primary and Secondary" Under Primary rules Human beings are required to do or abstain form certain actions whether they wish or not. Secondary rules provided that Human being may be doing or saying certain things may introduce new rules of primary type extinguish or modify old rules. Primary rules impost duties. Secondary rules confer powers, Public or Private. Primary rules concern action improving physical movement or changes. Secondary rules provide for operations, which led not merely to physical movement or change but to the creation or variation of duties or obligations. The union of primary and secondary rules constitutes the core of legal system.

Legal positivism has manifested itself most conspicuously in a jurisprudence of an analytical type, here Austin's theory designated as analytical positivism.

As Julius Stone has pointed out, analytical positivism is primarily interested in an analysis of legal terms and an inquiry into the logical interrelations of 'legal propositions.'

Legal Positivism, however may also take on a sociological form. Sociological Positivism undertakes to investigate and describe the various social forces which exercise influences upon the making of positive law. It is concerned with analyzing not the legal rules produced by the state but the sociological factors responsible for their enactment. It shares with analytical positivism a purely, empirical attitude toward the law and

a disinclination to search for and postulate ultimate values in legal order.<sup>192</sup>

#### 2.7.4 MARXISM

“All fixed, fast frozen relations with their train of ancient and venerable prejudices and opinions are swept away all new formed ones become antiquated before they can ossify. All that is solid melts into air, all that is holy is profaned and men at last are forced to face... the real conditions of their lives and their relationship with their fellow men (Marx and Engles - {The Communist Manifesto’, 1848 in the Marx Engles Reader, 1978:476}.

The first issue appears simple but is elusive: “What is Marxism... whether it is a philosophy or sociology, a religion or a mystification... Does it comprise the dangerous ramblings of a power crazy group of outsiders, or a set of writings based on the deeply concerned Humanist reflections of one of the world’s greatest scholar’ It has been called all of these things. ‘For Marxism, we are of this world and the world is a unity. Hence, whatever divisions, what ever conflicts we witness they can be reconciled, since ultimately we and the world are of the same kind. It is mankind, not some transcendent God that is the secret to religion, thus we must transform the narratives of religion into secular messages.<sup>193</sup>

Marxist legal theory has experienced many varieties and stages since its original conception and especially since the revolution of 191, so much so that both the legal theory and the judicial institution of the soviet Block rank equal as fields of study with systems and legal analyses having a much longer history.

Marxism is based on the writings of Karl Marx, as we know. In

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192 Bodeneimer E. – “**Jurisprudence ; The Philosophy and Method of the law.**”(1997)- Universal Book Traders, Delhi p.95

193 Morrison Wayne - ‘**Jurisprudence**’- From the Greeks to post – Modernism” (1997) Law man India Private Limited, Delhi p. 247-248

this century, Marxism, however, has been a political doctrine in which interpreting the meaning of Marx's work has often been subordinated to political necessities, rather than providing route the route to a deeper understanding of modernity.<sup>194</sup>

Since the ultimate goal is the realization of communism and law is an instrument whose aim is to teach citizens, it imposes observance of social duties. This is because in Communism there would be no class, if there are no class conflicts or conflict between interests of Government and people there should be no Rights. Yet they have it through state, the people grant themselves certain Rights not as a matter of expediency by self-interested Right ruling class but as a product of collective will of the people. Rights then are conferred in the limited sense in order to encourage him to be loyal, hardworking, well-disciplined and a virtuous citizen.<sup>195</sup>

Marxist theory is also concerned with the nature of Human beings. However, the view of men and women is not of individuals with Rights developed from either divine or inherent nature, but men and as specie being. Their theory mainly rests on the Marxist interpretation of society and law.

According to Natural Law doctrine reason or justice is immanent in nature as a creation of God, and especially in the nature of man (as the image of God) man is by very nature good, i.e. just and since justice means freedom, man is by his very nature is very free. But evils in the society cannot be denied. These evils have their 'seats outside of man' like its symbol the serpent in the Garden of Eden. These evils are forces of production in a capitalist society.

The value of commodities then came to be governed by the cost

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**194** Barrister RWM **DIAS jurisprudence'** (1999) Aditya books private limited Delhi p. 395

**195** Nailkar L – D the **Law Relating to Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 34-35



of the labour required to produce them. The place of tribal society was taken by the state which became the instrument of stronger class whether this was described as a slave owner's state, a feudal state, or 'Bourgeois'.<sup>196</sup>

The modern capitalist state necessarily involves the domination of the labouring majority by a minority, which controls the economic resources of the country law are an instrument by which this minority exploits the workers. The tension between the capital and labour will eventually break into conflict a revolt of majority against the minority and the majority will gain control of the economic resources and will seek to eliminate the minority. The state thus established is the proletarian dictatorship.<sup>202</sup> 'Bourgeoisio' Exist as Idlers who Perform, Pretended/Little - labour or no labour in the social production of existence - Exist as Employers/Masters/Lords of labour, - From Bapuji B.R. "Conception of Social class in Marx "Towards a Recognition1'(1993) - T.R. Publications, Delhi In short, Marx's communist Manifesto can be described in very simple terms in this way:

- I. That the Law is a product of evolving economic forces,
- II. The Law is a tool used by a ruling class to maintain its Power over the lower classes."

The forces of production dominate man instead of being dominated by him, and man in the process becomes a slave and he is not free.

The dictatorship of the proletariat is said to represent 'the highest form of democracy possible in a class society and is also 'substantially' the dictatorship of the party as the force which effectively guides proletariat. The term 'democracy' is here used in a sense different from that in west. The Proletarian dictatorship is indeed a dictatorship, but in

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<sup>196</sup> 'Bourgeoisio' Exist as Idlers who Perform, Pretended/Little - labour or no labour in the social production of existence - Exist as Employers/Masters/Lords of labour, - From Bapuji B.R. "Conception of Social class in Marx "Towards a Recognition1'(1993) - T.R. Publications, Delhi

so far as it has been formed by the masses and acts in their interests it is a democracy. The distribution of commodities at this stage of development will follow the maxim from each according to ability to each according to his work'-Inequality inevitably (persists and state organization continues to be necessary.<sup>197</sup>

In capitalism, when man is a slave in economic relationship there is conflict between the external reality and internal reality; It is through communism that man will return to himself.

The final stage of development, according to Marx is the socialization of society leading to the stage of perfect communism when all capitalist and bourgeois elements have been eliminated. This final stage may come about as a result either of evolution or of revolution.<sup>198</sup>

Out of this conflict will eventually emerge communism or the classless society. Domination will cease, inequalities will vanish and with them the State and law will disappear as well. It is not altogether clear when Marx and Engels expected the advent of "Utopia" It may be when production has reached such a point that all people can be supplied with their needs without having to compel them to work. In short, when the maxim 'From each according to his ability, to each according to his needs' can be applied or it may be when crime and other forms of wrongdoing have been eliminated, for as long as these continue the machinery for their repression will continue to be needed-Lenin believed that after the removal of the economic causes of crime, great part of, if not all, wrongdoing will disappear.

Freedom which is the essence of internal substratum of society,

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**197** Barrister RWM **DIAS jurisprudence'** (1999) Aditya books private limited Delhi p. 397

**198** Finch J.D. '**Introduction to Legal Theory** (2000) ,Universal Law publishing Company .Private limited Delhi p.183

hidden by the existing reality of capitalist society, will also become the external reality. That is the state which existed prior to the coming of political state, a state with freedom and justice where no private but only collective property existed will be reestablished. That is with the passing of ownership of means of production into the hands of a community the individual will have true freedom.

Marxism sees a person's essence as, the potential to use one's abilities to the fullest and to satisfy one's needs. Since the capitalist society production is controlled by few, such society cannot satisfy those individual needs only through communism, these needs can be met.

Marx supposed that "The defects and the inequalities in Human society were due to factors that lay in production and economic conditions and out side the nature of man. "This assumes that man is by nature equal and free and that only in the communist society would be able to realize his true self. For as both Lenin and Stalin asserted the individual will only be liberated when the mass is liberated 'Everything' said Stalin 'for the mass'.

One of the name of Marx is 'the Humanist' who writes against exploitation, who argues that the conditions of Human society do not go far enough to liberate man, to serve 'real' Human interests.<sup>199</sup> (Proletariat = As the workers out number the owners the workers are bound to capture the state and establish their rule. Marx called this rule the dictatorship of proletariat)

The Marxian creed was propounded sometimes in the middle of the nineteenth century. Since it has been subjected too much criticism. As a result of this criticism much of the ideological struggle raised by Marx was broken into pieces what remains of Karl Marx is a residue of

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**199** Nailkar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p.36

the fire which consists of four items :

- 1) “The function of philosophy
- 2) Conflict of interests,
- 3) Private ownership ,
- 4) To remove Society abolition of Private Property.”<sup>200</sup>

### **2.7.5 Utilitarianism**

Utilitarianism was a philosophical movement which flourished in Nineteenth Century. In England and although it made converts in other countries always retained a distinctly English flavour.

Though utilitarianism in ethics is traceable far into the origins of philosophy it was only in the Eighteenth Century after the wane of both authoritarianism and the rebel Natural Law that it came into its own. Hume, the leading English utilitarian philosopher wrote his essays in 1741-42. Undoubtedly his central thesis that the moral quality of an act was its tendency to produce happiness for the actor (recognizing at the same time that man being a social animal may be made happy by the happiness of others) was fashionable when Bentham was in his studious ‘teen’s.

The utilitarian theory played a prominent role in the Nineteenth and Twentieth Century philosophy and political theory. The Utilitarian’s approach to the problem of Right is through values such as Equality happiness, Liberty, Dignity, respect which concern man’s behavior are studied not at metaphysical concept but are accepted and acted upon. The utilitarian theory seeks to define notions of Rights in term of tendencies to promote certain end, e. g. common good.

Jeremy Bentham, the exponent of the classical utilitarian

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**200** Editors :”Gupta V.P. and Rao Mohini “**Bhimrao Ramoji Ambedkar**”,(1998), Ambe Books, Mumbai. P. 77

adopted the maxim “The greatest happiness of “the greatest number to popularize his philosophy.<sup>201</sup>

Bentham’s happiness principle enjoyed enormous popularity during the 19th century, and most reformers spoke in terms, of Utilitarianism. Yet his theory met lots of criticism. Some of the objections raised against Utilitarianism are;

- 1) “The Utility principle has been subjected to searching examination. In the first place, it is not easy to see how a subjective criterion such as pleasure and pain can be transmuted in to an objective one. A Pleasure connotes an emotional attitude of approval pain of disapproval. To judge an action according to the pleasure-pain criterion is to judge it subjectively”

So this calculus as provided is impracticable. Because, no person can know all acts the consequences of his and it would be foolish to try to assess them.<sup>1</sup>

- 2) “The Utility principle has been subjected to searching examination. In the first place, it is not easy to see how a subjective criterion such as pleasure and pain can be transmuted in to an objective one. A Pleasure connotes an emotional attitude of approval pain of disapproval. To judge an action according to the pleasure-pain criterion is to judge it subjectively”

So this calculus as provided is impracticable. Because, no person can know all acts the consequences of his and it would be foolish to try to assess them.<sup>1</sup>

- 3) Bentham’s psychological hypothesis is questionable. Even if

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**201** Stone J."Human Law & Human Justice" (2000) Universal Law Publishing Company Limited, Delhi p. 111

each man desires his own happiness so, that his happiness is a good to It may not general happiness for all. If pleasure may be the end of each. Then since pleasure can be felt only by the individual man the pleasure of other cannot be his end by only a means to his own end, which is his own pleasure. And yet, to satisfy Bentham's theory, not only the legislator but all citizens would have to aim at maximum pleasure for others, which seem contradictory with egoistic hedonism itself. "In the Utilitarian doctrine the egoism of the individual is at once explicitly affirmed and implicitly denied."

Principle of utility is unworthy. Satisfaction of all Human desires cannot be the only test of what is Right and wrong. There are higher values like worth of individual and Human Dignity.<sup>202</sup>

- 4) Individual Dignity is the fundamental principle of Human Right. Utilitarian principle always talks about satisfaction of all Human desires. But; Human desires are not always same. i. e. One person is may fond of latest Hindi movies, another parson may find latest Hindi Movies boring or waste of time.

Another illustration about the importance of Human Dignity, suppose, you are a well- known advocate, serving in big solicitor's firm. Though you're very sincere, your boss always insult you, taunting you and demoralize you. Then, you've a handsome salary also. But' there is no respect for you and not a little job satisfaction in this firm. If one

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202 Ibid p.131-132

person's Dignity is not maintained by another person, the and fulfillment of all desire are not enough.

- 5) Human desired and satisfaction is capable of manipulation. They can be manipulated by measures such as education, indoctrination, advertisement etc. By advertisement man can be brought to desire things which he would not have desired other wise. It is true, that desires, wishes and ambitions never end. They are always boundless.

From last & half decade, a wind of Liberalization, Privatization and Globalization has entered in India and every where. -Plus, we have so many television channels, fax & internet facilities available to know about whole world. We are able to purchase any product, which is available in any corner of world's any country. This becomes possible by world of advertisement. Day by Day, our world is converting in global village and computerization is becoming a culture and unavoidable event that has no limit.

So, the satisfaction of all desire is not always a test of Right and wrong. Because; one person is a drug -addict and" the Government wants to control the narcotics traffic. Then one person's satisfaction became dangerous for Government. Because; if for the sake of satisfaction of one person's desire of drug - addiction. Government will not ready to spoil public health & may not allow any social - evil' which are connected with drug - trade.

Again by Advertisement, man is be coming a big, shopping Animal. He / she never satisfied from one thing or one local brand He / she asks for more variety and or one

local brand. Today we are living an era of 'Dil Mange More'. From tooth brush to ball pen, from branded jewellery to instrument of telephone so many varieties and brands are available for us. And Human desire satisfaction is capable of manipulation.

- 6) Utilitarian are not clear on whose interest are in questions.... Interest of a national community... or a mankind. or a present or future generations ... Or "all creatures ... Whether interest of unborn included... or not

Today an age of internet & mobile phone. Interests are changing rapidly. One person's interest may not always match with another's. Interest is sometimes conflicting and sometimes harmonizing. i. e. United Nation's Organization is always attempting to harmonize interests of whole mankind, for all nations' interests and interest of future generations.

But -Utilitarian should mention for whose interests they are talking about..., because, as for example, if we talk about India; there is much variety interest. It changes caste by caste, creed by creed or on religious base. It may change on region wise or language wise also. i. e. g. Gujarati person is more interested in trade and commerce or is interested agriculture or firm business.

Some of the criticisms leveled against Bentham's theory were refined by the economic analysis.

The Economic analysis of law is an attempt to offer a sophisticated scientific alternative to utilitarianism.

In society 'Haves' community, rich community is always happy. But 'Have not' community, poor community are not happy, So Total happiness of relevant population is not always possible.

In the case that the happiness of the majority will embitter the



minority to the point of provoking disharmony.<sup>203</sup>

The utility calculus is objected because it does not provide an answer to how advantages to some can be measured against the disadvantages to others. But this is not so according to economic analysis; for all that happens to us can be reduced to things we will pay to be without, the solvent of a hypothetical market. As for example, “my neighbor may not be prevented from having noisy parties; which disturb me”. He pays ‘X’ pounds for the privilege, if there was a market in noisy parties. I would pay ‘Y’ pound to be left in peace. If X is greater than Y, satisfactions are maximized by allowing him to go a head. That is the efficient solution. Where Bentham spoke of the greatest happiness of the greatest number the economic analyst speaks of overall efficiency.<sup>204</sup>

Once of the fundamental principle in ‘interpretation of statute is law or statute must be defined or interpreted in this way which becomes maximum useful and gainful to maximum number or people. ‘Because law for statute is after all for welfare of people.’<sup>205</sup>

Friedman says, The main weakness of his work derive from two short comings one is Bentham’s abstract and doctrinaire rationalism which prevents him for seeing man in all his complexity in his blend of materialism and idealism, of nobility and baseness of egoism and altruism. This lead ‘Bentham to an overestimate of the powers of the legislator and underestimate of the need for individual discretion and flexibility in the application of law, the second fundamental weakness stems from

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203 Present Research Student’s view

204 Nailkar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 38

205 Present Research Student’s view.

Bentham's failure to develop clearly his own conception of the 'balance' between individual and community interest'.<sup>206</sup>

According to Poser, common law can be explained in terms, and argued that common law rules were the result of arguments, which are in reality economic in nature. He says "The common law method is to allocate responsibilities between people engaged in interacting activities in such a way as to maximize the joint value or what amounts to the same thing minimize the joint costs of activities. It may do this by redefining a property Right, by deserving a new rule of liability or by recognizing a contract Right.... His argument was the common law judges have decided the cases to maximize social wealth. That social wealth. Economic analysis holds, that social wealth maximization is a worthy goal so that judicial decision should try to maximize wealth, by assigning Right to those who would purchase; It argues that law suits should be decided to increase social wealth.

Our Supreme Court of India follows the same view. So many landmark judgments it has declared after Menaka Gandhi case. It is a concept like ancient Hindu rituals : "**Bahujan Hitay Bahujan Sukhay**" To seek and achieve maximum happiness for maximum numbers from maintaining maximum number's interest."

For Poser, wealth maximization is value itself because society that takes wealth maximization to be central standard for political decision will develop other attractive features.

He argues that, "Wealth maximization is of instrumental value, because a society that maximizes wealth will recognize Rights; such as Right to their own bodies, Right to direct their own labour as they wish etc."<sup>207</sup>

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<sup>206</sup> Dr. Mynani S.R. **Jurisprudence (Legal Theory)**, (2001) Asia Law House, Hyderabad p.426

<sup>207</sup> Naikar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 38

The Present Research Scholar doesn't agree with this opinion. Because; only money or wealth never recognizes person's Rights. If only wealth is a qualification for assurance of Right, then poor person or the poor people never expect 'the justice' either from society or from judiciary; or from established Government. Then at social level, political level and economic level and in every of society, 'might is Right policy always prevail.

Our Supreme Court of India is very much aware of this situation. So; it interprets Constitutional Law of India and other statues on basis of 'Distributive justice'. It provides justice & protects Rights of our poor and poor population against rich. As. for example, case of P. U. D. R. V/ S. State of Bihar. AIR 1987 SC 355; (1987), the people's ' Union filed a writ petition complaining that about 600 peasant who had assembled peacefully were harassed by the police.

The Supreme Court awarded compensation of Rs. 20,000/- in case of death and Rs. 5,000/- in case of injury.

(P. U. D. R. = people's Union of Democratic Rights, A Non Governmental Organization who fights for, deprived section's fundamental Rights and specially in cases of violation of Human Rights)

However, it is criticized, that a society is not a better society just because it specifies that certain people are entitle to certain, things. Witness South Africa. Everything depends on which Rights the society recognizes. It dies not provide that wealth maximization leads to recognition of certain individual Rights.<sup>208</sup>

The Present Research Scholar wants to submit that, wealth - maximization is not a solution of all problems. But oppositely wealth increases the risk comes from everywhere. Like robbery, stealing or losing.

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**208** Bakshi P. M. 'The Constitution of India with selective comments & Subject Index (2002) Universal Law publishing Company Private Limited Delhi. p.51.

As for example, you have invested Gold or diamond market or in share - debenture and you earn profit. Then mafia/ tapori will chase you and asking for 'Hapta; (His share from your profit earning.) So though you are rich & wealthy Person, but; you're able to enjoy it.<sup>209</sup>

For some it is the proof that Bentham's utilitarianism leads on to totalitarianism for others, it demonstrates the weakness of the vision of social progressive in which we all should be governed by the new knowledge which modernity is producing.<sup>215</sup> Present Research Student's view

## **2.7.6 Modern Theories.**

### **2.7.6.1 Theories based on justice**

Men have talked about justice for as long as they've talked about law. It is the notion of 'justice' which directs our attention to the fairness and reasonableness of the rules, principles, and standard that is the component parts of the normative edifice. While order, focuses on the formal structure of the social and legal system justice looks to the content of legal norms and institutional arrangements, their effect upon Human beings and their worth in terms of their contribution to Human happiness and the building of civilizations.<sup>210</sup>

The scope of justice is, however, wider. There sorts should be distinguished. Justice may be;

- 1) "Claimed to something inherent in law; or
- 2) Law may be contrasted with justice ; or
- 3) Justice may be a measure for testing law. "

Speaking of justice in the broadest and most general terms, it might be said that," Justice is concerned with the fitness of a group order

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**209** Present Research Student's view

**210** Stone J."Human Law & Human Justice" (2000) Universal Law Publishing Company Limited, Delhi p. 111

or social system for the task of accomplishing its essential objectives. Without presence of offering a comprehensive definition, it might be suggested that it is the aim of justice of satisfy the reasonable needs and claims of individuals and at the same time promote productive effort and that degree of social cohesion which is necessary to maintain a civilized social existence. There must be at least some such directives which can be said to be common to the ‘sense’ of justify of everyman. That is of members of the group generally. And if as with some recent writes the community assumed to be Humanity-wide. It must be possible to say this about ‘every man’ in the world.

“In short, a study of the usage of ‘justice’ seems to able to tell us only what we already know.” That ‘ justice’ is assigned or appealed to in evaluative operations; that the application of these operations is fairly ubiquitous. But that it tends to focus round certain poles of application such as social situations and the legal regulation of them.

If the revolutionary court announces that all who voted for a ousted regime to be shot and takes all steps in each case to find out whether or not a person had so voted,” it meets the requirements of both procedural and formal justice. It may be ‘law’ for all purpose yet it may not appeal to one’s sense of justice. Here ‘law’ is distinguished from ‘justice’.<sup>211</sup>

Justice has a protean face, capable of change, readily assuming different shapes and endowed with highly variable features. When we look deeply in to this face, trying to unravel the secrets hidden behind its outward appearance.<sup>212</sup>

A brief review of influential theories and historically significant social systems exhibiting inconsistent attitude towards the accomplishment

**211** Nailkar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 40

**212** Bodeneimer E. – **“Jurisprudence ; The Philosophy and Method of the law.”**(1997)- Universal Book Traders, Delhi p.-37

of justice may be helpful in pointing up the perplexing dimensions of the problem. In this sense, the most celebrated of the recent theories is that advanced by Professor John Rawls (1921) of Harvard University.

Prof. John Rawls taught philosophy more than 30 years. He has latterly exerted tremendous impact upon political and Juries prudential arguments through a series of articles and in particular 'A theory of justice' (1971). This book was quickly seized upon as a magisterial work developing a 'new liberal' paradigm. This 'denote logical' 'Rights - based' paradigm under out the ascender of utilitarianism in Anglo - Saxon theories, and it is usually accepted that criticism of liberalism both from the libertarian and anarchist Right or the communitarians must work through Rawls.

For Rawls the principle of justice provide a way of assigning Right and duties in the basic institutions of society. Those principles define the appropriate distribution of the benefits and burden of social - co - operation.

Another way of phrasing this is to say that Justice is an inherently contestable concept. That inbuilt in to the concept of justice is the impossibility of any one concept providing the end to the conversation as to what justice means.

To define Rights of justice, Rawls imagines a group of men and women who come together to form a social contract. He calls this situation the original position. 'It consists of people each representing a social class. They are placed behind a Veil of ignorance'. They have only general information of Human psychology and the laws of science. They do not know to which social class they are going to belong or even at what, stage of development their society stands.<sup>213</sup>

In this situation by unanimous agreement they choose the principles,

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**213** Morrison Wayne - "**Jurisprudence**'- **From the Greeks to post - Modernism**" (1997) Law man India Private Limited, Delhi p. 393

which will regulate the society they belong to. In making their choice, they are guided only by rational - self interest. Each knows that he has a plan of Life (his own conception of good): Therefore they agree to social principles, which will give them best chance of achieving each of this Life plan while choosing these principles there are no special interest taken into account, they are objectively just.

“The first principle is given operational precedent ensuring that Liberty always has priority with the argument that such restriction will improve the lot of the worst off. But holding firmly to that principle, a related proposition is that all social primary goods Liberty and opportunity income and wealth; and the basis of self - respect are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured” (1971 : 303)

Those behind the veil would choose Liberty as their first principle since, not knowing the actual situation or their own conception of good Life this would give them the greatest opportunity to pursue whatever ideal they favored. They would choose the second principle because they would operate on the basis of ‘minimum principle’ whereby they prefer the least worst option in case they turn out to be at the lowest level of society. Not knowing where they fit in to the distribution of social goods, they will be rational pessimist.

Rawls does not special the ‘system of equal basic liberties.’ The aim of the ‘original position’ is to set up a fair procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory, Rawls’s theory is not meant to be proved in some formal rational manner, But, appeal to us as a methodology and a principle of liberation which respects our empirical to attain justice while treating each other as free and equal.

Thus, Rawls would be appealing to central values of our democratic traditions. Liberty and Equality and provide a way for rationally inscribing them in to a flexible account of justice.<sup>214</sup>

The first stage is the 'original position.' In which two lexically ordered principle of justice are chosen. The second stage is a "Constitutional Convention", where they choose a constitution where the two principles are embodied. The third stage is that "legislation; where laws must comply with two principle of justice and the constitution". The fourth state relates to' Application of laws by judges and other officials!'

So Prof. Rawls seeks impartiality, which judges and officials apply it by proper use of laws to seek the justice.

#### **2.7.6.2 Theories Based on Human Dignity**

Human being is rational beings. They by virtue of the their being Human possesses certain basic and inalienable Rights which are commonly know as Human Rights. Since these Rights belong to them because to their very existence they become operative with their birth. Human Rights being the birth Right are therefore in all the individual irrespective of their caste, creed, religion, sex and nationality. These Rights are essential for all the individuals as they are consonant with their freedom 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 uplift meant of the people.

Because of their immense significance to Human beings, Human Rights are also sometimes referred to fundamental Rights, basic Rights, and inherent Rights natural Rights and birth Rights.

The Dignity of the Human person<sup>1</sup> and 'Human Dignity' are phrases

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**214** Nailkar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 41



that have come to be used as an expression of a basic value accepted in a broad sense by all peoples. 'Human Dignity' appears in the preamble of the charter of UN. The term 'Dignity' is also included in the Article 1 of UN Declaration of Human Rights. The Helsinki Accords in Principle - VII, affirm that the participating states will promote the effective exercise of Human Rights and freedoms all of which derive from the inherent Dignity of the Human person. Reference to 'Human Dignity' is also found in various resolutions and declaration of international bodies.<sup>215</sup>

Though there is no explicit definition of Dignity one 'lexical' meaning of Dignity is intrinsic worth of Human person scholars suggest that worth of every person should mean that individuals are not to be perceived of treated merely as objects of the will of others. The idea that Human Rights are derived from the Dignity of the person is neither truistic nor natural. It has two corollaries. The first corollary is the idea that basic Rights are not given by authority and therefore may not be taken away. The second is that they are Rights of person to very person. That is Human Dignity is private, individual and autonomous. Thus, Human Rights can be perceived and enumerated. These Rights are associated with the traditional concept of Natural Law.

### **2.7.6.3 Theories based Dignity as propounded by McDougal Laswell and Chenge.**

Harold Laswell (b. 1902) and Myres McDougal (b. 1906) two American writers who have joined in an effort to develop a policy - science of the law have in common with Leon Duguit the objective of building an empirical legal theory free from metaphysical speculation.

For Laswell and McDougal law is a form of power value as described as," the sum of the power decision in a community! "It is

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<sup>215</sup> Agarwal H.O. "International Law & Human Rights", (2002), Central Law Publications, Allahabad. p.68

essential to the legal process that a formally sanctioned authority to make decisions with an effective control ensuring the execution of these decisions. This combination of formal - authority and effective control produces a flow of decisions whose purpose is to promote community value in conformity with the expectation of the community that is law is viewed as process of decision making in a community as a whole and not as mere body or rules.

The authors postulate that, "The members of the community should participate in the distribution and enjoyment of values or differently expressed that it must be the aim of legal legislation and adjudication to foster the widest postulates sharing of values among men." The ultimate goal of legal control the authors envisage is a world community in which democratic distribution of values is encouraged all available resource are utilized to the maximum degree and protection of Human Dignity is regarded as paramount object of social policy.

However the authors show that "A value such as 'Dignity' a value that most people agree can be a springboard for structuring a Rights system."

In addition to Laswell and McDougal, a number of other thinkers in the United States have turned their attention in recent deeds to the fundamental values which the institution of law should be made to promote.

Although the revival of Natural Law or justice - oriented approaches to the law has not in this country.<sup>216</sup>

#### **2.7.6.4 Gewirth on Human Dignity**

"The Dignity of Human person" and "Human Dignity" are phrases that have come to be used as an expression of a basic value accepted in

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**216** Basu P.J. "Law Relating To Protection of Human Rights Under The Indian Constitution And Allied Laws", (2002), Modern Law Publications , Allahabad. p.941

a broad sense by all peoples. Many international covenants and declarations use these expressions.

According to Gewirth “The sense of Dignity in which Humans are said to have equal Dignity is not same as we say of a person that he behaves without Dignity or he lacks Dignity.” The kind of Dignity in which all Humans are said to be equal characteristics that belongs permanently and inherently to every Human as such.

All action than according to Gewirth have two generic features. One is voluntariness or freedom, in that the agents control or their behaviour and the other generic feature is purposive ness on internationally in that agents aim to attain same end or goal which constitute their reason for acting. This goal may consist in either in action itself or something to be achieving by action.]

After logically arguing as to what it means by saying “I do x for end or purpose E’ in various steps Gewirth concludes that it may be ultimately expressed as a general moral principle.

Act in accord the generic Rights of your recipients as well as yourself which he calls as principle of generic consistency (pgc).

The summery of this arguments are firstly, that every agent logically must accept that he has Rights to freedom and well being as the necessary conditions of his actions as conditions that he must have for, if he denies that he has these Rights than he must accept that the other persons may remove or interfere with his freedom and well being so that he may not have them but this would contradict his belief that he must have them. Secondly, that the agent must accept all other prospective. Purposive agent has the same Rights to freedom and well being as he claims for himself. Thus since all Humans are actual prospective as he potential agents the Rights in question belong equally to all Humans.

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Thus the argument fulfill, the specification for Human Rights; Subjects and respondents are all Human equally that the objects or Rights are necessary goods of Human actions and justifying basis of Rights is a valid moral principles.

Thus, dialectically every person should have freedom and well being (necessary goods) as a person who has Dignity or worth. Assertorically, that every agent has Dignity, His status as agent should be maintained and protected for Dignity is an attribute or characteristic that, of itself deserves respects and makes mandatory the support of the being

that has it. This mandatoriness or ‘ought’ moreover is strict. It is strict, it is co-relative to an entitlement on the part of the agent who has Dignity. In this way Dignity entails Rights.<sup>217</sup>

### **2.7.6.5 Theories Based on Equality of Respect & Concern**

Equality is a polymorphous concept which carries a number of different meanings. It includes in its scope the Equality of legal treatment, the Equality of opportunity; the Equality of basic Human needs. With the adequacy of compensation or restitution in making amends for a wrong and with the maintenance of a certain degree of proportionality between offence and penalty in the administration of criminal justice in order to gain a proper understanding of the relation of law to Equality some observations regarding these various types of Equality are called for.<sup>218</sup>

Dworkins thesis is similar to Rights in the Natural Law traditions. He distinguishes between two kinds of Rights. On the background ‘Rights’ which are Rights of abstract kind held against the decisions taken by the society as whole and two, institutional Rights held against decision made by specific institution. Legal Rights are institutional Rights to decisions in courts.<sup>219</sup>

Institutions about justice presuppose a fundamental namely ‘the Right to equal concern & respect.’

Dworkins says, “The Right to treatment as an equal to be taken as fundamental under the liberal conception of Equality.

Dworkings believes that Right to Liberty is too vague. However, he says that ‘Certain Liberty such as freedom of speech, freedom of worship ( Rights of association and personal and sexual relation do

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**217** Naikar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 45-46

**218** Bodeneimer E. – “**Jurisprudence ; The Philosophy and Method of the law.**”(1997)- Universal Book Traders, Delhi p.-299

**219** Supra Note 217 p.47

require special protection against the government interference.” This is not because preferred liberties have some special or inherent value but because of procedural hindrances these Rights may face. The hindrance is that if these liberties were left to Utilitarian calculation. That is the calculation of general interest and the balance would be tipped in favour of restrictions.<sup>220</sup>

The thrust of the Dworkinian thesis is anti-government which in itself is no bad thing.

But in the real world of today the naivety of this kind of attack on authority is like to sawing away at the branch on which one is safely ensconced so far.

Dworkin says, ” If a vote were truly Utilitarian then all votes should desire the liberties for them selves and liberties would protect under a utilitarian calculation. But a vote on these liberties would not be truly utilitarian not would it afford equal concern about and respect for liberties solely by reflecting personal or satisfactions of individuals and affording equal concerns to others. This is because external preferences such as prejudice and discrimination against other individuals deriving from the failure to generally treat other persons as equals would enter into the picture. These external preferences would correct utilitarianism by causing the individual to vote against assuming liberties to others.

According to Dworkin , ”The liberties that must be protected against such external preferences and must be given a preferred status by doing so we protect the fundamental Rights of citizens to equal concern and respect.

At last to conclude Dworking’s philosophy the present research scholar wants to mention his own words.

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**220** Dr.Myneni S. R “**Jurisprudence (Legal Theory)**”, (2001),- Asia Law House, Hyderabad. P.551

“A citizens’ allegiance is to the law not to any particular view of what the law is [Dworking, Taking Rights Seriously, 1977: 214], {Only} a community of principle faithful to that promise can claim the authority of a genuine associate community and can therefore claim moral legitimacy that its collective decisions are matters of obligation and not bare power.” [Dworkin Law’s empire, 1986:214]

“The Courts are the capital of Law’s Empire and Judges are its Princes.”

## **2.8 The Sociological Approach**

Sociological jurisprudence is usually described as ‘functional jurisprudence; or “jurisprudence of interest;” or jurisprudence’ of ‘social engineering’ or ‘experimental jurisprudence. Sociological approach to the study of law is of recent origin. It is the revolt of function against fact [of the Historical school] and fancies (of the philosophical school). It is the protest against the orthodox conception of law as an emanation from a single authority in the state. It aims at a complete body of explicit and comprehensive propositions applicable by accurate inter Predations of all claims; relationships and conflicts of interests. It attaches importance to relations of law to social institutions. It concerns itself primarily with contemporary institutions of the society. This school devotes its attention not on the ethical content and aim of law; But to the actual circumstance which gives rise to legal institutions and which condition their scope and operation.<sup>221</sup>

Traditional approaches, analytical positivism in particular, were forced into confessions of mental bankruptcy in meeting these demands. Finally revolutions and social unsettlement not only upset any complacency about social stability; but also provoked anxiety about the

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**221** Dr. Mynani S.R. **Jurisprudence (Legal Theory)**, (2001) Asia Law House, Hyderabad p.483

shortcomings of law.

The diverse character of the various types of inquiries that are styled 'sociological' invites comments. Sociology means, broadly, the study of society of which law is but a part. The founder of sociology, in a sense is Comte (1798-1857) because he was the first to employ the term 'sociology'. To can not an independent discipline and he also unified the work of earlier man.

But as discuss here, the first serious attempt to apply the scientific method to social phenomena was made by Auguste Comte who invented the term 'sociology'. Further impetus to the development was given by Darwinian evolutionary theory and enabled it to be linked with ideology of 'Laissez faire' in economic and social affair.<sup>222</sup>

This approach so far as Human Rights are concerned it directs attention the question of institutional development aimed at classifying behavioral dimensions of law and society. Focuses on the problems of public policy and identifies the empirical components of Human Rights in the context of social process.

Thus, for Herbert Spencer (1820-1903) evolution was the key to the understanding of Human progress and legal and social development.

Herbert Spencer is the most distinguished in English sociologists. He makes attempt to explain social phenomena to terms of biological laws. The biological stage is greatly influenced by the evolutionary theory of Darwin which repudiates the claims of absolute reality or justice of the philosophical theory. He demonstrated that societies resemble individual organisms. He pronounced the theory that law must evolve and change with society and with its progressive development. The criterion of good or bad conduct according to Spencer is to be found in

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222 Ibid p – 487



the tendency to promote development of Life in the Darwinian sense on the basis of the principle of natural system.

Now; Law was looked as a form of coercion organized by the state. Ihering (1818-1898) placed greater emphases on the function of law as a instrument for serving the needs of Human society.

He identified that in a society there is a conflict between social interest of men and each individual's selfish interest. To reconcile this conflict, state employ coercion becomes a law.

Friedman has called Ihering as "the father of modern sociological jurisprudence." Ihering passed the early part of his juristic carrier as an orthodox member of the German Historical School, during which time he intensively studied Roman Law and published four volumes of a work. "The spirit of Roman Law" 'According to him the purpose of law is to protect or reconcile interests of society.'<sup>223</sup>

The central notion in Inhering philosophy of law was the concept of 'Purpose'. He said that-purpose is the creator of the entire law. Law, he declared was consciously set by the Human will be achieve certain desired results. In his opinion law was to a great extent shaped by an action of the state intentionally directed to a certain end.

The end or purpose of legal regulation was indicated by Ihering in his often quoted definition of law; law is sum of the condition of social Life in the widest sense of term, as secured by the power of the state through the means of external compulsion.<sup>224</sup>

The same approach was strengthened by Roscoue" Pound (1870-1964):

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223 Bodeneimer E. – "**Jurisprudence ; The Philosophy and Method of the law.**"(1997)- Universal Book Traders, Delhi p.-89

224 Stone J."**Human Law & Human Justice**" (2000) Universal Law Publishing Company Limited, Delhi p. 152

Roscoe Pound is regarded as one of the most important American Sociological Jurists of the 'Twentieth Century'. Roscoe Pound made his legal philosophy as a vehicle of social control and legal ordering of varying social and individual interests to meet the just claims and need of the fast expanding American Society. some of the works of Pound are the 'Spirit of common law (1922), The interpretations of legal History (1923) 'Law and morals'(1926), 'contemporary Justice Theory (1940)' The Task of Law'(1944) etc.

Unlike Kant and Spancer, Pound thinks of the end of law not primarily in terms of a maximum self-ascertainment, but principally in terms of a maximum satisfaction of wants. During the Nineteenth Century, he points out, the history, of the law was written largely as a record of a continually increasing recognition of individual Rights, often regarded as 'natural' and 'absolute. In the Twentieth century, he proposed this history, should be rewritten in terms of a continually wider recognition of Human wants, Human and demands and social interests.<sup>225</sup>

So, the Nineteenth Century witnessed increase in recognition of individual Rights move so at common law, pound therefore felt that in order to achieve the purpose of legal order there has to be:

- a) recognition of certain interests, individual public and social
- b) a definition of limits within which such interests will be legally recognized and given effect and
- c) The securing of those interests within the limits as defined.

The interests to be secured and protected by legal order were catalogued and classified by Pound in an ambitious projects. He distinguished between 'individual interest' { "claims or demands or desires involved immediately in the individual { 'Life and asserted in title of that

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225 Bodeneimer E. – **"Jurisprudence ; The Philosophy and Method of the law."**(1997)- Universal Book Traders, Delhi p.118-119

Life”} ‘public interest’ {claims or demands or desires involved in Life in ‘a politically organized society and asserted in title of that organization”} and ‘social interests’ {“claims or demands or desires involved in social Life in civilized society and asserted in title of that Life”} in last category he included, among others the interest in the general security’ the individual Life’ the protection of morals,”the conservation of social resource”(physical as well as Human) and the interest in economic, political and cultural progress.

Pound linked the task of the lawyer to engineering an analogy which he used repeatedly. The aim of Social Engineering’ is to build as efficient a structure of society as possible, which requires the satisfaction of the maximum of wants with the minimum of friction and waste. It involves the balancing of competing interests.

For this purpose interest were defined as claim or wants or desires (in previous para), which men assert ‘defacto’ about which the law must do something if organized societies are to endure. ‘It is the task of the jurist to assist the courts by classifying and expatiating on the interest protected by law, Pound’s arrangement of these, called\* Social Engineering’.<sup>226</sup>

This ‘Social Engineering’ is the most important guiding principle of Roscoe Pound. So, Professor Pound putting it for law, says that in any given society its legal system represents an attempt to adjust the interests of individuals with each other, including those interests asserted on behalf of society and the state which the least possible sacrifices of the whole.

But, for the purpose of study of Human Rights Pound’s categories of interests should be discussed deeply : At first,

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**226** Barrister RWM Dias, “Dias”.Jurisprudence” (1999) Aditya Books Private Limited, New Delhi P.431.

**(1) Individual's interests :**

According to Pound "Individual intersperse claim, or demand Of desire involved in and looked at from the stand point of the individual Life "They concern :

**(i) Personality:**

This include physical person

- (a) Freedom of will (b) honor and reputation (c) privacy and (d) belief and opinion

**(ii) Domestic Relations :**

These include interests of (a) parents (b) children (c) husband and (d) wife

**(iii) Interest of substances :**

These include interest of (a) property (b) freedom of industry (c) Promised advantages (d) advantageous relation with others (e) freedom of association and (f) continuity of employment"

**II.-nd.4 is public Interests:**

According to Pound, "These are claims or demands or desires asserted by individuals looked at from the standpoint of political Life. They are :-

- (i) Interests of state as a juristic person : These include interests such as
- (a) **Integrity** : freedom of action and honour of the state's personality
- (b) Claims of politically organized society as a corporation to property acquired and held for corporate purposes.
- (ii) Interests of the state as guardian of social interests - (these overlap the next category namely social interests."

## **Social Interests**

According to Pound, these are claims or demands or desires, thought of in terms of social Life. These include; “ (i) **Social Interest** in the general security embracing those branches of law, which relate to (a) general safety (b) general health (c) peace and order (d) security of acquisitions (e) security of transactions

**(ii) Social Interest in the Security of Social Institution;-**

comprising domestic institutions, religious/political and economic institutions i.e.g. Divorce legislation may be adduced as an example of the conflict between social interests in the security of the institution of marriage and the individual interest of unhappy spouses.”

**(iii) Social Interest in general morals :**

This covers variety of laws, for example, those dealing with prostitution, drunkenness and gambling.”

**(iv) Social Interests in the conservation of social resources covers**

- (a) conservation of natural resources ,
- (b) conservation of Human resources.”

**(v) Social Interests in general progress** covers aspects as such:

- a) Economic progress
- b) Political progress”

**(vi) Social Interest in individual’s Life. This involves.**

- (a) Self ascertainment, (b) opportunity and (c) condition of Life.”<sup>227</sup>

This classification of interest may not fool-proof and there are overlapping of interests. But this classification is an important aid in the linking of principles and practice. Pound discussed the problem of interests

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<sup>227</sup> Naikar L – D **The Law Relating To Human Rights** (2004) Puliani & Puliani Publishers Private Limited Bangalore p. 32-33

in terms of balancing of individual and social interests. Law therefore is to devise ways and means and strike a individual and social interests. Law, therefore, is to devise ways and means and strike a balance between varying claims and expectations involved in individual and social Life when can be subsumed under social interest in the general security or general interest in the security of social institutions.

Having listed the interests, Pound considers the means in which they are secured. These consist of the devise of legal person and the attribution of claims, duties, liberties, powers and immunities. There is also the remedial machinery behind them, which aims sometimes at punishments, sometimes at reprisal and sometimes at prevention.

Pound declines to commit himself to rigid cannon of evaluation of these interests. He feels that certain interests may have priority at a certain time and that others should be given preferred treatment in other periods.

Thus freedom of person might be regarded as an individual but it is translatable as an interest of the society that its members should be free.

Actually, these varying interests have no fixed values of eternal and immutable nature. Each interests change in direct proportion to the demand of time-place. Pound says “An emphasis of one interest does not imply a neglect of the others. The theory of social interests is not dogmatic. It does not imply that whole service and function of law is to fulfill the need of the society in order to maintain it self. Pound has observed that the individual needs the law in order to keep his aggressive and social side in balance no less than society.”<sup>228</sup>

The survey of interest is useful which demand satisfaction. It

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**228** Stone Julius ‘**Human Law and Human Justice**’,(2000), Universal Law Publishing Company Pvt. Ltd. Delhi p.265

sharpens perception of values involved and the policies to achieve them.

Pound “Social engineering” is criticized on various grounds. But for students of Human Rights, he enlarges the understanding of the scope of Human Rights and their co-relations with demands, His identification of interests involved takes into account the realities of social process. He shows us how to focus on Rights in terms of what people are concerned about what they want.<sup>229</sup>

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**229** Dr. Myneni S.R. Jurisprudence (Legal Theory) (2001), Asia Law House, Hyderabad p.513.

## Chapter 3

### **A Situation Before Establishment of National Human Rights Commission**

#### **3.1 The problematizing Human Rights in India**

The transition from the medieval to modern period has resulted in a prodigious change in the Indian history with the advent of British rule in India. A new era started which created ripples in the legal culture on India. The British Government in India had not only deprived the Indian people of their freedom but had based itself on the exploitation of the masses, and rained India economically, politically, culturally and spiritually. Resistance to this fear fold disaster was manifested in the form of demand for fundamental freedom and civil and political Rights for the people.

The British Indian rulers discriminated against in matters of their political and civil liberties and Rights. They restored to arbitrary acts such as brutal assaults on unarmed satyagrahis, interments deportation etc. against Indians fighting for national independence equal justice and economic Equality. After witnessing the colonial rule every Indian was of the firm opinion that the recognition, protection and implementation of Human Rights are not only basic but also inalienable for them for leading a civilized Life. It is, however after the national struggle for freedom that a concrete movement for claiming the Human Rights for the people of India took share in which people from different walks of Life joined together to achieve 'Swaraj(Independence) for themselves.

To revive the philosophy of Human Rights in modern sense, concerted efforts were made by the Indian national congress which

<sup>1</sup> Edited by : Patil V.T. And Shastri T.S.N. "Studies in Human Rights" (2000) Published Deep and Deep Pvt. Ltd. p.2



demanded basic Human Rights in the “Constitution of India bill” constant resistance to the foreign rule manifested in the form of demand for fundamental freedoms, civil and political Rights for the people. The Rights like freedom of expression, Right to property, Equality before law and inviolability of one’s own home, figured in this bill. Congress as early as in 1918 in Bombay session demanded declaration of Rights of people of India and again demand of there basic Rights were reiterated in Nehru Committee Report in 1928. The Congress in the resolution of 1917 and 1919 asserted demand of civil Rights and equal status with the English men. In 1922 Congress aimed at achieving ‘Swaraj’ to share Dignity of the country.

The 1931, Congress session passed a seminal resolution on fundamental Rights. Drafted by Nehru, it included a commitment to ‘real’ economic freedom as well as to basic civil Rights. However, though the first Indian Human Rights group the civil liberties union, was formed by among others, Nehru, as early as 1936, post independence campaigning activity on behalf of Human Rights remained comparatively muted until the period of the internal emergency in mid-1970. Even today the number and strength of groups that are the Human Rights label is relatively small and they are, in the main active in the large metropolitan anthem of Delhi, Mumbai ad Kolkata. The ongoing debate in the Indian Human Rights community on an indigenous understanding on how Rights should be defined, provided some class to why this is so...

The Sapru report’s clause incorporating the proposals of fundamental Rights did not find favor. Simultaneously the freedom struggle had reached its climax and demand for independence gained momentum. In a land mark development, the British cabinet mission in 1946 recognized the need for written guarantee of fundamental Rights in

the constitution of India and envisaged a constitution assembly for training the constitution of India.

### **3.2 Human Rights in Modern India**

Before independence there is a group leading by former Prime Minister Jawaharlal Nehru agitated for civil liberties, that present researcher has mentioned earlier. But, after independence and before the establishment of National Human Rights Commission so many independent groups are working at regional levels for promotion of Human Rights. In 1947, one group was working in madras.

Then in 1972, in Calcutta one group was gathered for prevalence of democratic Rights. In 1974, 'Andhra Nagrik Samiti' was established. But In 1975, Mr. Jai Prakash Narain's leadership made a demand for people's Rights stronger. His movement was against authority's atrocities. In the days of emergency (1975-1977) grewed demand for more citizens Rights, which are guaranteed in our constitutional law of India; specially they are known as 'Fundamental Rights'. Meanwhile this 'emergency' became torturous and draconian rule by centre. All these extremities towards innocent single person's 'Right' made people more & more aware about 'Human Rights'.

But, for the first time, the word 'Human Rights Commission' appeared in election manifesto. The Janata Party declared in own manifesto that party wants to establish a 'civil Right Commission' Even in 1983, the Commission of minorities recommended to organize one Human Rights Commission.

A senior jurist like Laxmimal Sighavi suggested to constitute not only Human Rights Commission at national level but at state level also; in 1988.

1980's and 1990 opened a new chapter in Human Rights history providing in depth documentation of organized activities response in the south Asian Countries to the Human Rights revolution.

A good introduction to this debate is provided by rethinking Human Rights (1989), a collection published by 'Lokayan', the Delhi based group started by the political scientist and activist, Rajni Kothari among the problems it highlights are three issue, that are absolutely central defining Rights in a context of need, the application of an individualist conception of Rights to a society that finds it foreign an a state central view of Rights in a country where some of worst abuses arise from the social flux promoted by inequality, economic change and exploitation of caste and communal distinction.

The first of the three problems has been passed by Dr. Upendra Baxi, a prominent jurist and the vice-chancellor of Delhi University. He says, 'the Right to be Human is of course the lit motif of all Human Rights thought and action. All the same the Human being who is the bearer of these Rights may not have basic material needs fulfilled and threats to the Right to be.

Arising from civil society are not part of the problematic of Human Rights in the circumstances, Human Rights thought and action becomes a program a blue print for a just society, but a blue print with vacant spaces disallowing at the outset the pre-conditions to exercising the Right to be Human"

### **3.3 Human Rights abuse and Social Conflict –Tsonder case-1991**

Subsumed under this heading are the communal rioting that has regularly disfigured the Indian landscape especially since the 1960s and the intercaste violence that is part of everyday Life in many rural areas, especially in states like Uttar Pradesh, Bihar and Andhra. An investigation

of a particular instance of the letter will help illustrate the interplay of elements that of into the denial of the most basic of Rights The Right To Life On 6 August 1991 the village of Tsunder, in the coastal district of Antar in the southern that of Andhra, witnessed the slaughter of nine Dalits by upper caste Reddy landowner of the area. The details are here mentioned actually collected from the 'Hindu' newspaper and a detailed investigation by the 'Samta Sangathana', an organization of professionals committed to the cause of Dalit self assertion

The home state of former minister Narshimha Rao, A Brahmin from Telegram, it was created in 1993 as the first of the post – independence linguistic states in response to a powerful agitation for the separation of the Telugu speaking areas of Madras Province

Telangana Region (Merged into Andhra in 1956) in 1946-51 the Congress party ruled the state without interruption for 30 years. Wide spread popular disenchantment then culminated in regional Telugu Desam, led by 60 years old film idol turned populist politician, N.T. Rama Rao, Being returned to power in January 1983, State assemble elections {Congress Regained Office in 1989} however, Telugu Desam again returned power in December, 1994 under the leadership on NT. Rama Rao.

As within Andhra Gantur is considered relatively prosperous being a productive rice-growing area, the locally dominant castes are owning a sizeable amount of land; they are the 'Kammas' and the 'Reddys'. They respectively constitute an estimated fifth & tenth of the District. There are also sizeable concentrations of Telagas (Classified Backward Class) Dalits and 'adivasis' over two centuries of Christian missionary activity has also resulted in Gantu having the highest proportion of Christian among all the Andhra Districts.

The Reddys roughly twice as numerous or the 'Kammas' in the state as a whole have tended to have that predominance reflected within the Andhra Congress. Conversely, the political stock of the commercially more enterprising. Kammas rose in the 1980s along with that of the Telugu Desam ( Rama Rao the first 'Kamma' chief minister of the state in from Gantur).

Tsunder is one of a cluster of villages dominated by the Reddy's more conservative in the in social outlook that the 'Kammas' of 2,420 acres of cultivable land 'Reddys' are estimated to own over half, while 'Dalits' for just under half the village population of 5,800 possess only 78 acres. The latter are mainly 'madi jas and malas', traditionally engaged in the underage occupations of leather work, and grave digging respectively, most have been converted to Christianity with the salvation army particularly active in the area.

Though Gantur in common with rest of Andhra has a high proportion of landless laborers among its rural work force over three fifth there are few large land owner. Rapid economic development, with the introduction of canal irrigation and multiple cropping has brought significant changes to the Dalit Lifestyle. A more from bounded to work labour is increasingly being replaced in turn by tenancy as Reddy farmers are forced to rent out land and diversity into agri-business and urban industry in order to keep living standards.

These agrarian changes have been paralleled by other changes. Gantur district has experienced one of the highest rates of industrial growth in the state. This has put further pressure on the maintenance of the old rural order especially given Tsunder's situation. Connected by rail to Tenali, 20kms. Away an important junction town and cultural, many loc now travel to Tenali, and elsewhere, for more employment.

Education provides another significant barometer of change. The presence within the district of numerous Christian missionary institutions to which the Dalits have untrammelled even preferential access has overtime led them to being better educated than the 'Reddys' and the Telangas. This despite the fact that, four decades after the constitutional prohibition of **untouchability**, its practice persists in the main high school in Tsundur a 'Reddy' - Run grant-in-aid institution. Hence 'Dalit' children have to sit on the floor and are habitually ignored by the teachers while their upper caste peers sit on chairs.

To the repercussions of socio-economic change must be added the Constitutionally entrenched provisions made for the advancement of the Scheduled castes and Tribes and the Backward Classes (Article 15C4) 16 (4) 333, and 334 of the Constitution) the reservation of seats in the control and state legislatures of places in higher educational institution and jobs in the public service. In Andhra this has resulted in the reservation of 45% of all Government jobs and the places in higher educations also 1985 nearly two fifths of the membership of the state assembly were either Dalits or Backward caste peoples. However, these figures conceal the predominance of the foreword castes in the powerful upper reaches of politics and the . Constituting roughly a third of the population (including Brahmins, Reddys and Kamas) they accounted for nearly three fifths of the state's cabinet (in 1985) and three - quarter of the senior civil servants (in 1981).

Despite such qualifications the changes touched upon have had a far reaching impact on the consciousness of both the 'Dalits' and the wlltherto dominant castes. The 'Dalits' especially the youth, have been emboldened to question and aggressively challenge discriminatory

practices through militant organizations such as the 'Dalit Mahasabha, thus heightening the upper castes, sense of insecurity.

The pressures of modernizations have made the forced intimacy of buses, trains, and cinema, halls and classrooms particular flashpoints for confrontation. It is therefore not remarkable that the blood letting in Tsundur arose out of a seemingly trivial incident. A Dalit graduate purchases a cinema ticket in the chair, rather than the floor class an allegedly touched a Reddy viewer. The ensuing confrontation saw the young man's father being beaten up and the 'Reddy' and Telugu' men of the village demanding that the youth's family have to leave locality. Though the real Dalits opposed the demand, the family fearing for their lives fled.

What followed was a social boycott that resulted in considerable hardship for 'Dalits'. Because the village electricity and access to the water was via the upper caste quarter both were frequently interrupted. Locally employed 'Dalits' also suffered a drastic reduction in income especially as 'Reddy' landowners refused to allow Dalit tenants to work their rented fields.

The initial official reaction to the tension was sympathetic to the 'Dalits'. A Police sub-inspector belonging to the backward classes, sought to discourage upper caste harassment of the 'Dalits'. However at this juncture the circle inspector, reputedly strongly anti-Dalit, took personal charge and allegedly helped by the Reddys political maneuvering had his subordinate transferred.

On 6 August, the circle inspector led a Police party to the 'dalitwada (Dalit quarter), telling the men folk to leave their homes as they were about to be attacked. Upon heading the advice, the Dalits found gangs of Reddys and Telagas around with Knives, axes and spears waiting for

them in the paddy fields. In the chore that followed at least eight 'Dalits' were killed. In a tragic-twist to the tale, 'Dalit' women who had heard the echo of their men folk screaming, later recounted how they were reassured by the Police party that it came from cattle being chased!

The aftermath of the massacre was a striking commentary on how the Tsundur by 'Dalit' Mahasabha activities a 'Reddy' farmer was killed and several houses set aflame in related incident. And on 17 August 'Dalits' from all over Andhra protested outside the state Assembly in Hyderabad amidst allegations of the complicity of the Assembly's Deputy Speaker in the affair. The Dalits then launched a fast protesting against the delay in arresting those responsible for the massacre. On 10th September 1991 an undergraduate student the vice-President of the Tsundur Victims struggle committee, was shot dead in a clash with Police attempting to end the fast. Two months later fulltime minister, after a meeting with the leader of 'Dalit Mahasabha' directed the state Government to seek a CBI inquiry for incident (the 'Dalits' has boycotted a judicial inquiry Commission appointed by the State Government.

Representatives of the state and the political establishment area perceived in a Salvation Army church in Tenali, where they had taken refuge, survivors greeted the Congress Chief Minister N. Janardhan Reddy with mud and sandals when he arrived to express sympathy. They also refused to talk to this predecessor, Rama Rao, who had been in power in 1985 when the on Dalits had gone unapprehended.

A reason behind established of National Human Rights Commission, nobody knows exactly. Some scholars citizens, that Government of India was bounding by conditions of developed countries to continue liberalized economic policy or it may be possible that Government become sensitive towards nationwide increasing violence



### **3.4 A need to establish The National Human Rights Commission**

Government has not come forward in this direction suddenly. But, there are so many Historical, social, political, Economical & International causes existing behind them. Some of them are mentioned here:

- (1) International organizations like Amnesty International Asia Watch, and International Red-cross serving Humanities criticized our Government. So, Government decided to constitute a Commission to collect information, especially about national level Police atrocities.
- (2) At State level, plus social & economic problems creates violations of Human Rights Communal riots, racial violence exploitation by capitalist & terrorism - all are still great challenges for India Today. So, Government decided to collect all information's about all incidents. In addition to investigate all this matters, it retains one national level institute. This Institute will co-ordinate and co-operate between Government and its officials.
- (3) Most important factor behind formation of Human Rights Commission was, monetary assistance. Actually, UNO, International Monetary Fund and other developed countries, offered a conditional relief's. They pressured to improve Human Right situation in our country for financial help.

- (4) In 1993, European Union signed a treaty for peace & development with Union of India. The foundation of this treaty was Human Rights and democratic values.
- (5) The judiciary of India (High Court and Supreme Court both)'s judgments, suggestions and also recommendations of National Police Commission - all are promoting Human Rights. All were inspiring Government of India to progress in this direction.
- (6) The number of custodial death was increasing day by day in India. So, the first step towards a foresighted plan was establishment of National Human Rights Commission. In second step was an investigation on harsh administrative policies. And the third step was to provide protecting umbrella to all victims of all atrocities. All these matter became compulsory for Government of India.
- (7) In India judicial process is very much slow. It means 'Justice delay, justice deny'. So, National Human Right Commission may be a remedial option in this field.
- (8) Besides all these challenges, India is developing as a great democracy of the World. To conserve this honors and Dignity it became necessity for India to establish a 'Commission'. To care of all these values on National level Government felt to create one Human Rights Commission. As for example Canada, Australia, Mexico, Algeria, Ireland, Japan, Nicaragua, Surinam, Philippines like countries organized Commissions like these. In this situation India was motivated by all these countries.

India also successfully opposed any punitive linkage between a country's Human Rights record and foreign aid. Prime Minister P. V. Narasimha Rao's response to suggestions for such a nexus was "Does it mean I can do anything, If do not take foreign aid' ....

In fact the rhetoric belief growing sensitivity on the Human Rights front .On 5 March, 1992, just as Amnesty International was about to release its report on Torture Rape and death in custody. Home Minister S. B. Chavan told in the Lok Sabha that India was to have its own Human Rights Commission, thus fulfilling a pledge made in the congress (I)'s 1991 election manifesto. In a frank admission of the Commission's Primary purpose. Congress (I) spokesman V. N. Gadgil stated : "Its findings will act as correctives to the biased and one sided reports of some of the non-Governmental organizations. It will also be an effective answer to the politically motivated international criticism.

The establishment of a National Human Rights Commission was discussed at a special conference of state Chief Ministers on 14 September, 1992 which decided to constitute an eight - member committee of Union Ministers and state chief Ministers to draft the enabling legislation.

At the 6th annual summit of the South Asian Association for Regional Cooperation (SAARC) in Colombo in December 1991, India - its neighbors in favoring a more relative, contextual approach.

The Colombo Declaration emphasized the need to keep economic development at the centre of International attention in light of the new Primacy being accorded to the promotion of Human Rights and democracy in the Third World. A similar note was struck at the tenth summit of the Non-Aligned Movement in Jakarta in September 1992. The 'Jakarta Message' called for economic development to be given top priority in shaping a new global order and while upholding the protection of Human

Rights warned that no country however, should use its power to dictate its concept of democracy and Human Rights or to impose conditionality on others.

Such a prospective purposes the continuity of traditions within modernity, a stand point that has proved especially popular among scholars of contemporary South Asia. However, “dharmic” (religious) India increasingly belongs to the past : its mythologies ritual under pinning social customs and status hierarchies are being staidly pulverized by the forces of modernization.

But this modernization fails to take adequate confidante of the distinctive historical, social and cultural attributes of the non-Western parts of the world now in the throbs of change. Moreover, if the main argument for the Universalization of the Western liberal conception of Rights is the wide spread acceptance of capitalist market economics and the nation state, it must also follow that the retention of the former has to be contingent upon the relative dominance of the latter. Thus while the Universal Declaration and Covenants of Rights currently do recusant an indispensable international guide and framework in practice the nuisances of articulation and application will continue to be determined in India, as elsewhere, by the national context.

This is reflected in the Indian Government’s guarded response to the prominence accorded to Human Rights in the post-cold war western rhetoric of a ‘New World Order’. At the conference of common wealth heads of Government in Harare In October 1991, India opposed the British attempt to insert a commitment to ‘good governance’ in the conference declaration. The phrase was perceived as having neo-colonial connotations, as interpretation reinforced by remarks such as that of the British Prime Minister John Major (of that time), Arguing for the adoption

of “common Human Rights standard” he reportedly asserted that everyone In the common wealth know that was meant by ‘it is Just not cricket’.

In the event the final Harare Declaration omitted the ‘Good Governance’ phrase instead opting for a more cautious commitment to respect for Human Rights and to democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest Government.

### **3.5 A CONCLUSION:**

#### **India and ‘Universal’ Human Rights in a ‘New World Order’**

In these circumstance, when the dynamic process of change - Social, economic and political - boil over into violence the state is not as much an agent in the violation of Rights as a reflection of the contradictions tearing the old social Fabric apart.

The responsibility of protecting basic Human Rights in a context of such intense flux poses a formidable task for any state, even without the downing added complications of having to core with a variety of ethnic and religious conflicts and incipient nationalism. While the curtailment and denial of Rights following upon the Indian State’s attempts to counter the latter have attracted greater attention internationally the Tsundar case is more representative of the kinds of infringements frequently experienced through much of India.

Tsundar illustrates now the denial of the ultimate Human Right - the Right to Life - In India today forms part of a matrix of violation that takes in and economic as well as civil and political aspects.

As in the rest of South Asia, and in the Non-Western World generally in; India too the issue of Human Rights remains inextricable intervened with problems of national integration, economic development

and cultural and special change. While the basis for an international consensus on the broad principles of Human Rights arguably exists, our consideration of the Indian case indicates some of the specificities that policy makers need to be sensitive to in attempting to bridge the yawning gap between the theory and praxis of Human Rights in 'New World Order'.

- **State's Dual Role** -

Broadly speaking the state has two major roles to play –

- (i) As provides of service for public welfare; and
- (ii) As protector of law and order.

Both these roles are complimentary to the protection and promotion of Human Rights.

One of the arts of 'modern' Government is to create new institutions of Governance. Such exercises are propelled by all kinds of compulsions and not necessarily 'bona fide for being Sr. Governance by institution acquires a distinct presence of its own. Recent addition to the Patheon of 'Government by institutions' is Human Rights Commissions. The failure or success of Human Rights Commissions as 'institutions of state' or 'governance' - and the distinction is important - cannot be forecast with any accuracy. They depending on how it received by those in power and mobilized by those who use it.

Nationally, the National Human Rights Commission (NHRC) was intended to be different. Its creation was mired in controversy even if its creation was celebrated with self-indulgence by a Government under pressure from America and others to do something about Human Rights in India.

In early 1990 India felt the need of 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 & Kashmir; North-East and Andhra Pradesh. In addition to the pressure was added from the domestic front as well for the creation of a National Human Rights Commission, because of the awareness among the people for the protection of Human Rights. All this led the Government to decide to enact a law to establish a Human Rights Commission. Government's proposal to establish the Commission was of course sudden and without due deliberations.

India has 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 the General Assembly. It introduced a draft resolution wherein it emphasized the importance of the integrity and independence of such national institutions. In the draft resolution it also requested the Secretary General of the United Nations to submit a report to the General Assembly in two years regarding the functioning of the various kinds of national institutions and their contribution towards implementing Human Rights instruments. The interest shown by India in the establishment of a national institution for the protection and promotion of Human Rights was loadable. The interest shown in the international forum implied that it was in favors of establishing such an institution. However, at that time no such institution was established.

India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on the 16th December, 1966. The Human Rights embodied in the aforesaid Covenants stand substantially protected by the constitution.

However, there has been growing concern in the country and abroad about issues relating to Human Rights. Having regard to this, changing social realities and the emerging trends in the nature of crime and violence Government has been reviewing the existing laws; procedures and system of administration and transparency in them and devising more efficient and effective methods of dealing with the situation.

Wide ranging discussions were held on the subject at various forums such as the Chief Ministers' Conference on Human Rights, Seminars organized in various parts of the country and meetings with leaders of various political parties. Taking into account the views expressed in these discussions, the Human Rights Commission Bill, 1993 was introduced in the Lok Sabha (House of Peoples) on 14th May 1993.

National Commission on Human Rights {NCHR} was set up in India on September 27, 1993 when the President of India promulgated an ordinance. Provisions for the setting up, of similar Commissions at state levels were also made in the ordinance later, the Lok Sabha passed the Protection of Human Rights Bill on December 18, 1993 to replace the Presidential Ordinance. The Bill became an Act after it received the assent of the President on January 8, 1994 which is known as the Protection of Human Rights Act

In view of the urgency of the matter, protection of Human Rights Ordinance was sent to the President. The salient features of the present bill are:-

- (1) The constitution of a National Human Rights Commission consisting of five members appointed by the President with a Chairperson who has been a Chief justice of the Supreme Court.



- (2) The chairpersons of the National Commission for Women and the National Commission for Minorities will be deemed to be members of the Commission for the discharge of certain functions.
- (3) The Commission will be a fact-finding body with powers to conduct inquiry into complaints of violation of Human Rights;
- (4) The Commission will be assisted by investigating agencies of the central and state Governments; the Government may also constitute one or more special investigation teams;
- (5) The State Government may setup Human Rights Courts for speedy trial of offences arising out of violations of Human Rights and may also specify a Public Prosecutor or appoint an advocate as Special Public Prosecutor for the purpose of conducting cases in such Courts;
- (6) The Commission may make recommendations for the effective : implementation of the existing laws and treaties on Human Rights;
- (7) The Commission may undertake research in the field of Human Rights and take measures to promote awareness of Human Rights among all sections of the society;
- (8) The constitution of the State Human Rights Commission on the lines of the National Human Rights Commission.

- **The Bill seeks to replace the aforesaid ordinance.**

Section 2(d) of the Act defined the expression “Human rights by stating That Human rights means the Rights relating to Life, (Liberty, Equality and; Dignity of the individuals guaranteed by the constitution or embodied in the International Covenant on Civil and Political Rights

and the Economic, Social and Cultural Rights, but these Covenants are not : directly enforceable as law before Indian Courts. The references to these I Covenants in the Act are purely cosmetic. The decisive words are: “and enforceable by Courts in India”. These words limit Human Rights strictly to the fundamental Rights embodied in Part III of the constitution, which are enforceable by Courts in India. The fact is that they are more limited than Human Rights in the Covenants. Further, the Commission’s mandate does not extend to those Human Rights which have been recognized in : international treaties signed and ratified by India besides the fundamental Rights. A pertinent question arises as to why the Commission I was established for the protection of fundamental Rights when they being constitutional Rights are enforceable before the Courts.....

The question raised by Dr. Agarwal may be indicating some factual. But it is properly replied here.

Present Research Student’s views look more relevant in reference to protection of Human Rights. And on addition to establishment of National Human Rights Commission.

Present Research Student humbly submit that “India is one of the few countries that protects Human Rights through its constitution. The Civil and Political Rights guaranteed as fundamental Rights are enforceable through the Court of law. The Economic Social and Cultural Rights, though not enforceable, under Directive principal social order and betterment of quality of Life for all sections of the society in judiciary which zealously protect the Rights ran active parliamentary system and a vigilant press.

India, being aware of the growing need to protect Human Rights to join the international community in its effort to protect Human Rights, has acceded to various international instruments Chief among them are

the Covenant on Civil and Political Rights and Convention on Economic, Social and Cultural Rights, 1966.

Due to growing concern in the country and abroad having regard to the changing social activities and emerging trends in the nature of crime and violence, to bring greater accountability and transparency in the administration of justice the Government of India in 1993 passed the Protection of Human Rights Act, which came into force on January 8, 1994.

In response to the United Nations recommendations for setting up of national institution for the better protection, promotion and realization of Human Rights the Government of India, enacted the previously mentioned act. This enactment has paved a new era of concern for preventing Human Rights violation. It is a comprehensive piece of legislation consisting of forty-three sections, arranged under eight chapters.

Chapter II to IV of the Act deals with the National Human Rights Commission. Main provisions relating to it are all described here:

- **Constitution of National Human Rights Commission**

The Act envisages setting up of a three-tier machinery for the protection and enforcement of Human Rights, i.e. National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts at District level. Under the Act extensive powers of investigation and enquiry have been given to the Human Rights Commission.

The Act applies to the whole of India including the States of Jammu and Kashmir, which has been given special status under the Constitution.

The very idea of creating a Commission was for the purpose of providing practical shape to the entire format of Human Rights

Philosophy in the light of Social objectives The Present Research scholar frankly admits that ninety percent of Social legislation enact in India have Social objectives and have Social aspects in it.”

The enactment of Protection of Human Rights Act, 1993 has empowered the National Human Rights Commission to function from Delhi with Jurisdiction all over India.

- **Appointment of Chair Person and other Officials**

Section 3 of the Act Provides for the Constitution of the National Human Rights Commission consisting of :

- (a) A Chair person who has been as chief justice of the Supreme Court.
- (b) One member who is, or has been, a Judge of the Supreme Court.
- (c) One member who is, or has been, the chief Justice of a High Court, and
- (d) Two members to be appointed from amongst persons having Knowledge of or Practical experience in matters relating to Human Rights.

Statutorily required to be presided over by a sitting or retired Chief Justice of India, and including other judges, administrators and others, the NHRC seems to have a profile greater than its Competition or Commissions. Those Chairpersons are part of the NHRC even though the jurisdictional relationship between the Commissions intense is imperfect.

Over its first six years, the NHRC was guided by former Chief justice Ranganatha Mishra (1994-1996) and M.N. Venkatachiah (1997-1999)^there were formative years. While Justice Mishra’s Chairmanship was a holding over operation in which the NHRC acquired profile without,

devising an imaginative program, it was with the advent of Justice Venkatachaliah that it began to be the wood for the trees. Professional firm-Mickenzie-to examine its present and future docket to enable NHRC to plan its work in relation to the innumerable Complaints filed before it to seek Human Rights redress extremely it profiled itself on the larger canvas of international Human Rights law and, in particular to the Convention on Torture.

Besides there, the Chairpersons of the National Commission for Minorities, the national Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women are deemed to be members of the National Human Rights Commission for discharging various functions assigned to it. But all these members do not have powers to inquire of Complaints of violation of Human Rights.

The Commission shares its powers with the other Human rights Commission, e.g. The Commission for scheduled Castes and tribes set up by the Constitution. And the special Commissions dealing with the women's Right and gender justice and a minority group in order to draw the working of these Commissions together, the chair person of these Commissions are members of the National Human Rights Commission Indian experiments in 'Human Rights Commissions are both dated in point of time as well as a relevant phenomenon. Actually in a sense the Commissioner for Scheduled Castes and Tribes created by the Constitution in 1950 was a kind of 'Human Rights Commission' but for a long time, its work was bureaucratized even though it produced most informative reports. Which were merely acted upon. During the brief spell of B.D. Sharma as Commissioner it acquired some prominence with the 29th Report representing a protest that the Commissioner and his reports were being ignored. Mr. Sharma also wrote to the Supreme Court about the

malaise with which the reports were treated the Court listed the matter for consideration. But it was taken no further.

In 1990 the Scheduled Castes and Scheduled Tribes Commission was established but less effective for being so. For a brief spell, it started receiving complaints and recommended solutions to retreat back into shell.

In the course of time Commission were also established to protect the Rights of women - National Commission for Women and minorities - National Commission for Minorities.

Each has known its day, occasionally acquiring Centre stage to find some prominence in some controversies As institution these efforts have become reutilized in the timeless charging of Indian Government to possess no significant role with either those who are governed as well as those who govern them.

So; National Human Rights Commission becomes the most important i governing body for protection and promotion of Human Rights; in comparison of another already active Commission in this field.

Section 4 of the Act deals with the appointment of the Chair person and other members of the Commission. In order to accord to greater illegitimacy to the appointment a high power committee has been constituted to recommend the names to the President of India, Sec.4 is described here.

**- A committee for appointment of Chair person others Officials**

“Appointment of Chair Person and Other Members”

- (1) The Chair person and other Members shall be appointed by the President by warrant under his hand and seal.

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a committee consisting of -

- (a) The Prime Minister - Chair Person
- (b) Speaker of the House of - Member of the Peoples' house
- (c) Minister-in-charge of the - Member  
Ministry of Home Affairs  
In the Government of India
- (d) Leader of the opposition in - Member the House of  
the people people
- (e) Leader of the opposition in - Member f the council  
of states
- (f) Deputy Chairman of the - Member, Council of  
States states

Provide further that no sitting judge of the Supreme Court or sitting chief justice of a

High Court shall be appointed after consultation with the chief justice of India.

Sec. 6 of the Act. deals with the Terms of Office of members. It says The Chair Person and the members shall hold office for a period of five years, from the date on which they enter upon their office. They shall be eligible for reappointment for another term. A person can serve at the Commission until age of 70 (\$seventy) Years. The Commission

shall have a secretary General who will discharge his functions keeping with the power delegates to him.

But there is some restriction on appointed chair person or member -that is mentioned in Sec. 6(3). It says “On ceasing to hold office a chair person or a member shall be ineligible for further employment under the Government of India or under the Government of any state.

- **Another Provisions.**

Sec. 5 Provides for the removal of the chairperson or any other member from his office by an order of the president on the ground of proved misbehavior or incapacity after the Supreme Court, on an inquiry reported misbehavior or incapacity after the Supreme Court on inquiry reported that the Chairperson or such other member on any such ground to be removed.

The President may remove from office the chair person or any other i Member if

- (a) He is adjudged an insolvent
- (b) He is engaged during his term of office in any paid employment outside the duties of his office-or
- (c) or He become unfit to continue his office by reason of infirmity of mind or body; or.
- (d) He has been declared by a competent Court a person of unsound mind;
- (e) He has been convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

Further sections relates with another provisions of working procedure,

They are :



Sec. 7 Member to act as Chair person or to discharge his functions in certain circumstances.

- (1) In the event of the occurrence of any vacancy in the office of the chairperson by reason of his death, resignation or otherwise the President may by notification authorize one of the Members to act as the chairperson until the appointment of a new to fill such vacancy.
- (2) When the chairperson is unable to discharge his functions owing to absence on leave or otherwise such one of the Members as the President may by notification authorize in this behalf shall discharge the functions of the chairperson until the date on which the chairperson resumes his duties.

Sec. 8 Terms and conditions of Service of Members:

The salaries and allowances payable to and other terms and conditions of service of, the Members shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of a Member shall be varied to his disadvantage after his appointment.

Sec. 9 Vacancies etc. not to invalidate the proceedings of the Commission.

No act or proceedings of the Commission shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the constitution of the Commission.

Sec. 10 Procedure to be regulated by the Commission.

- (1) The Commission shall meet at such time and place as the chairperson i may think fit.
- (2) The Commission shall regulate its own procedure.

- (3) All orders and decisions of the Commission shall be authenticated by the Secretary - General or any other officer of the Commission duly authorized by the Chairperson in this behalf.

Sec. 11 Officers and other staff of the Commission

- (1) The Central Government shall make available to the Commission.
  - a) An officer of the rank of the Secretary to the Government of India who shall be the secretary General of the Commission;

And

- b) Such Police and investigative staff under an officer not below the rank of a Director - General of Police and such other officers and staff as may be necessary for the efficient performances of the functions of the Commission.
- (2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative technical and scientific staff as it may consider necessary.
- (3) The salaries allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.

Another provisions of the Protection of Human Rights Act, 1993 and 'The National Human Rights Commission (Procedure) Regulations, 1994' also supporting to NHRC's Constitution. According to present research scholar's view sec-18 of the National Human Rights Commission (Procedure) Regulations, 1994 relates with constitution of Human Rights.

See 18 says about 'Investigation Team' 'The Commission shall have its own team of investigation to be headed by a person not below the rank of a Director - General of Police appointed by it and such team shall consist of :

- » One Deputy Inspector - General of Police.
- » Two Superintendents of Police.
- » Six Deputy Superintendents of Police.
- » Twenty four (24) Inspectors of Police and such other

categories of officers as the Commission from time to time decides. The Commission may in any given case appoint an appropriate number of outsiders to be associated with the investigation either as Investigators or observers.

Sec 37 of The Protection of Human Rights Act, 1993 deals with 'Constitution of Special investigation teams'; 'Notwithstanding anything contained in any other law for time being in force, where the Government considers it necessary so to do it may constitute one or more special investigation teams, consisting of such Police officers as it thinks necessary for purposes of investigation and prosecution of offences arising out of violations of Human Rights.

- **Administration of National Human Rights Commission:**

Functions of National Human Rights Commission

Describes about the functions of the Commission which provides the knowledge about administration of the Commission. They are :

- (1) The Commission shall inquire 'Suo Motto' or on a petition presented to it by a victim or any person on his behalf into complaints of
  - (a) Violation of Human Rights or abatement thereof;

- (b) Negligence in the prevention of such violation by a public servant.
- (2) The Commission may intervene in any proceeding involving any allegation of violation of Human Rights pending before a Court with the approval of such Court.
- (3) The Commission shall visit under intimation to the State Government any jail or any other institution under the Control of the State Government where persons are detained or lodged for purposes of treatment information or protection to study the living conditions of the inmates and make recommendations thereon.
- (4) The Commission shall review the safeguards provided by or under the constitution or any law for the time being in force for the protection of Human Rights and will recommend measure for their effective implementation.
- (5) The Commission shall review the factors including acts of terrorism that inhibit exercise of one's Human Rights as well as the safeguards currently in force and make appropriate recommendations.
- (6) The Commission shall study the treaties and other international instruments on Human Rights and make recommendations for their effective implementation.
- (7) The Commission will undertake and promote research in the field of Human Rights.
- (8) The Commission shall spread Human Rights literacy among various sections of society and promote awareness of the safeguards available for the protection of those Rights

through publications the media seminars and other available means.

- (9) The Commission shall encourage the efforts of Non-Governmental Organizations and Institutions working in the field of Human Rights.
- (10) The Commission may perform any other function as it may consider necessary for the promotion of Human Rights.

After mentioning the provisions of section (12) the present research Student wants to illustrate the activities carried by the Commission under the same section. They are:

- (i) Under Sec. 12(1) the Commission has taken action against Government of Gujarat for violation of Human Rights in Post-Godhra Riots.
  - (ii) By provision of Sec. 12(2) the Commission has visited the jail of Delhi especially Tihar' in 2000 and make recommendations,
  - (iii) The Commission has also reviewed POTA (Prevention of Terrorism Act) under the Sec. 12(4).
  - (iv) The Commission has published a guidebook for media to present child-abuse.
- (11) The Commission shall submit an annual report to the Central Government. Also to the State Government concerned and may at any time submit special report on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report. The Central Government and the State Government shall cause the annual and special reports of the Commission to be laid

before each House of Parliament or the State Legislature respectively alongwith a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

- (12) Commission shall perform pursuant to the directions issued by the Supreme Court in exercise of the Jurisdiction under Article 32 of the Constitution. The Supreme Court in *Premjit Kaur V/s. State of Punjab* (AIR 1999) stated that the Commission would function pursuant to the directions issued by this Court and not under the Act under which it is constituted. In deciding the matters referred by this Court, National Human Rights Commission is given a free hand and is not circumscribed by any conditions. Therefore the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment or law.

Sec. 13 says,

- » It has all the powers of a Civil Court trying a suit under the Code of Civil procedure, 1908.
- » For summoning and enforcing the attendance of witnesses or documents to conduct investigation by utilizing the service of central or state Government agencies.
- » After such investigation or inquiry it can recommend to the concerned Government to initiate proceeding for prosecution or approach the Supreme Court or the High Court for such directions and recommend for grant of immediate relief to the victims or the members of the family.

In nutshell, it may be stated that by enacting the protection of Human Rights Act, 1993 India has once again, be-affirmed its strong Commitment to protect and promote the Human Rights of its people.

The most important among all these is Sec. 13(3). The Commission has been equipped with search and seizure powers under Sec. 13(3) of the Act. The Commission's wide jurisdiction must be treated as not just as empowerment but a power coupled with a duty requiring positive action by the Commission.

- **Investigation procedure**

Sec. 14, 15 & 16 Provide for Investigation and other procedure.

At first Sec. 14

- (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.
- (2) For the purpose of investigating into any matter pertaining to the inquiry and officer or agency whose services are utilized under sub-sec. (1) may subject to the direction and control of the Commission.
  - (a) Summon and enforce the attendance of any person and examine him.
  - (b) Require the discovery and production of any documents; and
  - (c) Requisition any public record thereof from any office.

- (3) The provisions of section 15 shall apply, in relation to any statement made by a person before any officers or agency
  - (I) call for information or report from the Central Government or any State Government or any other authority or organization subordinate thereto within such time as may be specified by it; provided that;
    - (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint, on its own.
    - (b) if, on receipt of information or report the Commission is satisfied either that no further inquiry is required has been initiated or taken by concerned Government or authority. it may not proceed with the complaint and inform the complainant accordingly.
    - (c) Without the provides to anything contained in clause (I), if it considers necessary having regard to the nature of the complaint

Sec. 17 follows the Principle of Procedure established by law which is

prescribed in constitutional law of India. Actually, Sec. 17 can be compared with Article 21 of our Indian constitution. It has a title of 'Protection of Life and personal Liberty'. Under this title every citizen has a guarantee in form of fundamental Rights. It pronounces, "No person shall be deprived of his Life or personal Liberty except according to procedure, established by Law". And the 'procedure established by law' in article 21 has been judicially construed as meaning a procedure which is reasonable, fair and just. So, procedures for inquiries provided



In Sec. 17 gives the Commission wide powers for it & provide for fair & established procedure.

Subsequent to an inquiry, if the Commission finds violation of Human Rights by a public servant, it can recommend prosecution against him under section 18 of the Act. Further the Commission can also recommend to the concerned Government or authority for grant of immediate relief the victim on his family. The most important power given to the Commission is to approach the High Court or the Supreme Court for appropriate directions orders or writs. The Supreme Court and the High Courts have wide powers for the enforcement of fundamental Rights or the Human Rights under Article 32 and 226 of the Constitution respectively.

The procedure with respect of armed forces is different, in the case of complaint of violation of Human Rights by the armed forces; the Commission shall seek a report from the Central Government. The Government in turn shall inform the Commission of the action taken on the matter. In all cases the State / Central Government or the authority has been enjoined to send their comments on the report, including action taken thereon within a period of three months in case of armed forces and within one month in other cases unless an extension is granted by the Commission under sections 18 (p) and 19(2) of the Act.

To infuse public accountability, the National Human Rights Commission under Sec. 19(3) is required to publish its report along with recommendations and action taken by the Government on the recommendations. Under section 20 of the Act, the Commission is under an obligation to submit an annual report to central Government as well to the State Government concerned. The Central Government and the State Government as the case may be shall lay down the reports submitted

by the Commission before each house of Parliament or the State Legislature respectively along with a memorandum of action taken or proposed to be taken on the recommendation of the Commission and the reasons for non-acceptance of the recommendations if any. In this way the Act ensures Parliamentary, supervision of the implementation of Human Rights by the Commission.

The core of the Commission has always been the inner rather than ex-officio members even though the NHRC has unhesitatingly trespassed into the areas of work of the other Commissions in matters relating to gender and caste discrimination.

- **Publication of Annual Reports**

There still remains a gap between the internal intensity with which the Commission works and views its own work and its external reception by the Government. As for example the 'Seventh Report' for the year 1999-2000 was allegedly sent on time. But, for antiquated reasons dealing with Parliamentary privilege, the 'Report' was not made public until the year 2002 because Parliament had not considered it. Thus, we get a continuing and further lament from the Commission about its work being ignored.

Section 20 (2) of the Protection of Human Rights Act 1993 specifies that the Central Government 'shall cause the annual report of the Commission to be laid before each House of Parliament along with the Memorandum of Action taken or proposed to be taken on the recommendations if any. The delay in tabling constructive annual reports sets back the schedule for the preparation and presentation of the reports of the Commission. The Commission, therefore has performed its recommendation that its annual reports be placed promptly before Parliament together with the required Action taken Memorandum. This

should normally be done not later than the Session immediately following submission of its reports.

But all this has fallen on deaf ears. The public for whom the Commission is made is not apprised of what the Commission has done. Government lets the urgency of the report vanish into obsolescence. Parliament deals with state reports to provide stale feedback and receive outdated 'action-taken-reports' to; co sequent give insufficient feedback oversight and direction to the Government on the Commissions work and report. Dealing with a report years later is almost like not dealing with it at all. This is not unusual for Government. But at the same time, it shows the premium attached to the Commission's work by the Government and the Commission are accountable ceases to have significance. The Commission's report are relegated to the unanimated attention of dusty shelves that, too, within 12 years of its creation.

Another section would be also useful to understand the administration of National Human Rights Commission. They are Sec. 21 & Sec. 30.

- **Establishment of State Human Rights Commission.**

Sec. 21 relates to the State Human Rights Commission: 'Under section 21 of the Act a State Government may constitute its Human Rights Commission.' Already state like West Bengal, Himanchal Pradesh, and Madhya Pradesh have established State Human Rights Commissions. States like Nagaland, Manipur, Orissa, Maharashtra, Andhra Pradesh, Karnataka and Kerala are in the process of setting up their Commissions.

- **Human Rights Court.**

Sec. 30 Provides for Human Rights Courts. For providing speedy trial of offences arising out of violation of Human Rights, the State Government may with concurrence of the Chief Justice of the High

Court by notification specify for each district, a Court of Session to be a Human Rights Court to try the said offences.

- **Another Related Provisions.**

According to this present Research scholar's view Sec. 36, Sec. 38, Sec. 39 and other sections also useful for function and administration of National Human Rights Commission.

At first: Sec. 36 Provides for matters not subject to jurisdiction of the Commission. It says:

The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

This provision is really recognizing the independency of State Human Rights Commission. It guarantees that National Human Rights Commission will not interfere in State Human Rights Commission's jurisdiction. It will not also intervene in any other Commission established under any law, which is presently working. The National Human Rights Commission would not create trespass in the other Commission's powers.

Another provision relates time bounding factor of taking .recognizance of complaints. It puts time limit on State Human Rights Commission and National Human Rights Commission. Indirectly Sec. 36(2) is a restriction on both Commissions. It says The Commission or the State Commission shall not inquire into any matter after the expiry of one ear from the date on which the act constituting violation of Human Rights is alleged to have been committed.

But, this restricting provision some time falls against the victim. Suppose, there is a one citizen of India. Who lives in remote area who is also illiterate and even does not know about his 'Rights'. Then such a single person would not be able to understand a violation of his Human

Right. And now, this person has some knowledge about Human Rights (its violation and State / National Human Rights Commission. But meanwhile a time-limit of Sec. 36 of the Act has been passed. Then this single citizen of India cannot approach any of Commission. He would be not have any remedy or redressal under protection of Human Rights Act.

Now, the purpose of here mentioned Act is distributive justice, specially in Human Rights factor. And the main object of National Human Rights Commission is protection and promotion of Human Rights. But, it will not consider any complain after one year, exact before the act has done. In humble opinion of present Research Scholar, this section requires review / rethinking.

Now, Sec. 38 creates a protecting umbrella on member of State / National Human Rights Commission. Its title is 'Protection of Action taken in good faith'.

'No suit or other legal proceedings shall lie against the Central Government, State Government, Commission or the State Commission or any 'Member there of or any person acting under the direction either of the Central Government State Government, Commission or the State Commission in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or any order made there under or in respect of the Publications by under the authority of the Central Government, State Government Commission or the State Commission of any report, Paper or proceedings.

Sec. 39 recognizes Members of State / National Human Rights Commission as a public servant. It provides that every member of the Commission State Commission and every officer appointed or authorized by the Commission or the State Commission to exercise functions under

this Act shall be deemed to be a public servant. Within the meaning of Sec. 21 of the Indian Penal Code (U/s of 1860). fV3

Since its conception the NHRC has always lacked continuity in the evolution of its strategies. This completely destroys the 'accountability' structure by rendering accountability to Parliament and obtaining Parliamentary solutions redundant. It has responded move to the Personality of the chairman and to external events. Some continuity is inevitable r especially because certain changes dealing with investigation and complaints were institutionalized to provide the impetus for their own 'carry forward', equally, the Commission cannot ignore contemporary controversies, events and issues - lest it be accused of ignoring what confronted it. whose services are (utilized under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission. (4) The office^ or agency whose services are utilized under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf. (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted the investigation) as it thinks fit. These provisions are much similar to powers of civil Court.

## CHAPTER - 4

### Promotion Activities by National Human Rights Commission

#### 4.1 Introduction

Since the Commission was established, the number of Human Rights issues assigned” assigned to its policy, research, projects and Programmers Division for study and monitoring has increased with every passing year. The Commission therefore considered it essential to review these issues and establish certain priorities amongst them. As a result of the review, certain projects programmers and “key Thrust Areas” have been identified by the Commission.

The projects and programmes include the following:

- ❑ An Abolition of bonded labour and child labor
- ❑ A Supervision of the functioning of three mental hospitals at Agra, Gwalior and Ranchi, including monitoring of the functioning of the Agra protective Home.
- ❑ A Relief measures being undertaken by the Government of Gujarat and other agencies for those affected by the earthquake which occurred in January 2001.
- ❑ A Public Health and Human Rights, including the Rights of those affected by HIV/AIDS.
- ❑ Trafficking in women and children.
- ❑ Abolition of manual scavenging,
- ❑ Starvation deaths in Orissa.
- ❑ Widow in Vrindavan.
- ❑ Denotified tribes
- ❑ Human Rights Education. And
- ❑ The Major Trust Areas include the following:
  - **Rights of the child, including**

(a) The Child Marriage Restraint Act, 1929.

(b) Child Labor

(c) Child abuse.

- **Rights of women**

Dalit and tribal issues, including atrocities on scheduled castes/Scheduled Tribes. Custodial justice management including.

(a) Condition of jails

(b) Custodial deaths/torture/ fake encounters

(c) Penal reforms.

- **Issues concerning marginalised sections, including**

(a) Matters relating to disability

(b) Treatment of the mentally ill (including Quality Assurance in mental Hospitals)

(c) Rights of Elderly.

(d) Problems of minorities.

(e) Refugees, migrants and internally displaced persons.

Consideration of important bills ordinances and Monitoring their impact Manual scavenging Bonded labor /child labor Human Rights Education Review of domestic laws/bills Review of International treaties. Rights of those displaced by mega projects<sup>1</sup>

The National Human Rights Commission has concentrated in many areas for promotion of Human Rights. As for examples

**4.1.2. Civil Liberties**

**(A) Human Rights in Areas of Insurgency and Terrorism**

Savage acts of terrorism convulsed the world in the year 2001-2002, compelling the International community to focus on ways of combating and triumphing over this evil.

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<sup>1</sup> National Human Rights Commission annual report (2001-2002) p.22



Following the attacks in the United States of America on the World Trade Centre and the Pentagon on 11 September 2001, the Security Council of the United Nations adopted Resolution 1373 of 28 September 2001 requiring all States to take a wide range of legislative, procedural, financial, economic and other measures to prevent, prohibit and criminalize terrorist acts. India itself, which had fought and often lonely battle against terrorism since the 1980s,

New Delhi continued to be the target of vicious acts of cross-border terrorism. Thus on 1 October 2001, 38 persons were killed and 60 others injured in a Fidayeen' attack on the State Assembly in Srinagar; on 13 December 2001; A national calamity was narrowly averted when a brazen terrorist attack was thwarted within the precincts of Parliament House by the valour of the guards on duty, of whom some sacrificed their lives in the cause of the nation.

These two attacks, on symbols of democracy, re-confirmed the view taken by the International community ever since the 1993 World Conference of Human Rights in Vienna that:

The acts, methods and practices of terrorism in all its forms and manifestations... are activities aimed at the destruction of Human Rights,

Fundamental freedoms and democracy, threatening territorial integrity and the security of State and destabilizing legitimately constituted Government, and that the International community should take the necessary steps to

enhance cooperation to prevent and combat terrorism’ (emphasis added).

Terrorists are the sworn enemies of Human Rights and there can be no equivocation on this matter. Terrorism must be fought and defeated. This is essential for the protection of Human Rights themselves, for the fight to Life - itself a target of terrorists is the most basic Right, without which Human beings can exercise no other Right.<sup>2</sup>

The (Commission continued to hold hearings in respect of the problems being faced by members of the Kashmiri Pandit Community, of whom some 3,00,000 have had to leave the Valley since the insurgency began, together with over 1,000 Muslim families and a number of Sikh families. In order to assist them in dealing with their problems, the Commission had encouraged the Government of Jammu and Kashmir to constitute a Committee at the State level to examine their difficulties expeditiously and to help resolve them. The special reporter of the Commission was requested to serve as a Member of the Committee.

It has not function with the regularity expected of it. This has been a matter of concern and anxiety to the Commission as also to the Kashmiri Pandits who continue to face great difficulties and hardships. The Commission finds the present situation unacceptable and deeply frustrating, not least since its Chairperson has personally had occasion to discuss these matters with the highest echelons of the State Government when he visited Jammu

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2. “NHRC annual report” (2001-2002), published by National Human Rights Commission (now the Commission, New Delhi p.p. 24-23

and Kashmir and was given the assurance that the problems facing the Kashmiri Pandits would receive priority attention. Regrettably, this has not been the case. The Commission therefore urges the State Government to react with greater promptness and sensitivity to the concerns and grievances of members of the Kashmiri Pandits community, to re-activate the committee that has been constituted and to ensure that it functions with regularity and a sense of purpose.<sup>3</sup>

**(B) Second Area is: Custodial Death, Rape and Torture**

It has a major priority of the Commission, ever since it was established, to curb custodial violence. Towards this objective, the Commission issued guidelines in December 1993 stating that it must be informed of any incident of custodial death of rape within 24 hours of any such occurrence. Information on custodial deaths was to be followed by a post-mortem report, a video tape report on the postmortem examination, an inquest report, a magisterial enquiry report, a chemical analysis report etc.,

In order to streamline the existing procedure relating to the scrutiny of incidents of custodial violence, the Commission created a separate cell within the investigation Division.

As death resulting from custodial torture in prisons has been found to be comparatively rare, the Commission in December 2001 modified its earlier guidelines requiring the ideography of postmortem examinations of custodial death occurring in jails.

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3. "NHRC annual report: (2001-2002) published by New Delhi pp. 30-31

While the video - filming of postmortem examinations of all deaths occurring in Police custody was to continue as before, this requirement was relaxed in regard to deaths occurring in judicial custody. In the latter cases, it was deemed to be necessary only when the preliminary inquest by a magistrate raised the suspicion of foul play, or where a complain alleging foul play was made to the concerned authorities, or some other reason arose giving rise to a suspicion of foul play.

#### **4.1.3 Third area is more serious;**

##### **(C) Encounter Deaths**

The Commission continued to pay particular attention to reports of killings of members of the Peoples War Group, allegedly in 'Take' encounters involving the Police of Andhra Pradesh. During the past three years, a series of communications have been received in this respect, notably from Shri S. R. Sankaran, Convenor, Committee of Concerned Citizens, Hyderabad, on which the Commission has called for investigation reports from the Director General of Police, in accordance with its guidelines. The reports of the Director General have been reviewed on a quarterly basis in order to monitor progress in respect of each of the complaints.

Given the serious Human Rights implications of the strife in Andhra Pradesh, the Chairperson has personally discussed the situation on frequent occasions with the Chief Minister of the State.

**(D) Video-Filming of Postmortem Examination and Revision of Autopsy Forms:**

With a view to ensuring prompt and accurate reporting to the C Commission in respect of cases of custodial death, the Commission had recommended that the postmortem examination in respect of all such cases be video-filmed and that the film be transmitted to the Commission. Along with all other relevant reports, so as to enable the Commission to make an independent assessment as to the cause of such deaths.

This fourth area still needs much more improvement. Because all efforts by National Human Rights Commission to sensitize Police, there are some new about Caviar Police atrocities.

**4.1.4 Systemic Reforms; Police:**

For the past many years, the Commission has been emphasizing with increasing urgency that there must be major Police reforms in the country if the Human Rights situation is to improve if the investigation work of the Police is to be insulated from 'extraneous influences', and if the Police is to be accorded the trust that it needs for the proper discharge of its responsibilities to the peoples of this country.

Commission has noted, in this connection, that the memorandum of Action Taken of April 2002, filed by the Central Government.

**(a) Working of Human Rights cells in State Police Headquarters:**

The Commission has noted, with appreciation that, upon its recommendation, State Government have established Human Rights Cells in the Police headquarters of their respective capitals. These cells for elaborate guidelines were devised by the Commission in consultation with the State Government were expected to function as vital links between the Commission and the State Government. The Commissions has observed however, that the cells are not being to fulfill the roles assigned to them for a variety of reasons including the want of adequate infrastructure.

Though, all these provisions recommended by NHRC, Police brutally be have with employees of Honda Company in Gurgaon (Haryana) on 26th July 2005.

**(b) Human Rights and Administration of Criminal Justice system:**

The Commission has in earlier reports, made extensive recommendations aimed at reforming certain aspects of the administration of the criminal justice system in the country, so as to make it more sensitive to Human Rights considerations.

The Commission is gratified to note, from the memorandum of Action Taken on its annual report for 1999-2000, that a number of constructive measures have been taken to act upon the recommendation of the Commission. The National Judicial Academy has also been asked by the Central Government to develop 'packages' of programmers that could be used for the speedy disposal of criminal cases

and to evolve comprehensive programmers for the training of all judicial personnel and court administrators.

In addition, 1,734 Fast Track Courts have been proposed to be set-up in various parts of the Country to dispose of certain categories of long - pending cases. The central Government has indicated in its memorandum of action taken that some 1,015 such courts have already been constituted and that retired judicial offices and judicial staff have been engaged to handle this work.

The Commission is happy to see, in this connection, that the central Government has set up a committee under the chairmanship of Justice Shri V. S. Malimath, a former member of this Commission, to look in to the entire working of the criminal justice system and to suggest measures for its reform and improvement. This also contributes to an overall improvement in the sensitivity of the system to Human Rights considerations.

Now; it is an eye-catching problem of any sensitive person - a living condition in Jails. So, NHRC also pay attention on the same problem.

**(C) Custodial Institutions:**

**(1) Visits to Jails**

The Commission intensified its efforts to improve the living conditions in jails and other institutions under the control of State Government where persons are detained or lodged for purposes of treatment, reformation or protection. Mention was made in the preceding annual report of the visit of the Chairperson to Tihar Central Jail, New Delhi on

29 August 2000. The recommendation made by the Commission on the report of the visit evoked an encouraging response from the Government of the National Capital Territory and Delhi High Court. A series of measures were initiated to reduce congestion,

Improve sanitation and hygiene standards and up-grade the facilities for the vocational training of inmates in Tihar Jail. Problems of the under trials also received special attention from the judicial authorities and the Home Department. As directed by the Chief Justice of India, regular sittings of Lok Adalats were held within the Jail premises and these proved to be of great value.

The chairperson visited central jail, Arthur Road, Mumbai on 12 June 2001. He made a number of observations regarding overcrowding, health-care and the problems of women prisoners. He pointed out the need for greater involvement of NGOs in the education and rehabilitation of prisoners. His observations, with suggestions for improvement, were sent to the Chief Secretary, Government of Maharashtra on 31 July 2001.

Shri Chaman Lal, special reporters of the Commission and Chief coordinator, custodial justice cell, carried out detailed inspections of central jail, Ranchi (22-23 July 2001), Sakshi Jail, Jamshedpur (26-27 September 2001) Central Jail Raipur (30 August 2001), District Jails, Shillong (10 January 2002), District Jail, Guwahati (12 January 2002), Central Jail Satna (4-5 March 2002) and District Jail, Meerut

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4. “NHRC Annual Report” (2001-2002), Published By The Commission New Delhi pp. 39-40



(18 March 2002). The special Reporter find specific problem being faced by under trials which required to be taken up by District Magistrates in the meetings of the monitoring committee of the concerned district-He also identified, in consultation with the jail doctor, the patients who required surgical / specialized treatment from the district referral hospitals.

**(2) Prison Population:**

After observing the conditions of prisoners in various jails of our country NHRC make mandatory a medical - check-up for prisoners.

**( a) Medical Examination of Prisoners on Admission to Jail**

As mentioned in the report for the year 2000-2001, the Commission has introduced a system of obtaining six-only consolidated reports from the jail authorities of all States/Union Territories regarding the medical examination of prisoners on admission to jails.

Analysis of these reports reveals a fairly high incidence of diseases like gastro - enteritis, scabies and various skin diseases. This has an obvious connection with poor hygienic conditions and an insufficient supply of clean water. The incidence of tuberculosis was also found to be high in some areas. Unfortunately, the reports from the States have been erratic or wanting. Only Andhra Pradesh, Goa, Haryana, Madhya Pradesh, Manipur, Orissa, Tamilnadu and the Union Territories of Delhi and Chandigarh have been sending their reports regularly.

**(b) Mentally ill Patients Languishing in Jails:**

The Commission has been greatly distressed by the reports it has received of the presence of mentally ill persons, in violation of the provisions of the Mental Health Act, 1987 and the specific directions given by the Supreme Court on the subject. Directions issued by the Commission through a letter addressed by the Chairperson to the Chief Ministers of all the State / UTs on 11 September 1996 was reiterated on 7 February 2000 and the criminal justice cell has been monitoring compliance. The Commission is distressed to note, however, that as many as 112 mentally ill patients are still being held in Alipore Jail, Calcutta. The Commission has specifically requested the Chief Secretary, West Bengal to arrange for the, proper treatment of these prisoners and their rehabilitation by involving a Calcutta - Based NGO, 'SEVAK'. The matter is being pursued with the Government of West Bengal.

This is the most needy step for prisoners.

**(C) Sensitisation of Jail Staff**

Sensitisation of Jail<sub>0</sub> superintendents and jailors in respect of the Human Rights of prisoners was an important activity undertaken by the Commission in the discharge of its responsibilities under section 12(c) of the Protection of Human Rights Act, 1993. One-day Workshops were held in Lucknow (12 May 2001), Agra (23 June 2001), Deharadun (12 July 2001), Bhubaneswar (9 November 2001) and Varanasi (24 March, 2002). A total of 137 Jail Officials, including two inspectors general of prisons, seven Deputy

Inspectors General of Prisons and 94 Senior Superintendents/ Superintendents of Jails Attended these workshops.

The workshops were conducted by the Chief Coordinator of the Custodial Justice Cell with the assistance of the special representative of the Commission for Uttar Pradesh and Orrissa. The recommendations of the Mulla committee report on jail reforms and measures initiated by the Commission to improve conditions in jails.

The concluding section of each workshop was devoted to a discussion on the problems of administration, finance, security and discipline being experienced by jail officials.

Not only jails need reforms but another places like it requires reforms.

**(3) Visits to other correctional institutions / protection homes:**

Shri A. B. Tripathy, special representative for Orrissa, visited the children home, Sonapur (17 August 2001), Shishu Sadan, Choudwar (24 August 2001) and the observation - cum -special home fourkela (19 February 2002) Shri S. V.M. Tripathi, Special Representative for Uttar Pradesh / Uttaranchal visited the women's protection homes, Juvenile Homes and Observation Homes in District Haldwani, Uttaranchal (6 May 2001), Lalitpur (22 August 2001) Meerut (August 2001), Jhansi (31 August 2001), Gonda (25 September 2001), Muzaffarnagar (24 October 2001). Rai Bareilly (17 November), Kanpur (18 March 2002) and Unnau (18 March 2002). His reports contained many useful comments on the infrastructure and functioning of these

institutions and suggested several improvements. His recommendations were thereafter forwarded to the concerned State Government after considerations by the Commission.

Justice Smt. Sujata V. Manohar Visited the Women's Protection Home, Juvenile Home and Observation Home in Varanasi, on 22 march 2002. The Directed/ Social Welfare Department. Uttar Pradesh was also present. The member made a number of recommendations to improve the living conditions, health-care, education and vocational training of the inmates in these institutions and also for the better maintenance of the institutions.

**(D) Improvement of Forensic Science Laboratories**

The Commission remained in touch with the Ministry of Home Affairs in regard to the implementation of the recommendations contained in the report entitled 'State of the Arti Forensic Sciences: For Better Criminal Justice, prepared by a Group constituted by the Commission.

**4.2 Review of Laws, Implementation of treaties and other International Instruments of Human Rights (Section 12(d), and (i) of the protection of Human Rights Act, 1993)**

As a part of promotion Activities for Human Rights, National Human Rights Commission also reviews some territorial laws, to make them move Humanize, at first,

**(A) Prevention of Terrorism Ordinance, 2001**

In the course of the year under review, it became essential for the Commission to take a position on the prevention of Terrorism Ordinance, 2001, which was promulgated by the President on 24 October 2001.

**(B) Child Marriage Restraint Act, 1929.**

In order to curb the practice of child marriage in the country, the Commission had taken the view that the Child marriage Restraint Act, 1929 should be recast so as to make the offence cognizable and non-bailable. It was of the view that a provision should be made in the demanded Act to take action against organizers associations who organize child marriages on a mass -scale.

**(C) Protection of Human Rights act, 1993.**

The working of the protection of Human Rights Act 1993 and the amendments proposed by the Commission to that Act are of such importance to the promotion and protection of Human Rights in the country and to the efforts of this Commission that this report has devoted chapter - II exclusively to an examination of these matters. There is no need, therefore, in this section, to repeat those considerations.

**(D) Implementation of treaties and other International instruments**

The Commission is very much sincere about children's Rights. So, it is asking for implementation of protocols to the Convention on the Rights of the child.

**(1) Protocols to the Convention on the Rights of the Child.**

The Commission had recommended that Optional protocols 1 and 2 to the Convention on the Rights of the Child dealing respectively with the sale of children. Child prostitution and child pornography and the involvement of children in armed conflicts, be examined by the Government of India.

**(2) Protocols to the Geneva Convention**

**(3) Convention Against Torture**

Torture, ill- treatment - which are elements against Humanisam NHRC wants to abolish it.\*15

So, In its last annual report of 2000-2001 the Commission had urged the Government to fulfill its promise to ratify the Convention Against Torture which it had signed as long as 14 October 1997 on the recommendation of the Commission.

The Commission has noted that, in is memorandum of Action Taken on the annual report of the NHRC for the year 1999-2000, the Government has now state that the ministry of external affairs has initiated action in the matter and has emphasized to the authorities concerned the need for effecting changes in domestic legislation in order to bring its provision in conformity with the UN Convention Against Torture.

**(4) Convention and protocol on the status of Refugees**

In its annual report for 2000-2001 the Commission had expressed its firm opinion that there was need for comprehensive national legislation to deal with the refugee situations facing this country and that this law should be devised keeping in view the decisions of the supreme court as well as the relevant International instruments on this subject, notably the 1951 Convention relating to the status of refugees and the 1967 protocol on that subject.

The Commission is happy to note that the process has been initiated. Indeed, when this Commission considered it

essential to file a writ petition before the supreme court in 1995 in order to ensure that the Rights of chakmas in Arunachal Pradesh were protected, the Apex court took the view that the protection of Article 21 of the constitution, which ensures the Right to Life and Liberty, is applicable to all, irrespective of whether they are Indian citizens or otherwise.

NHRC also suggest some guidelines for forthcoming enactments already passed laws

**(D) Freedom of information bill, 2000**

According to the Commission's opinion, it has been judicially recognized that the Right to freedom of speech and expression in Article 19(1) (a) includes the Right to acquire information. The State is not merely under an obligation to respect the fundamental Rights guaranteed by part III of the Constitution but is also under an obligation to operationally the meaningful exercise of these Rights.

The Supreme Court held in *S. P. Gupta V/s. Union of India* 1982 SC 149 that the Right to know is implicit in the Right to freedom of Speech and Expression and expression guaranteed in Article 19(1) (a) of the Constitution, and reiterated this in *Reliance V/s. India Express* (1988) 4 SCC 592 in which it is said that the Right to know is basic Right of the citizens.

**(F) Persons with Disabilities (Equal Opportunities, Protection of Rights and full participation) Act, 1995.**

The Commission has been strongly urging that a higher level of attention be given to the full and proper

implementation of the persons with disabilities (Equal Opportunities, protection of Rights and full participation) Act, 1995. By the central as well as the State of India was promoting Equality and protecting the disabled persons. It requested the Ministry of “social justice and empowerment to send it a copy of the draft bill for examination.<sup>5</sup>

NHRC is also trying to widen fight to Life according to ICESCR and recognizes Right to Health as a fundamental Rights.

### **4.3 Right to Health:**

To Widen and deepen its own understanding of the issues involved in matters relating to health as a Human Rights, the Commission constituted a core advisory group on health, headed by its chairperson.

#### **(A) Public Health and Human Rights.**

##### **(1) General Recommendations:**

State public Health Regulatory Authority should established in each of the states as well as a National public Health advisory body to regulate public health practices and monitor the implementation of public health programmers.

##### **(2) Recommendations on Access to health care:**

Decentralization of authority in health care systems of the country, through Panchayati Raj and other local institutions, by devolution of appropriate financial, administrative and supervisory powers and implementation of all relevant national programmes of ministries / departments of health, family welfare, women and child development, social justice and empowerment.

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5. “NHRC annual report” (2001-2002), published by National Human Rights Commission (now the Commission, New Delhi p.p. 55-56



Regulation of irrational or unethical medical practice in the public and private health care sectors of the country, through the development of guidelines for use of drugs, diagnostics and therapeutic procedures, with a regulatory framework for monitoring and enforcement.

Availability of quality Life saving drugs to the population. There should be a price control policy for essential drugs, including all patented drugs, with the prices linked to purchasing capacity of the population.\*20

**(3) Recommendation On Tobacco Control:**

There was a need to review the provision of various incentives for tobacco industry under different Acts including the Tobacco Board Act, 1975 and for doing away with all subsidies (Direct and indirect) being provided to the industry.

**(4) Recommendations on Nutrition:**

Access to iodized salt should be made available to all sections of population, on a sustained and affordable basis.

The infant Milk substitutes, feeding bottles and infant foods (regulation of production supply and distribution) Act, 1992 should be reviewed with specific reference to violations.

Convention on the Rights of the child (CRC)

Convention on the Elimination of All forms of Discrimination against Women (CEDAW) SAARC Declaration on the Girl child.

In today's world India has maximum number of HIV/AIDS Effected population so; Commission also submits its views on here mentioned topics.

**(B) HIV/AIDS and Human Rights:**

The publication of the Commission on this National consultation has been widely disseminated and greatly appreciated. It has served as a key document in discussion organized under United Nations auspices in Durban, in Colombo and in Melbourne, on the latter two occasions the Asia-Pacific forum of National Institutions joining as a co-sponsor of the discussions that were arranged. On all of these occasions, the efforts of the Commission

On this matter have been singled out for recognition as the kind of action that national institutions for promotion and protection of Human Rights can usefully and constructively take to bring greater understanding to bear on this complex subject.

Another problem in our country is a death of pregnant women before or after delivery. NHRC understands the serious needs of this problem.

**(C) Maternal Anemia and Human Rights**

In order to evolve a plan of action for systematic improvements in the health care delivery system, a two-day workshop on Health and Human Rights with special reference to Maternal Anemia was organized by the Commission on 26-27 April 2000 in partnership with the Department of women and child Development and UNICEF. The recommendations of that workshop were annexed to the Commission's annual report for the year 2000-2001 and also formally transmitted to the central Government for appropriate action.

While the response of the Government to that recommendation is yet to be received, the Memorandum of Action Taken filed by the Central Government in respect of the Commission's annual report for 1999-2000 refers to the launch, on 15 October 1997, of the nationwide Reproductive and child Health (RCH) .programmed, in which Nutritional Anemia control is given high priority.

The Memorandum of Action Taken adds that the current RCH programmed reuses the following strategies

Promotion of regular consumption of foods rich in iron,

Provision of iron and floated supplements in the form of tablets to high risk groups, for prevention as well as treatment of severe anemia,

“Improved packaging and streamlining the supply of iron and folic acid, Identification and treatment of severely anemic cases.”

The memorandum also states that, during 2000-2001, 464.45 Crores IFA(L) and 402.52 Crores (small) Iron and Folic Acid tablets were supplied.

Women and children are also mentioned as a weaker section in constitutional Law of India, who needs special treatment (Article 15(3)|, NHRC deeply interested in problems relating to women & children -\$b it creates awareness among people about Rights of women & children.

#### **4.4 Rights of Women and Children**

##### **(A) Trafficking in Women and Children**

**(1) Trafficking in Women and Children: Manual for the Judiciary.**

Trafficking in Women and Children, both male and female, is a given violation of several Human and there is great need to deal with this problem in a comprehensive way. In this context, the department of women and children development (DWCD), Ministry of Human Resource Development, Government of India approached the Commission with the proposal that a Manual be prepared, under the joint agencies of the Commission and the DWCD for use of the judiciary.

The NLSIU Bangalore has been commissioned to draft the manual.

- (2) Information kit on trafficking in women and children.
- (3) Prevention, Rescue and Rehabilitation of women and children trafficked into prostitution in Delhi.

The Commission has been greatly concerned about the number of women, particularly minor girls, found in the brothels of Delhi. A meeting was accordingly convened in the Commission on 25 February 2002 under the chairmanship of Justice Smt. Sujata V. Manohar. It was attended by senior Police officials of Delhi, a representative of 'STOP' an NGO working in this area in Delhi, and senior officials of the Commission. The National Commission for women was also invited; its Member, Smt. Nafisa Hussain, attended the meeting. Some of the pertinent points arising out of the meeting were as follows;

Arrangements for providing food to the rescued women/girls, as well as for their transportation to hospitals for their medical check-ups should be made available at the concerned Police stations.

Additional space, should be provided for rescued women and children at Nirmal Chaya in Delhi in order to accommodate those who are rescued.

**(B) Combating Sexual Harassment of women's at the work place:**

During the course of the year under review, the Commission continued to work on the issue of sexual harassment at the work place. It will be recalled that, in its preceding report, the Commission had drawn attention to the guidelines issued by the Supreme Court in its landmark judgment in the case Vishaka V/s. State of Rajasthan, 1997(6) SCC 241 and observed that these guidelines were not being implemented adequately either in the public sector or in the private sector. The Commission had also reported on the decisions taken in a meeting convened under the Chairmanship of Justice Smt. X- Manohar on 1 march 2001 where the precise role of the complaints committee and other pertinent matters arising out of that judgment were elucidated and explained.

In a further step to deal with sexual harassment at the work-place, the chairman of the Commission convened a meeting on 25 April 2001 to consider how universities and educational institutions could implement the guidelines and norms prescribed by the Supreme Court in the Vishakha

Judgment. The meeting was attended by the Secretary, Department of Secondary and Higher Education and the Secretary, Department of Elementary Education and Literacy of the Ministry of Human Resource Development, Government of India; chairman, University Grants Commission (UGC); Chairman, Central Board of Secondary Education (CBSE); principal Secretary, Directorate of education, NCT of Delhi, selected senior Advocates and NGO representatives.

In a further meeting presided over by the chairperson of the Commission, a discussion was held in respect of the sexual harassment of women in the legal profession. Shri Soli S. Sorabjee, Attorney General of India, Shri D. V. Subba Rao, Chairman, Bar Council of India and Shri R. K. Jain, Senior Advocate, Supreme Court attended that meeting. Subsequent to the meeting, the Commission constituted a high level committee on 21 December 2001 under the chairmanship of Shri Soli Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalization punishment of those who may be involved. Specifically, the Committee was also asked to consider whether amendments were needed to the Advocates Act, 1961 and the bar council rules, and to advise the Commission of its views on this matter.

Whenever women go out, she is always endangered by any kind of violence harassment or sexual abuse. Local or distance trains are the places where women feel unsafe.

So, NHRC considers issue seriously. “Harassment of women passengers in Trains.”

A petition received from Jagori an NGO on 15 January 1998, as well as news item that appeared in the issue of ‘outlook’ magazine dated 2 April 2001 brought to the notice of the Commission that women are frequently attacked, molested and sexually harassed on railway trains and platforms and in waiting rooms.

The Commission, however, considered it essential to take serious note of this problem. After considering the matter in its several meeting, including discussions involving the Government Railway Police (GRP) / Railway protection force (RPF), senior officials of the Railway Board and representatives of ‘Jagori’ the Commission made the following recommendations to the Railway Board. they are mentioned here

The Railway Board should have appropriate notices fixed at strategic points in all railway station/ coaches stating that sexual assault, obscene remarks, stares, gestures, songs and unwanted attention are all forms of sexual harassment and therefore offences punishable by law under the Indian penal code and the Railways Act, 1<sup>^</sup>89. It was further suggested that the contents of such notices could be shown on close - circuit. T. V. on all railway platforms.

It is an irony that Indian women becoming powerful day by day in every field of Life. But one of her portion is still living in miserable situation. One of the example is widows of Vrindavan.<sup>6</sup>

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6. “NHRC annual report” (2001-2002), published by National Human Rights Commission (now the Commission, New Delhi p.p. 68

**(C) Rehabilitation of Widows in Vrindavan**

As indicated in the last annual report, the issue of destitute women, particularly widows, residing in the Vrindavan area has been a subject of immense concern to the Commission. In its preceding report, the Commission had provided details of the action taken by the Government of Uttar Pradesh on the basis of the recommendation made by the Commission in respect of proper accommodation, financial assistance, health care and sanitation facilities, creation of a suitable fund for last rites, proper arrangements for the distribution of pensions, provisions, of LPG connections for group - cooking and the issuance of ration cards.

Among the decision taken were the following:

In order to provide recreation to these women, it was proposed to install television and radios in all the homes run by the Government. It was also decided that the Government could request the West Bengal Film Division to screen appropriate films in these homes.

Self - help groups for income generation would be set-up provide suitable training to women in small groups of 25 each to make candles, pickles, pappads, etc. During the training period, each trainee could be given a stipend and, after the completion of the training, they could be helped to obtain loans from till banks to make them self-reliant. Vocational training was also imparted to some of these women in tailoring and block printing.



In addition, at the request of the Commission Help Age India has started a health service to the windows in Vrindavan with the help of a mobile van which visits the areas where the widows reside.

**D) Nomenclature to be used in Official Documents for Addressing Wives of person who have Died.**

Agreeing with the proposal, on 19 June 2001 the Commission made a recommendation, to all State Governments and other concerned authorities that, instead of the sue<sup>1</sup> expressions like ‘Widow’, ‘Vidvah’ Vivah’ and the like, which are normally used to address the wives of persons who have died. expressions such as ‘Wife of the Late’, Zauja Marhoom’ or ‘Dharmpatni Swargiya’ or ‘Wife of Shaheedvir (for those whose husbands had sacrificed their lives for the cause of the nation/country) should be used by the Governments for all official purposes, specially in the official records.

Women still has a status of expendable commodity. NHRC want to bring women in better situation.

**E) Sale of Female Children of Lambada Tribals in Telengana Region, Andhra Pradesh.**

The Commission took sure mote cognizance of a news item published in the Hindu of 22 January 2000 which highlighted the suffering women of the Lambada Tribe of Telangana Region in Andhra Pradesh.

**F) Women’s Human Rights Cell in National Human Rights Commission.**

Keeping in view the large number of complaints being received by the Commission relating, including allegations of no registration or non - investigation of dowry deaths, sexual harassment of women at the workplace, instances of rape, outraging of the modesty of women, abuse of girl children and kidnapping, the Commission has set up a Women's Human Rights cell within the Commission's Law Division.

This is a very good and progressive step towards establishment of Women's Rights on sound base.

One more promotion activity was handled by NHRC to improve national economic picture is,

- **Rights of the Vulnerable**
- (A) **Abolition of Bonded labor and Child labor**
- (1) **Bonded Labor**

The Supreme Court had, in its order dated 11 November 1997, passed in writ petition (civil) No: 3922 of 1985, requested the Commission to be involved in the monitoring of the.

Implementation of the Bonded Labor System (Abolition) Act, 1976.

- (2) **Specific Case**

To illustrate the nature of the actions being taken by the Commission, the facts are given below of a specific case involving the detection and release of 85 bonded laborers from the quarries of Barighat, Ganj Basoda, District Vidisha in Madhya Pradesh in December 2000. The credit for the detection goes to Shri Raghunath Vivek Pandit,

Director, Samarthan, a Mumbai Based NGO and Swami Agnivesh, President, Bonded Labour Liberation Front, Delhi. Shri Vivek Pandit visited Ganj Basoda along with some members of a local NGO and, with the help of the district administration got 85 bonded laborers released from 4 stone quarries. This was later verified by the Commission's investigation team which visited Vidisha from 10-12 January 2001- Although the release certificates were issued promptly and interim Relief of Rs. 1,000 to each laborer was also arranged by the district administration. The rehabilitation of the released laborers under the (centrally sponsored scheme was proceeding slowly. The released laborers belonging to Madhya Pradesh are also entitled to receive a grant of Rs. 25,000 under the SC / ST Act, of which is to be paid on the registration of the FIR. 33 laborers had actually received this amount until the date of review. Commission also arranges two workshop on -Bonded Labour in Ranchi on 21 July, 2001 and Chandigadh on 22 Sept. 2001.

- **Child Labour**

Dr. Justice K. Ramaswamy, Member assisted by Shri Chaman Lal, Carried out an over all review of the Child Labor situation in Rajasthan, Uttar Pradesh, Orissa and Maharashtra during the period covered by this report. The review was based on the directions issued by the Supreme Court in its landmark judgment of 10 December 1996, in writ petition (civil) no: 4657 1986 M. C. Mehta V/s. State of Tamil Nadu and others.

**(4) Child Labor in Slaughter Houses**

Employment of children in slaughter houses is prohibited under the provisions of the child labor (prohibition and regulation) Act, 1986. The Commission has, however, been receiving reports about the employment of children in abattoirs/ slaughter houses all over the country. In a meeting held on 16 March 2001, the Commission therefore decided to send notices to all concerned.

**(5) Child Labor in Aligarh Lock Industry**

A committee to study all aspects of the child labor situation in the lock industry in Aligarh (UP) was constituted by the C Commission on 2 August 2000 with Shri Chamnlal , Special Reporter as its chairman and Shri Madhukar Dwevedi, special Secretary, Labour Department Uttar Pradesh. The Commission urges the Government of Uttar Pradesh to act promptly and comprehensively on the recommendation contained in the report.

**- Impact / Evaluation study.**

**(1) Rehabilitation of People Displaced by Mega Projects**

**(2) Rights of the Disabled**

The Commission has, already, reviewed the working of the persons with disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 and suggested a number of amendments to this legislation, which have been detailed in its annual report for 2000-2001,

Concerned about the issue of wide prevalence of iron and iodine deficiency related health problems, which result in a large number of children in the country being born with

mental disabilities, the Commission has worked closely with the concerned ministries and departments.

A core group on disability related issues has therefore been constituted by the Commission in August 2001. The core group will consider the problems faced by the disabled from a Human Rights perspective and evolve suitable ways and means of improving the conditions of the disabled.

**(I) Rights of the Elderly**

The Commission has stressed that there is need for better mobilization and coordination of efforts on behalf of the elderly. To identify areas of activity of particular importance to them, the Commission held two rounds of discussions with non Government organizations working for the Rights of older persons.

The Commission sought the response of the ministries of Social justice and empowerment, Law/ Justice and company Affairs, Home affairs, Finance, Health and Family welfare and insurance companies on these suggestions.

The Department of Pension and Pensioners Welfare has indicated that, to facilitate quicker Demission of the department orders and clarifications and to make them easily accessible to Pensioners' Association and others, all matters relating to pensioners have been made available on the internet and can be accessed at [www.nic.in.persmin](http://www.nic.in.persmin).

**- Problem of Denotified and Nomadic Tribes**

This is a completely new are for promotion of Human Rights covered by NHRC. The communities designated as denotified. Tribes (DNT) and Nomadic Tribe. (NT) The

communities designated as denotified Tribes (DNT) and nomadic Tribes. (NT) of India were identified as ‘Criminal Tribes’ (Which included both castes as well as tribes) in pre-independence India. Though the Primitive Tribes Act, 1871 was annulled soon after independence, the Police, as well as members of the public, frequently and most regrettably continue to treat persons belonging to these communities as ‘born criminals’ and ‘habitual criminals’. They therefore remain amongst the most disadvantaged and discriminated against in the country.

The Commission has also recommended that all those State Government that had enacted the ‘Habitual Offenders Act’, should take the steps to repeal that Act.

It is a shameful condition of some people in our independent India.

**(F) Manual Scavenging**

The Commission has been vigorously pursuing the need end the degrading practice of manual scavenging in the country. It has taken up this matter at the highest echelons of the Central and State Government through a series of personal intervention by the chairperson.

On 14 August 2001, the eve of Independence Day, the chairperson of the Commission addressed a letter to the Prime Minister stating that it was a matter of national shame that, despite over half-a-century having passed since we gained independence, the in Human of manual scavenging continued in our country.

NHRC is widening an aspect of Human Rights day by day. Here is an activity, as an illustration.

#### **4.5 Human Rights in Situations of Natural Disasters**

##### **(1) The Orrissa Cyclone Affected**

On 29 January 2002, the Chairperson personally convened a special Review meeting at Bhubaneswar, which was attended by the Chief Secretary and all of the Secretaries of the Departments concerned with the relief and reconstruction work. The review indicated that the disbursement of ex-gratia payments to the next -of- kin of those who had died had proceeded satisfactorily. As had the disbursement of House Building Assistance (HBA) to the affected families

##### **(2) The Gujarat Quake Affected**

The Commission took suo motto cognizance in respect of the situation arising from the devastating earthquake that struck large areas of Gujarat on 26 January 2001.

35. Ibid p. 95-96 Once again, the Commission acted to ensure that the Rights of the affected population and particularly of the most disadvantaged were protected and respected. An account of the Commission's actions in the immediate aftermath of the earthquake are contained in its annual report for the year 2000-2001.

Thereafter, on 29 May 2001, the Commission made a series of directions and recommendations to the Gujarat Government. In particular, the Commission urged the State Government to hasten the work for the rehabilitation of the affected population and to ensure that, before the monsoon

broke, temporary shelters were provided to all quake-affected people. The Government was also asked to complete the enumeration of orphaned children, destitute women, and older citizens expeditiously and to draw up an action plan to provide relief and rehabilitation, special care being taken of those belonging to marginalized sections of society.

The state Government was also asked to empower an officer stationed at Bhuj with sufficient powers to resolve the problems of the affected people at the district level itself, thus ensuring expeditious redressed of grievances and an increase in the credibility of actions being performed.

In addition to these directions, the Commission recommended to the State Government that family identity cards be issued in order to ensure that assistance went to the Right people and those NGOs, prominent citizens, philanthropic organizations were associated formally with the effort underway in each affected area and in each taluka of the affected districts. It was further suggested that a plan be formulated to set up HAM Radio Clubs in schools / college in the quake / cyclone prone areas of the State so as to have a better communication system in case of major calamities.

The State was also advised to raise a special Battalion, in the nature of a Rapid Action Force, specialized in providing sophisticated relief and rehabilitation assistance. There was also a need for an elaborate Disaster Management Plan for the future to prevent panic or knee-jerk reactions and to ensure coordination in the performance of all.



In the interesting example of the complementarity of the of the higher judiciary of the country and the Commission, a copy of the judgment dated 17 February 2001 of the High Court of Gujarat in the case Bipinchandra J. Diwan V/s. State of Gujarat, was sent to the Commission for " 'necessary action and intervention if necessary in redressing the complaints of violation of Human Rights in accordance with the provisions of section 12(b) of the protection of Human Rights Act, 1993 The High Court also associated the District Judge in each district as an Ombudsman to receive complaints from affected persons and to take these up with the authorities in order to provide quick relief and immediate activating of the legal aid system.

#### **4.6 Racism; World Conference in Durban**

The National Human Rights Commission of India Believes it is essential that all Member State, including India, respect the International Human Rights regime. Established under the auspices of the United Nations and observe the discipline of the treaties to which they are State party. It is worth mentioning, in this connection, that Section 2 (d) of the protection of Human Rights Act. 1993 which established the National Human Rights Commission defines Human Rights to Rights relating to Life, Liberty, Equality and Dignity of the individual guaranteed by the constitution or embodied in the International Covenants.

In furtherance of the statutory responsibilities the Commission has thus accorded the highest priority to ending discrimination against scheduled castes and scheduled tribes and in seeking to eradicate in particular, two pernicious practices which largely affected members of these communities, these relate to manual scavenging and bonded labor.

In the final analysis, the Commission believes that the promotion and protection of the Human Rights of the weakest sections of society are clearly related to their full and proper empowerment. That is why the Commission has urged the adoption and implementation of policies at the central and state levels that will open the doors of opportunity to them. Freed and compulsory primary education up to the age of 14 years, as the constitution. Requires; access to proper primary health care' freedom from malnutrition and material anemia, and a re-allocation of resources. To back such programmes in manner that has true meaning. In addition, the Commission has continued to receive daily from persons who are included among the scheduled castes and scheduled tribes. These have alleged acts of discrimination 'un touch ability', violence against the Human person, atrocities of various kinds, and high – handedness by public servants and others.

After the world conference, the Commission has been engaged in an effort to analyses the Declaration and programme of Action That were adopted in Durban and to devise a strategy to follow - up on those important documents and the Statement was jointly agreed upon by the forty seven National institutions for the promotion and protection Human Rights that were present in Durban. The Commission intends to pursue these matters seriously in the period ahead, and to monitor the implementation of the Durban by the concerned authorities in this country.

NHRC also arranges various research programmers and projects for protection& promotion of Human Rights. Some examples have discussed here:

#### **4.7 Research Programmes and Projects:**

##### **(A) Preventing Employment of Children by Government Servants;**

###### **Amendment of Service Rules**

With a view to preventing the employment of children by Government servants the Commission has continued to pursue this matter with the central and the state Government. The Commission had recommended that the relevant service rules governing the conduct of Central and State Government employees be amended to achieve this objective.

The Union Ministry of Personnel and Public Grievances and Pensions ( department of Personnel and Training ) has informed the Commission that the central Government has amended the All India Services (Conduct ) Rules, 1968 as well as the Central Civil services (Conduct) Rules, 1964 appropriately.

##### **(B) Quality Assurance in Mental Hospitals**

###### **(1) Mental Hospitals in Ranchi, Agra and Gwalior**

The Chairperson of the Commission personally visited the Institute of Mental Health Agra on 7 April 2001 and reviewed its functioning. The Chairperson visited the Gwalior Mansik Arogyashala on 2 November 2001 to inaugurate the halfway for female patients and laid the foundation stone of the new OPD building of the institution. A special drive is underway to restore a number of cured patients to their respective families, who had earlier been reluctant to take them back. Significant results have been achieved, especially by Ranchi Institute. The Chairperson visited the Ranchi

Institute on 20 July 2001 and was impressed by the overall progress made after the intervention of the Commission.

**(2) Mentally ill patients in Dargahs / Private Hospitals**

Despite the efforts of the Commission to have all state Government act on the basis of the report prepared for it on quality assurance in mental hospitals, much remains to be done for the proper care of those suffering mental disabilities.

In preceding annual reports, the Commission has dwelt at some length on the situation that prevailed in the Sultan Alayudeen Dargah in Goripalayam near Madurai; where patient were often brought by their relatives in the hope of a healing by faith, and then been left behind in the Dargah often in chains. After being dissatisfied by the efforts of the State Government to remedy the situation, the Commission had appointed a committee under the eminent psychiatrist, the late Dr. K. S. Mani of Bangalore to go in to this matter.

Despite these recommendations, however, a shocking incident occurred on 6 August 2001 When 28 inmates of the Baddhusa Private Mental Asylum in Erwadi of Ramanathpuram district, Tamil Nadu, lost their/in a fire. Primarily owing to the fact that they had been kept in chains. The Commission was greatly disturbed by the incident and the failure of the State Government to prevent this tragedy. Taking a grave view of the matter, it asked all States and UTs to certify that no mentally ill patients were chained and kept in captivity. This, the Commission felt, was essential in order to prevent the recurrence of any such tragic incident in future. In letters addressed to the Chief Secretaries of all

the State and Chief Administrators of all Union Territories  
The Commission requested them to have the requisite report sent to the Commission by 31 January 2002.

**(B) Action Research on Trafficking in Women and Children**

As indicated in its preceding report, the Commission had requested its member, justice Sujata V. Manohar, to serve as its Focal point. In respect of the Human Rights of Women, including such matters as Trafficking in Women and Children among the activities initiated by the Focal .Point is a programme calling for action research on Trafficking in Women and Children in India; which is being conducted jointly by the Commission and UNIFEM.

With a view to starting the proposed action research, a one-day Technical consultation for the National Level Action Research on Trafficking in Women and Children was held at the Institute of social Sciences, New Delhi on 9 October 2001.

**4.7.1 Research Programmes on Women Rights**

**(1) Rights of Women Prisoners in Indian Jails:**

**A Sociological Study**

The Commission approved financial assistance for a research study on the Rights of Women prisoners in Indian Jails; A Sociological Study.<sup>1'</sup> It was proposed by the National Institute of Criminology and Forensic Science (MCFS), New Delhi Which functions under the ministry of home affairs, Government of India.

### **(3) Complaints made by Women at Police Stations in Bangalore**

The Commission has approved a proposal. It received from 'Vimochana', a forum for women's 'Rights based in Bangalore. Its purpose is to conduct a study on 'Complaints made by women at Police stations in Bangalore.' The main objectives of the study are to;

“Make an overall assessment of the kinds of complaints that are made at Police stations by women;”

For this study, Vimochana will set up desks run by two social workers each in two Police station pin Bangalore city. These desks will be set up in those Police jurisdiction where there is higher reporting of crimes against women, particularly those resulting in unnatural death.

#### **4.7.2 Research Study on the Musahar Community of Bihar**

The Commission supported a research study 'The Musahar A Social - Economic Study,' by the A. N. Sinha Institute of Social Studies, Patna. Musahars are amongst the poorest of the Scheduled Castes and their deprivation is such that they are often compelled to subsist on a diet of rats and similar rodents. They are concentrated in Bihar, Jharkhand and Madhya Pradesh.

The report of the study is being examined by the Commission which intends to pursue this matter. Which draw attention to the persistent indignity with which an entire community of the country has to live, despite the promise of the Constitution and the laws of our land.

### **4.7.3 Research Project on Mentally ill persons in Jails of West Bengal.**

The Commission supported a research study SEVAC. It is a Calcutta - based NGO, titled 'Operation Oasis,' which sought to identify the mentally - ill persons languishing in different jails / homes in West Bengal make recommendations on their behalf.

### **4.8 Promotion of Human Rights Literacy and Awareness**

It is widely recognized that Human Rights education can contribute most constructively to deepening and widening an understanding of Human Rights.

The Commission has been mandated under Section 12(h) of the protection of Human Rights Act, 1993 to promote Human Right awareness and literacy. It has, accordingly, endeavored to promote a culture of Human Rights in the country.

It has pressed for the introduction of Human Rights education in the curricula both of school and of universities. It has involved NGP in efforts to spread Human Rights awareness at the grassroots level. It has sought to bring about a greater sensitivity among civil Servants, Police and security personnel. Also among the members of the judiciary by re-orienting their training programmes and organizing seminars. It has encouraged the media to report on Human Rights issues and it has urged the Central Government to devise a National Action Plan for Human Rights.

#### **(A) National Action Plan for Human Rights and Action Plan for Human Rights Education.**

Ever since the world Conference on Human Rights in Geneva in June 1993 greater emphasis has been placed on

the value of individual States formulating National Action Plans for Human Rights. The elaboration of such national plans has also been the subject of frequent discussion in workshops organized by the United Nations for participants from the Asia - Pacific regions.

The Commission has been of the view that the development of a national plan for Human Rights can help crystallize programmes and policies that are Human Right friendly across the entire range of Governmental activity. Such plan can assist to identify issues having a bearing on Human Rights in the work of a variety of Ministries and Departments, and it can re-orient attitudes and priorities across the spectrum of Governmental Endeavor. It can, further, add legitimacy and strength to the voice of those who advocate good and Humane governance as essential to the well -being of a country. The Commission has therefore been urging that such a national plan be formulated.

In this connection, the Commission would also like to observe that the Tenth workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia Pacific Region, held in Beirut, Lebanon on 4-6 March, 2002. The workshop called on State to establish a monitoring mechanism to supervise the implementation of such action plans. It emphasized the desirability to include Human Rights education as a component of the action plan. The Statement adopted by the National Institutions at the World Conference against Racism, Racial Discrimination, Xenophobia and Related intolerance at Durban, held in August, 2001.



**(B) National Institute of Human Rights.**

The National Institute of Human Rights (NIHR) was established in the National Law School of India University (NLSIU), Bangalore with the assistance of the Commission in an effort to establish a centre of excellence for Human Rights education. During the preceding year, the Institute prepared a Handbook on Human Rights for Judicial Officers, with the help of a grant from the Australian Human Rights Fund. Small Grants Scheme, which was given to the Institute upon a recommendation of the (Commission. During the current year, the Commission sanctioned further assistance to the institution to organize similar training programmes for judicial officers from the States of Kerala and Tamil Nadu.

**- Human Rights Training for Civil Servants**

The Commission continued to interact closely with the Lal Bahadur Shastri National Academy of Administration (LBSNAA) Mussorie as well as the Sardar Vallabhai Patel National Police Academy (SVPNPA), Hyderabad in its on going effort to create an awareness of Human Rights among young administrators.

The Commission has also provided financial assistance to the LBSNAA for undertaking two research studies entitled (I) 'Insurgency, Terrorism and Human Rights: Analysis and Recommendation in respect of Jammu and Kashmir and North East<sup>1</sup>: and (ii) 'Protection of Human Rights in Tribal Areas; Land Environment and other Rights. The Academy proposes to utilize the services of the officer trainees in

under taking the survey connected with the research studies thereby sensitizing them to issue relating to Human Rights.

**(C) Human Rights Training for Police Personnel**

The orientation and training of Police personnel remained a high priority of the Commission in the course of the year 2001-2002. A Visit of the Chairperson and members of the Commission to the various state often included discussions with the Directors General of Police in regard to the training of Police personnel. Also the use of the training material on Human Rights prepared by the Commission

The two training projects jointly undertaken by the Commission with the British Council on “Human Rights Investigation and Interviewing Skill” and “Improving Custodial Management”, which began in the year 2000-2001.

The first project, on ‘Human Rights Interviewing and Investigation Skill ‘ had, as its objective, the development of analytical and appraisal skill required for objective and accurate reporting.

Participants were selected from among the Police personnel of a number of States and also from those serving with the National and State Human Rights Commission.

In all, 20 Regional Programme were developed under the project and a total number of 220 Police personnel were trained.

The second project, entitle ‘Improving Custodial Management,’ aimed at better protecting <sub>7</sub> the Human Rights

of citizens while under detention in Police or judicial custody. The programme was initially restricted to five states. Eleven officers were nominated for the training, which involved a study tour to the United Kingdom in the month of April 2001. Of these officers, eight were of one rank of IG /DIG. The remaining three were of the rank of SSP / SP, including one SSP from the Commission. The officers of the States, who had undergone the training, were subsequently required to run workshops in their respective States, with a view to training a further 200 Police officers.

The estimated share of the British Council Towards the projects was Rs. 39 lacs (60,000). The Commission incurred an expenditure of Rs. 1, 61, 5047-.

In a further act of collaboration, the British Council and the Commission undertook a training project entitled 'Strengthening of the Role of Human Rights Cell in State Police Headquarter to improved Custody Management.' The purpose of the project was to design, develop and deliver a need - based training module to promote a better understanding and better practices in respect of Human Rights among the Police. Under this project, Police officers underwent training. They comprised an IG and DIG/ SP from each of the five states, namely Bihar, Uttar Pradesh, Himachal Pradesh, Haryana and Gujarat, and an officer from the Commission.

The British Council has also organized a Training of trainers' programme from 28 May to 8 June 2001 at the Uttar Pradesh Academy of Administration, Nainital. The

trainers are currently, running 2- day workshops at the district level on 'Police for the Protection of Human Rights' at different locations in their respective State.

The idea being to train 20 Police personnel of the rank of Deputy Superintendent of Police / Station House Officer/ Constable in each workshop. In all, the core trainers will train some 1,000 Police personnel.

**(E) Human Rights Education for Para - military and Armed Forces**

Since the Commission was established a major, and reciprocal, effort has been made between it and the armed forces to exchange views on Human Rights matters including the training of personnel of all ranks. As early as 1998, the Commission prepared a training syllabus of the Para - military forces, after due consultation with them. This was incorporated in the training curriculum of the central Police organization. The Commission is therefore seized with the task of preparing a series of Handbooks for the Para- military forces^ in consultation with the Bureau of Police Research and Development (BPR & D). Three draft hand books, designed for different levels of personnel of the Central Police Organization are presently being processed.

**(F) Internship Programme**

With a view to spreading an awareness Human rights issues among university students, the Commission introduced a 'Summer Internship Programme in the year 1998. Since then, this programme has held annual during the summer vacations in the universities and has proved to be increasingly

popular. Keeping in view the increasing request for internships, the Commission also introduced a 'winter internship Programme from the year 2000. "The Summer Internship Programme - 2001 was held for a period of 30 days from 14 May - 12 June 2001. Eighteen students are pursuing studies in Law, Political Science^ Sociology and Criminology in Universities in the States of Madhya Pradesh, West Bengal and Orissa participated in the programme. Each year, the Commission chooses a different set of States from which to choose the summer interns, the idea being to provide an opportunity to students from all parts of the country to participate in this programme. During the year under review the 'Winter Internship Programme' was held from 3 December 2001, 4 January 2002. Thirteen students from Delhi University, the Indian Law Institute, New Delhi, Jawaharlal Nehru University, New Delhi: Nagpur University and Bangalore University participated in the programme.

**(G) Seminars and Workshops**

The Principal seminars and workshops organized by the Commission in the year 2001 - 2002 included here a two - day Regional Consultation on Public Health and Human Rights was held in New Delhi on 10-11 April 2001. It was organized by the Commission in consultation and partnership .with Ministry of Health and Family Welfare and The World Health Organization.

Human Rights Day was observed on 10 December 2001. The Chief Guest for the occasion was His Excellency Shri K.R. Narayanan, President of India.

**(H) Publication**

The Commission has also issued a set of four posters on Mahatma Gandhi, which carry some of his sayings most germane to an understanding of Human Rights. His Excellency, the President of India, Shri K. R. Narayanan, released the first of these posters on Human Rights Day, 10 December 2001. The quotations carried on these posters are:

‘it has always been a mystery to me how men can feel themselves honored by the humiliation of their fellow beings.’

“Peace will not come out of a clash of arms but out of justice lived and done.”

“To slight a single Human being, is to slight those divine powers and thus to harm not only that being, that with him, whole world.”

“There is a higher court than the courts of justice and that is the court of conscience.”  
It supersedes all other courts.”

With a view to disseminating knowledge on important developments in the field of Human Rights, the Commission in planning to bring out an annual publication entitled the ‘Journal of the Human Rights’.

The newsletter of the Commission continued to be published both in English and Hindi every month. That magazine providing a most useful means of disseminating information on the Commission’s activities and priorities. The demand for the newsletter, which is available to its

readers free of cost, is large and growing. The newsletter also continues to be widely read by Police personnel and personnel of the armed and Para-military forces. It has proved to be especially useful to media personnel covering Human Rights issues and the work of the Commission. Comments and expressions of appreciation about the newsletter have been received from a wide circle of people around the country, encompassing students, academicians, Human Rights activists, research scholars, Government officials, representatives of NGOs members of the legal fraternity and others.

The newsletter is also available on the website of the Commission, [www.nhrc.nic.in](http://www.nhrc.nic.in) which is consulted extensively both at home and abroad by all those who are interested in the Human Rights situation in India.

**The members of the Commission visited various places either in country or foreign for promotion activities of Human Rights.**

**(1) Visit on Behalf of the Commission to Various States**

During the year under report, the Chairperson, Members, Special Reporter and Senior Officials of the Commission paid visits to several States in the country including, inter alia, the States of Andhra Pradesh, Assam, Chhattisgarh, Goa, Gujarat, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Pondicherry, Rajasthan, Tamil Nadu, Uttaranchal and Uttar Pradesh. Programmes fixed on a number of

occasions for a visit by the Chairperson to Bihar did not materialize, difficulties being expressed by the State Government.

The visit provided an opportunity for the Commission to interact with the principal decision makers in the State, as well as with leading non - Governmental organizations and other interested in Human Rights. Every effort was made, during such visits, to cover as wide a range of the Commission's concerns as possible, keeping in mind the special problems and issues relating to the State that visited

NHRC also publishes various guide liner, volumes & Handbooks.

The National Human Rights Commission also publishes a journal. It includes articles like. ; -

1. Human Rights: New Dimensions specially focused on Redefinition of Human Rights in our New Millennium. It is an article by Justice J. S. Verma Chairperson of NHRC.
2. Struggles for Human Dignity'. This topic includes articles like 'Domestic violence and the Law' (by Indira Jaising) o 'Rights of Tribal' (B. D. Sharma).
3. It also discusses current issues like some important orders of the NHRC on Gujarat, and opinion of the NHRC on The freedom of Information Bill 2001. The hope of the Commission that the Journal will catalyze new thinking on the cause of protection of Human Rights and promotion of Human Dignity in our country. The journal has supposed to facilitate sharing of ideas, experience and information on Human Rights issues, both national and International By



Facilitating research and publication. The Journal should also provide an important Platform for building a body of high quality scholarship on Human Rights and bringing together a community of Human Rights scholars. This journal is also useful in symposia and seminars on important Human Rights issues. The journal should also be a source of new ideas and inspiration for policy makers and offers critical commentary on judicial pronouncements on Human Rights law in the academic traditions.

The journal publishes annually It focuses on three broad themes. First, each issue has discussed in depth selected new developments in Indian Human Rights law. Second, the journal highlights different ongoing struggles for Human Dignity Third, the journal contents important developments on selected Human Rights issues. In addition, the journal also reviews heading books published on Human Rights nationally and Internationally.

In all of journal's work must promote the cause of Human Dignity, which lies at the core of the struggle for Human Rights.

**(1) Visits Abroad**

While visits to the various States of our country have provided an opportunity to the Commission to understand and seek to resolve the problems being faced by individuals and various segments of society within India. The visits abroad have occasionally been necessary to attend meeting on Human Rights in which the perspective and experience

of the Commission has been sought and this has made a difference.

Among the meeting attended were the following. : -

The Chairperson and Shri Virendra Dayal, Member represented the Commission in meeting of the International coordinating committee of National Institutions for the Promotion and the Protection of Human Rights and at the 57th Session of the United Nations Commission on Human rights in Geneva between 17-21 April 2001

Shri Y. S. R. Murthy, Private Secretary to the Chairperson and Officer on Special duty (Research) represented the Commission at a workshop on the impact of Globalization on the Full Enjoyment of Economic, Social and Cultural Rights', held in Kuala Lumpur between 8-10 May 2001

Prof. Moolchand Sharma, Advisor (Research) represented the Commission in a regional workshop on "National Human Rights Institutions and the Right to Development and Economic, Social and Cultural Rights" held in Hong Kong Between 11-13 July 2001.

The Chair person and other members have also visited many places during year of 2000-2001.

**(K) Visits of the Chairpersons and Members to various States**

The Chairperson visited Jammu and Kashmir on 8 February 2001 held discussion with the Chief Secretary / home Secretary / DGP and other senior officials.

The Chairperson visited the state of Andhra Pradesh on 2 March 2001 and held meeting with the Chief Minister

and senior State Government officials. issues discussed included the allegation of deaths resulting from ‘fake encounters the killing of Human Rights activists, manual scavenging and bonded labor. The chairperson also visited the states of Uttar Pradesh, Maharashtra, Chandigarh, Karnataka, Madhya Pradesh, West Bengal and Punjab holding discussions with the Chief Secretary / DGP and other senior officials on all issues relevant to the Human Rights situation in those States.

Dr. Justice K. Ramaswamy, Members visited the State of Rajasthan and held public hearing on atrocities committed against women, Dalits and advises. The member also visited the State of Andhra Pradesh, Karnataka, Uttar Pradesh, Haryana, Himachal Pradesh, Punjab and Gujarat and held discussions with senior officers, NGOs and others in respect of the identification, release and rehabilitation of bounded laborers.

**(4) Visits Abroad**

The Commission participated in the Fifth International workshop of National Institutions for the Promotion and Protection of Human Rights held in Rabat, Morocco between 13 to 15 April 2000. Immediately thereafter, on 17 and 18 April 2000, the Commission participated in a meeting of the International Coordinating committee of National Institutions and the 56th Session of the UN Commission on Human Rights in Geneva. The delegation of the Commission comprised Justice Shri J. S. Verma, Chairperson, Shri

Virendra Dayal, Member and Shri N. Gopaldaswami, Secretary General.

“A Regional Workshop on the role of national Human Rights Institutions in advancing the International Human Rights of Women,” was held in Suva, Fiji from 5- 7 May 2000. The Commission was represented by Smt. Sujata, Joint Secretary of the Commission.

The 5th Annual meeting of the Asia Pacific Forum was held in Rotorua, New Zealand from 7-9 August, 2000. The Commission was represented by Justice Shri J. S. Verma, Chairperson. Justice K. Ramaswamy, Member and Shri N. Gopaldaswami, Secretary General. Amongst the important issues discussed was the need for a formal structure for the forum.

The Joint Secretary of the Commission also attended a Regional Workshop on Economic, Social and Cultural Rights’, jointly organized by the Canadian, Human Rights foundation and the Philippines Commission on Human Rights. It was held in Manila, Philippines, between 5 to 10 November 2000

The Chairperson visited Sri Lanka between 3-5 December 2000 to deliver the millennium lecture at the University of Colombo and the Fourth Neelan Tiruchelvam millennial lecture at the International Centre for Ethnic Studies, Colombo.

**(N) Training**

The Commission also took up a project jointly with the British Council on ‘Human Rights Investigation and

Interviewing Skills.<sup>1</sup> The Objectives of the project were to; (a) develop professional competence in investigation, interviewing and reporting skills, (b) enhance knowledge of Human Rights issues and (c) assess the feedback from the first series of training for 120 personnel in making improvements for further training. The project was developed with the support of the Foreign and commonwealth office, United Kingdom. Phase - 1 involved the training of a core group of 8 trainers. Phase - 2 will focus on the delivery of regional training programmes and phase - 3 will conduct an evaluation and assess the overall impact for planning future inputs. The (Commission / British Council collaboration has been extended in two important ways; (a) by including trainers from the Commission and the State Human Rights Commission in addition to those provided by the British Council; (b) inviting host institutes to be part of the regional programmes.

After studying the Annual Reports of National Human Rights Commission A Present research Scholar want to submit that Commission in very much active to spread Human Rights education.

The Commission has decided needy and wide issues for protection & promotion of Human Rights.

From last three or four years Commission is taking keen interest in current issues like Rights of those people who are affected by HIV / AIDS or widows in Vrindavan.

In order to make the Commission make accessible to the public particularly when emergencies arise after office

hours and holidays, the Commission has designated a special telephone number No: 98 -102 – 98900 to receive complaints from those seeking assistance From the Commission. As senior officer of the 6-|ommission is in charge of this facility. This service is available to the public from 6:00 p. m. on every working day till 10:00 a. m. the next morning and round the clock holidays.

In recent years, National Human Rights Commission has arranged many activities for Human Rights Promotion. Specially, seminars , lectures, Training programmes etc.

The present Research wants to mention all these activities one by one.

- 1) At first, Speech of the president of India on the Human Rights Day. (10 December 2001).
- 2) Second is NHRC's chairperson on terrorism

He delivered his speech on 4th December 2001 for Both “Shawn 1 memorial oration”

- 3) Third is statement of justice J. S. Verma, Chair person, NHRC, at Geneva 5) Fifth is, lecture by, Justice, J. S. Verma Chair person NHRC ‘Humanism - The Universal (freed on 22 May 2002.

Justice J. S. Verma's two lectures specially delivered on 22 May 2002 were delivered in India International Central, Delhi. Under lecture series on greed's of our times organized by The foundation for Universal Responsibility of His Holiness The Dalai Lama, New Delhi.

- 6) Sixth in NHRC Chair person calls for integration of the disability dimension.

In recent National Human Rights Commission has arranged many activities for Human Rights Promotion. Specially the Commission has organized many seminars^ lecture series, training programmes etc. The present Researcher wants to mention all these activities one by one.

The National Human Rights Commission has also published some guide books to sensitize people, educators & media also on various aspects. At First, as for example, a Hand book on discrimination based sex, caste, religion & disability especially for teachers. The purpose of publishing this book to avoid discrimination at school level on here mentioned ground.

The National Human Rights Commission also published a Guide book for media people who are working on child abuse problem, but media people is not target for publishers also a single citizen to every reader of this book any corner of the world is target.

This guidebook is the culmination of four workshops organized by the NHRC' and Prasar Bharti with support from UNICEF. This guidebook is for professionals working? n the media including media administrators, journalizes- print / TV / Radio and Internet documentary film makers Software producers, Advertising agencies, public interest programme producers and Internet content providers. It aims facilitate media intervention to protect the Rights of children against sexual violence. The media, particularly the electronic media, plays an important role in shaping society's views and influencing the way people think and behave.

#### **4.9 Now; some details about the Commission's promotion activities during the year of 2005-2006.**

A periodical review of the Bonded Labor and Child Labor situation in UP with focus on the Districts of the carpet - weaving belt was carried out by the NHRC. This periodical review by the NHRC has been mandated by the (supreme Court of India vide its order dated : 11-11-1997). The Commission's Special Reporter Shri Chamanlal Visited Varanasi, Mirzapur, Bhadoi, Allahabad and Kanpur from 2- 7 September 2005. District-wise review was carried out at Varanasi, Bhadoi, Mirzapur and Allahabad in meeting held with the District Officials associated with these issues. Separate meeting were held with the NGOs working in the field of child labour at Varanasi, Bhadoi, Allahabad and Mirzapur.

A Total of 1053 released bonded laborers belonging to UP were required to be rehabilitated in the State. 32 bonded laborers of UP were received from other States and were required to be rehabilitated in Up. This gives a total of 1085 bonded laborers required to be rehabilitated. 120 of them have either died or become untraceable or have refused to take any assistance. Of the remaining 9, 65, 790 have actually been rehabilitated.

68 bonded laborers are required to be rehabilitated at places other than the place of their identification. This requires physical verification of 18 of them in Urai (Jalun), 1 in Sonebhadra, 46 in Hamirpur and 3 in Hardoi. After the verification is completed, steps for their rehabilitation will be started. The Labor Commissioner assured that rehabilitation of these persons would be completed shortly.

The rehabilitation of the released bonded laborers is receiving good attention from the Labour Commissioner and his team of enthusiastic officers as before.



The Government of Up had received a grant of Rs. 10 lakh for awareness generation. The grant has been utilized carefully and efficiently on Radio /TV programmes, Publication of a Booklet on Bonded Labor, Staging of Nukkad Nataks etc. as per the Guidelines of the Ministry of Labor and Utilization certificate has been submitted to the Government of India.

A grant of Rs. 5 lakh was received from the Government of India for Evaluation Studies in Varanasi, Chitrakoot, Mathura, Mirzapur and Sonebhadra. Studies were conducted by Giri Vikas Adhyan Sansthan Lucknow (Varanasi and Chitrakoot), Academy of Management studies, Lucknow (Mathura) and the Institute of Tourism Studies, Lucknow University (Mirzapur and Sonebhadra).

- **Magnitude of the Study : -**

1) **CHILD LABOUR**

The identification of Child Labor has totally stopped in UP following the issuing of a single line directive by the Government on 29th August 2003 declaring the end of the “Inspector Raj” in the State. However, the Government has modified its order in December 2004 and allowed inspections of Factories and Establishments on receipt of specific information about violation of labor laws after obtaining permission from the competent authority. This does not seem to have helped the situation at all as regards Child Labors. While the interaction with the NGOs at various place shows that the employment of children in both hazardous and non - hazardous categories has substantial increase during the last 2-3 years, which was also supported by figures of detection till August 2003, the detection of child labor is

practically nil in the state after the said directive came into force. The situation has undergone no change since the issuing of the revised instructions. During the period 1-4-2004 to 31-3-2005, only 4 children were identified employed in non hazardous occupations /processes in the entire state. Detection in respect of hazardous category was nil. In the current year (1-4-05 to 30-6-05), 30 children have been identified employed in hazardous (carpet weaving) in District Bhadoi in the entire state. With this, the number of children identified in Up since the survey of 1997 ordered by the Supreme Court comes to;

Hazardous	– 29752
Non hazardous	– 35997
Total	– 65749

**2) Educational Rehabilitation of Detected Children:**

24261 out of a total of 29752 children identified in hazardous occupations have been admitted to Formal or non - formal System of schooling. This gives a fairly satisfactory percentage of 82. In the non hazardous category, it comes to 89.2% 'excluding the number of children belonging to migrant families, (8210) only 797 out of a total of 65749 that is 1.2% have not been admitted to School. Although the picture can be described as too good to be true and does not take into account the actual retention of these children in school after enrolment, with the efforts of the labor and education department the overall situation of education of identified child laborers in the state has certainly shown some improvement during the period of review.

### **3) Recoveries fro Offending Employers:**

The number of employers involved in the total detection of 29752 children in hazardous work is 10,741.7877 prosecutions have been launched against the employers since the First purvey of 1996-97 ordered by the Supreme (four.7176 R. Cs have been issued for recovering a total amount of Rs. 32, 40, 60,000.1471 R. Cs. have been stayed by the Court, 1406 have been quashed /returned. A total amount of Rs. 1, 03, 49,632 has been collected which includes Rs. 8, 29,783 collected after the last review (March 2004). The total collection in the districts of the carpet belt is Rs. 15, 38,164 (14.86%). The statement received from the Labor Commissioner, UP shows that a total of Rs. 14, 00, 06,225 is recoverable against R. Cs. which have neither been stayed, nor quashed / returned. The number of these R. Cs. could not be furnished. Special efforts need to be made to settle these R. Cs. which have not been contested and are pending execution. The labor Commissioner was advised to write to the D. Ms in this connection.<sup>6</sup>

#### **4.10 Now Some Latest Promotion Activities**

##### **1) UK Minister of Immigration, Citizenship and Nationality pays a visit to Commission, Promotion Activities**

‘New Delhi, 9 November 2005

Mr. Tony McNulty, UK Minister of Immigration, Citizenship and Nationality visited the Commission on 8 November 2005. He had an interaction with the Humble Chairperson, Dr. Justice A. S. Anand. During their interaction, Mr. McNulty was given

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6. “NHRC annual report” (2004-2005), collected information from website : [www.nhrc.nic.in](http://www.nhrc.nic.in)

information regarding the working of the NHRC and various ongoing projects. Issue of terrorism following the blasts in London on 7/7 and in Delhi on 29/10 was discussed. Chairperson NHRC informed the visiting dignitaries about the stand of NHRC in regard to combating terrorism without chilling the civil liberties of the citizens and without sacrificing the Rule of Law. Appreciating the working of the Commission, Mr. McNulty informed the Chairperson that his country regarded NHRC, India as an exemplary model of the National Human Rights Institutions and that while establishing the National Human Rights Institution in UK, which was being debated in the House of Lords; they may be drawing upon the experience of NHRC, India.

**British PM's wife Cherie Booth pays a visit to NHRC; Says UK plans to set up a Human Rights Commission.**

New Delhi, 7 September 2005.

British are in the process of formulating legislation and setting up of a Human Rights Commission in its country. This was conveyed by Mrs. Cherie Booth, wife of British Prime Minister Tony Blair, who headed a British delegation. Mrs. Booth who was particularly keen to get an idea of the working and experience of the Commission stated that UK would like to learn from active Human Rights institutions like that of India. During her interaction she was briefed on the working role of the NHRC, the broader issues of Human Rights child fights and child trafficking.

**NHRC seeks Photographs on Human Rights Issues – Clarification**

New Delhi 28 September 2005.

The National Human Rights Commission has been bringing out a number of publications, posters, advertisements and an annual desk calendar, which required photographs sensitive to the issues of Human Rights. For this, the NHRC would like contributions in the form of photographs from both Amateur and Professional Photographers. Selected photographs will be paid a sum of Rs. 5,000/- as a token of appreciation. In addition, whenever the selected photo is used, the photographer's name would be acknowledged.

The themes on which photos are required by the NHRC are –

- i) Rights of Mentally ill people
- ii) Rights of Health
- iii) Rights of The Elderly
- iv) Rights of persons with HI V/AIDS
- v) Rights to Food and Drinking Water
- vi) Rights of the Disabled
- vii) Trafficking in Women and Children
- viii) Bonded Labor

#### **4) NHRC, EXPERTS MEET TO DISCUSS HUMAN RIGHTS EDUCATION FOR - PREPARATION OF DOSSIER PLANNED**

New Delhi 22nd February 2006

In its continuing effort at creating awareness and inculcating Human Rights Culture amongst the masses in the country, the National Human Rights Commission (NHRC) held a meeting with experts and academicians in New Delhi on 20th February 2006. The meeting, which was jointly organized, by the NHRC and the NGO Karnataka Women's Information and Resource Centre deliberated on how to prepare dossiers on Human Rights Education

for the University level students. These experts are being roped in to write essays based on their own experience on field.

The experts who attended the meeting were Dr. D. Jeevan Kumar, Professor of Political Science, Bangalore University, Ms. Nalini Nayak, Human Rights Activist, Shri Sanjay Sangvi, Ms. N. B. Sarojini, Ms. Shivani Chaudhary, Dr. Meera Pillai, Shri Ashis K-Kothari, Founder Member of Kalpavriksh, Smi- Martin Macwan, Navsarjan Trust, Ms. Ela. R. Bhatt, SEVA, Dr. Poonam Agarwal, Prof. NCERT and Ms. Devaki Jain, Project Director, KWIRC.

**5) UP Police takes steps to sensitize its staff on Human Rights after NHRC expresses its distress**

New Delhi 23rd February 2006.

The UP Police have assured the National Human Rights Commission that it has directed its personnel to be sensitive while dealing with cases of Human Rights violation. This assurance came

After the NHRC expressed its distress on the approach adopted by the disciplinary officer in awarding minor penalty of 'censure' to the erring officials in the case of a 70 years old man Hoshyara who was picked up by the Police in July 2001 Accordingly to a story reported in an English fortnightly Human Rights Observe, published from Delhi the victim had been taken to the Police station, tortured and released only after he paid Rs. 1500/-.

The DGP, UP was directed by the Commission to personally look into the matter and ensure that a penalty, which is commensurate with the gravity of misconduct committed by the erring officials, is awarded to them. He should also issue

instructions to all the disciplinary authorities in the State Police System to be alive to the issues of violation of Human Rights by the Police and corruption in Police force while awarding penalty for misconduct to the erring officials.

**6) Health Care facility in the Country is appalling and the State has to fulfill its Constitutional obligation to provide medical services to the people; NHRC**

New Delhi 4th March 2006

Dr. Justice A.S.Anand, Chairperson, NHRC has said that the state of health care facility in the country is appalling and that public sector and private sector need to act in partnership to bring health care facilities for the common people. He said that, The Commission acknowledges various constraints of the Governments in providing health care to all but constraints cannot be accepted by citizens for far too long as excuse for the denial of their Right to health. The State cannot avoid its constitutional obligation with regard to providing health care on account of financial constraints.” He said that terms of health care facilities the country faces three 4 basic challenges - accessibility and affordability. Dr. Justice Anand was addressing the participants of the Review Meeting of

The Recommendations of NHRC Core Group on Health and Public Hearing on Health Organized by the Commission on 4th March 2006 in New Delhi,

The Commission has focused on the issue of ‘Right to Health’<sup>1</sup> especially on issues related to silicosis, organ transplant, blood transfusion, HIV / AIDS related issue and Emergency Medical Care. It has organized 5 Regional Public Hearing on Health followed by a National Hearing in December 2004.

## **Human Rights Awareness is vital for creating a culture of Human Rights: NHRC**

New Delhi 4th March 2006

Spreading Human Rights awareness among the common people in their language is vital for creating a culture of Human Rights. Unless people are aware about their Human Rights they cannot protect their Human Rights or seek redressed of its violation. The language of Human Rights Awareness literature, thus, should be simple enough to be understood by common people'. NHRC, Chairperson Dr. Justice A. S. Anand said this the concluding session of the two - day National Seminar in Hindi on the Concepts of Human Right in Indian Culture & Importance of Human Rights Education in India,' organized by the Commission in New Delhi on 2-3 March 200§. He said that, Jill religions are inspired in there own way by an innate concept of Human Rights He emphasized that Rights and duties are interlinked. While Rights without duties lead to arrogance, duties without Rights lead to slavery. Hence, there is a need to maintain balance between Rights and duties.

Dr. Justice A. S. Anand, Chairperson, NHRC also gave away awards to the winners of the creative writing competition on Human Right in Hindi organized by the National Human Rights Commission.

### **7) SSB adjudged winning team at inter - CPO Debate Competition on Human Rights.**

New Delhi 8 December 2005

The Sahastra Seema Bal (SSB) has been adjudged the overall winning team of this year's Inter-CPO debate competition on Human Rights organized jointly by the National Human Rights



Commission and the Border Security Force. Eight teams from the SSB, Assam Rifles, CRPF, BSF and ITBP debated on the topic 'Can terrorism not be countered within the parameters of rule of law without sacrificing Human Rights' in both Hindi and English in the final conducted. The winners will be felicitated at the function being held by the NHRC on Human Rights Day, i. e. 10 December 2005. The debate competition, which has been an annual event since 1996, is aimed at creating awareness on Human Rights within the central Police organizations.

**9) International Round Table for NHRC on ESCR -ends;  
New Delhi Concluding Statement Adopted.**

New Delhi, 1 December 2005

The three-day International Round Table on National Human Rights Institutions for ways to implement Economic, Social and Cultural Rights came to an end in New Delhi, Today with a call to states to respect and ensure that National Human Rights Institutions (NHRIs) are established in accordance with the Paris Principle adopted by the UN General Assembly on 20 December 1993. They also called on their institutions to be adequately resourced to enable them to deal with Economic, Social and Cultural Rights (ESCR).

The New Delhi concluding statement, adopted by delegates from 24 countries reaffirmed that all Human Rights being universal, indivisible and interdependent, National Institutions should adopt a comprehensive approach to the promotion and protection of Human Rights, which includes ESCR.

56. All Information are Collected from website – [www.nhrc.nic.in](http://www.nhrc.nic.in)

## CHAPTER – 5

### Right to Life

#### 5.1 Life: Meaning

“Life is something more than mere animal existence and the inhibition against the deprivation of Life extends to all those limits and faculties by which Life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the taking out of an eye or the separation of any other organ of the body through which one communicates with the outer world.”<sup>1</sup>

The Apex Court had referred to the classic judgment of *Field v. Barlow* on the meaning of above words.

##### 5.1.1 Life : Ancient Hindu View.

In fact, as philosophers tell us, Life is lived at many levels. The Rig Veda {10.177.2} gives a subtle description of the mundane activity of speech. The soul (which in Rig Veda, is compared to a bird soaring high in heavens) inspires or fills up the mind with speech. The ‘Gandharava’ (the mind) carries it to the heart And then, the luminous inspired speech takes shape, in words that can be heard. One can pursue this imaginary further. While the external mundane activities of Life have their own place. They are the manifest of an inner, unseen, unperceived activity – which indeed is the real ‘Life’ that a Human being lives. It is true that judicial decisions on Article 21 (Right to Life) do not embark upon such an analysis in ‘depth’ but; they do take note of ‘width’ of the ‘Right to Life.’

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<sup>1</sup> That judgment is *Moon v/s Illinois* (1963) referred to in *Kharak Singh v/s State of Rajasthan* AIR 1963 sc 1295.

## **5.2 An Improvement of Right to Life**

Leaving apart the debatable issue most of the civilized nations agree that Life is sacrosanct and hold that Life means some thing more than mere animal existence. This something more in the realm of Human Rights may mean love compassion, respect, physical integrity and the like.

It is self evident truth that man having born in this world. Whatever cause one attributes, be it god nature or biological accident. He wants to have the needs fulfilled. These needs depend upon the socio-economic and political conditions of the society in which he lives. As and when the society Progresses needs change these needs have to be met in the existing legal framework.<sup>2</sup>

## **5.3. Right to Life as a Primordial Right**

Primordial Rights are those basic Rights which one should possess in order to enjoy other Rights. That is, they are those Rights without which, the enjoyment of other Rights is not possible. They are like parent Rights from whom the children Rights spring from. As for example, there such Rights identified are:-

1. Right to Life
2. Right to Development
- 3 Right to Environment

But for present research study, to know about Right to Life is more important. The argument is, most societies recognize Right to Life as most basic Right for any Human being to exist in the modern civilization. In the final analysis, scholars conclude that if there were no Right to Life, there would be no point in other Human Rights.

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2. Bakshi P.M. **The constitution of India, with selective comments** – (2002) – Unive4rsal law Publishing Co.Pvt.Ltd.Delhi P.48

Therefore, today non-deprivation of Life is the core of the Rights of the person; recognized by almost every nation of the world. 590; many regional International standards has been established; for the security of Right to Life. The Present research Scholar wants to describe them one by one.<sup>3</sup>

### **5.3.1. The International standards regarding Right to Life :**

Article: 3 of the Universal Declaration of Human Rights, 1948 says, 'every one has the Right to Life, Liberty and security of person.'

Article 6 of the Covenant on Civil and Political Rights says: "Every Human being has the in here Right to Life. This Right shall be protected by law. No one shall be arbitrarily deprived of his Life".

Article -2 of the European Convention on Human Rights says: "Every one's Right to Life shall be protected by law. No one shall be deprived of his Life intentionally save in the execution of a sentence of a Court following his conviction of a crime for which this penalty is provided by law.

Article 4(1) American Convention on Human Rights, 1969 provides as follows:

"Every person has the Right to have his Life respected. This Right shall be protected by law and in general from the moment of conception".

Article: 6 of Covenant of Civil and Political Rights proclaim that every Human being has the inherent Right to Life.

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3. Naikar L.D **the law relating to Human Rights** (2004) – Puliani and Puliani publishers private Ltd. Bangalore P.400

Man cannot live only on the guarantee or protection of Life given by the State. In order to live, his basic needs such as food, shelter, clothing and medical care should be met. These are the aspects of social Rights recognized in Articles 11 and 12 of Covenant on Economic, Social and Cultural Rights. Especially the developing countries like India needs Rights like Economic Social and Cultural Rights.

### **5.3.2. The regional standards regarding to Right to Life :**

The Indian struggle for freedom was not only to demolish the foreign rule but it was also to build an egalitarian society to ensure Life of quality to the people with Right to Equality.

The prevailing conditions before independence in this country were pathetic and miserable. People suffered with poverty, ignorance and illiteracy, want of food & shelter even basic Human freedoms were not available. The Constitutional law of India also provides fundamental Rights to the people, which include basic Human Rights. Among all the Human Rights the most cherished Right is the Right to Life.<sup>4</sup>

Article 21, if read literally, is a colorless article and would be satisfied, the moment it is established by the State, that there is a law which provides for a procedure which has been followed by the impugned action. But the expression 'procedure established by law. In Article -21 has been judicially construed as meaning a procedure, which is reasonable fair, and just.

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4. Ibid P.244

Article. 21 lays down that no person shall be deprived of his Personal Liberty, except according to procedure established by law.<sup>5</sup>

A lay man perhaps asks a simple but basic question, as to why a constitutional provision is needed on the subject. Whether the ordinary law is sufficient or not? It is true that the Indian penal code in all contexts contains ad judicable provisions to punish a person who takes away or attempts to take away the Life of another Human being. But the impact of a Constitutional Provision lies in the fact that, by being elevated to the pedestal of fundamental Right The Right is placed within the reach of ordinary legislation inspired by political motives.

‘Life’ in Article -21 is not merely the physical part of breathing. This has been recognized by the Courts.

The jurisprudence of personhood or philosophy of the Right to Life envisaged under Article -21 enlarges its sweep to encompass Human personality in its full bloom. Right to Life is guaranteed under Article -21 of the Indian Constitution.<sup>6</sup>

It is a humble opinion of Present Research Scholar that the concepts related to Dignity / Equality or Liberty may change from time to time and place to place, but the concept of Right to Life has always been static and the same everywhere in the world.

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5. 2005 A.I.R. Journal/1 I ‘from Article’ common man and the constitution of the India’ PP-1-2

6 Bakshi P.M. ( 2002) ,"**The Constiution of India with selective comments**", ( 2002), Universal Law Publishing Company Private Limited. Delhi p. 217

Now it is compulsory to know about protection activities related to National Human Rights Commission (Known only as “The Commission” ) The Commission has solved many cases related to Right to Life during its establishment from 1993 to date. The Present research Scholar wishes to discuss all those activities.

#### **5.4 Some well-known cases, considered by the Commission in relation to Right to Life:-**

##### **1. Disappearance of Shri Harjit Singh since April 1992.**

Amnesty international has brought the notice of the Commission a report on the disappearance of Shri Harjit Singh an employee of Punjab State Electricity Board. It was Stated that he was arrested by the Punjab Police claimed that, Shri Harjit Singh was killed in an encounter, whereas the father of Shri Harjit Singh asserted that he had seen him alive in Police custody after the Police claimed that he was dead.

While the complaint was being followed up with the State Government to ascertain the progress of investigation. The Commission received a number of representations from NGOs and individuals (some from abroad) expressing concern over the delay Observing that more then 2 years had elapsed since the direction of the High Court to the Sessions judge. Chandigarh to investigate the matter, the Commission decided to intervene in the proceedings pending before the High Court u/s 12 (b) of the Protection of Human Rights Act 1993 and appointed a senior Advocate of Chandigarh. In present case an international organization was indicated the matter to the Commission. And the Commission transferred the case at State High Court.

## **2. Enhanced Compensation To Persons Affected By The Activities Of Extremists In Andhra Pradesh**

During the Commission's visit to certain districts in Andhra Pradesh in August 1994, a number of representations were received by the Commission from the victims of Naxalite and extremist activities. A majority of these representation sought adequate compensation to the next of kin of the deceased, or for those permanently disabled or seriously injured at the hands of extremists. A number of other petitioners sought protection for their Life and property, consequent upon violence resulting from the action of extremists.

By an order of the Government of Andhra Pradesh issued on 2 April 1991, compensation to victims of Naxalite violence was paid at rate of Rs.25, 000/- in case of death, Rs.10, 000/- in case of permanent incapacitation, and Rs.5,000/- in case of injury. In this case, compensation was granted.

## **3. Custodial death of Abdul Gaffer Khan in Goa**

The Commission received messages from the District Magistrate and the Superintendent of Police of South Goa District in regard to the custodial death of Abdul Gaffer Khan. He was arrested by Marmugoa Town Police at 0005 hours on May 1994 and who subsequently died at around 0200 hours on the same day. In this case District magistrate was complainant.

## **4. Commission Take UP Cases Of Custodial Deaths In UP**

The Commission has initiated follow-up action on the basic of Amnesty International's report on 'Deaths in Police custody in India in 1994', in respect of a number of cases in Uttar Pradesh (UP).



The officer-in-charge of Kunwargaon Police station and some other Policeman reportedly arrested Shyabir Singh, Desharaj and Dharamvir Singh from their village between 3-5 September 1994 and detained them illegally for a number of days in the Police station. During which period they were said to have been tortured, Deshraj was subsequently burnt to date on 12 September 1994 by pouring kerosene oil on him. The Commission further noted that the police officer tampered with records to show that arrest was made on 12 September 1994.

While recommending payment of a sum of Rs.300, 000 to the next of the deceased. The Commission asked the State Government to recover either the whole or a part of this money from the service dues of the errant Police officials. The Commission also asked the State Government not to wait for this recovery while paying compensation.

In this case the Commission should know about the tragedy by Amnesty International. The Commission also recommended for monetary compensation.

## **5. Investigation of Custodial Deaths in Bihar**

During a visit of the Chairperson of the Commission to Bihar in August 1994, the State Government had brought to his notice 15 cases involving 17 custodial deaths. That had taken place in that State from 1986 to 1991. According to the State Government, Police personnel were found guilty in 9 cases. While no prima-facie cases could be established in remaining six cases. Amnesty International had also included these 15 cases in a report published on this subject.

The Commission cross - checked this information with the Ministry of home affairs. In addition, the Commission sent a senior officer of its investigation Division to look into some of these cases.

In these cases State Government takes notice of cases.

**6. Recovery Of Compensation Amount From Errant Police Personnel Responsible For Custodial In Tamil Nadu, Orissa And Rajasthan**

In a move to bring the “quick and appropriate” sensitization of Police personnel and others, the Commission has taken view that compensation to be paid in cases of custodial death should be borne by State but recovered form the delinquent public servants.

The Commission have since received a Communication from the Government that action had been initiated for the sanction of compensation to the next of kin of Anthony and its subsequent recover from the guilty Police officials. The Chief Minister of Orissa has also written to the Commission stating that compensation, as recommended by the Commission, has been sanctioned to the next of kin of Babula Das who died in Khurda Police Station custody.

**7. Death Of Kheshino Sumi In The Custody Of The Armed Forces (Assam Rifles) In Nagaland**

Upon the intervention of the Commission the Ministry of Defense has sanctioned a sum of Rs.10, 000 to the next kin of Kheshino sumi died in custody of Assam Rifles. The Commission initiated a proceeding on the basis of a report subsequently from the Superintended of Police, Dimapur, Nagaland indicating the custodial death of Kheshino Sumi. He was arrested on 12 November

1994 from Purana Bazar as he was reportedly being taken by the Assam Rifles on a mission to uncover the hide out of insurgents. It was Stated that kheshino jumped from a running vehicle with a view to escaping and was injured in the process. After being found in a ditch the report added that Kheshino was taken to the civil hospital, Dimapur but that the doctors on emergency duty declared him dead. According to the defense automates, the salient fact which emerged from the Court of inquiry proceedings was that Kiheshino was actively involved in the activities of the outlawed National Socialist Council of Nagaland (IM) and that he was neither maltreated nor beaten after his apprehension.

After a detailed analysis of all the facts Stated in the report, the Commission observed that:

The “detention of Mr. Kheshino from 12 to 14 November 1994 was unauthorized and illegal:

In the absence of positive evidence of assault, the Commission noted that it was not in a position to hold that kheshino died on account of physical torture. However, the Commission pointed out that this case involved violation of law and therefore, recommended compensation of Rs.1, 00,000/- to the next of kin of Kheshino sumi.

#### **8. Killing Of CP(ML) Activists In Police Firing In Begusarai , Bihar**

Expeditious investigation into the killing communist party of India (Marxist-Leninist) CPI (ML) activists by the Bihar Police personnel at Begusaral, and payment of compensation of the next of kin of deceased and injured persons, has been recommended by the Commission to the Bihar.

The Commission observed that the killing of Harbans Singh was a clear case of gross negligence. The Commission therefore recommended that compensation of Rs.100000/- be paid to Harkeerat Kaur, the widow of the deceased and also a subsistence allowance of Rs.1500/- per month during her Life time.

**9. Action In The Case Of Rohtak Fire Unit Cracker Unit Blast In HARYANA**

The Commission took suo-motto cognizance of press reports of an explosion at a fire cracker factory in Rohtak. Haryana on 24 May 1995 and issued notice to the State Government calling.

For a report the press report put the death toll at 23 which included 13 women, 6 children and 4 men.

The Commission recommended as an interim measure that a sum of Rs.14, 15,000/- be paid to the next of kin of the deceased persons and that this money be collected either fully or partly from the factory owner and from the delinquent officers.

The Commission also advised the State Government to frame rules for employment in a hazardous industry, in particular, it said that an insurance policy of Rs.50000/- per employee at the cost of the employer should envisaged, in a same way as was done in the case of the Savakis factory by the Supreme Court. In this case, the Commission took notice of indent from press report.

**10. Killing Of Jogi Thakur In A Fake Encounter In Bihar.**

Upon the intervention of the Commission, a case under section 302 of the India penal code for murder was registered against guilty Police personnel of Bihar involved in the killing of Jogi Thakur in a fake encounter.

Smt. Urmila Kunwar, wife of the deceased, filed complaint with the Commission demanding a thorough investigation into the death of her husband.

On the basis of the investigation report, the Commission held that this was a clear case of murder and, accordingly, recommended registration of a case under section 302 IPC against the delinquent Police officers the Commission also recommended payment of interim compensation of Rs.1, 00,000/- to the wife of the deceased.

#### **11. Compensation To The Next Of Kin Of Riot Victims In Gujarat**

Upon the intervention of the Commission a sum of Rs.2,00,000/- was sanctioned to the heirs of Gulab Nabi Pandey and Zanier Ahmed Pandey, who died in communal riots in Surat, Gujarat, following the demolition of Babri Masjid.

The Commission received a presentation from Basher Ahmed Mir of Jammu & Kashmir stating that the deceased were his relatives and that they were trading in Kashmir shawls in Surat Gujarat where they were killed in communal riots which broke out in December 1993.

As no response came from the State Government for about four months, the Commission issued summons to the Chief Secretary and the Revenue Secretary to appear in person before the Commission, which they did. Following that hearing, the Gujarat Government reported to the Commission that ex-gratia payment of Rs.200,000/- had been sanctioned to each of the heirs of the deceased.

## **12. Custodial Death Of Asit Kumar Chaturvedi:**

### **Uttar Pradesh**

This case was taken up by the Commission on receipt of a complaint a certain Shri Amit Kumar Chaturvedi, an under trial prisoner in District Jail, Agra died as a result of injuries inflicted while in jail custody. The report stated, that following high fever, Shri Asit Kumar Chaturvedi was admitted to SN Medical College, Agra, that his family members arrived there to take care of him and that he died within two days after being released on bail, the Commission noted that the report was silent as to what was done to Shri Chaturvedi while he was in prior to his being sent to the hospital.

The Commission's investigation prime-facie indicated that the prisoner was severely beaten up by the jail. The Addition City Magistrate also, in his report, on the basis of an examination of post mortem report, panchnama and other records, concluded that Asit Kumar Chaturvedi had died due head and other injuries that he had suffered in the Central Jail, Agra.

Pursuant to the recommendations of the Commission, the Uttar Pradesh Government has informed the Commission that it has sanctioned a sum of Rs.1,00,000/- as compensation to the next to the kin of the deceased.

## **13. Death Of Usman Ansari Following Alleged Police**

### **Violence: Maharashtra**

The Commission received on 7 October 1995 a complaint from SMT. Hamida Begum, a resident of Nagpur alleging murder of her husband, Usman Ansari, who she said was forcibly take by four Police constables from their home to prepare food for a party

that was organized to celebrate the promotion of a Head Constable as Sub Inspector. Next morning, the dead body of her husband was found on the road near the place where the party was held.

The Commission, there for, asked the Government of Maharashtra to get this matter investigated by CBI and also to pay a sum of Rs.2, 00,000/- as compensation to the next of kin. The Commission has directed that the amount so paid may subsequently be recovered from such of those Police personnel whose guilt will be established through and independent investigation.

#### **14. Measures To Prevent Deaths By Starvation In Orissa**

Pursuant to the orders of the Supreme Court of 26 July, 1997, the Indian Council for Legal Aid and Advice filed a petition before the Commission seeking interim measures to prevent deaths by starvation that had reportedly occurred in what are popularly known as the 'KBK Districts' of Orissa which now, in fact, comprise the eight districts of Kalahandi, Nuapada, Bolangir, Sonepur, Koraput, Malkenagiri, Nawarangpur, and Rayagada. Prior to that, the Commission had received a letter from the then Union Agriculture Minister, Shri.Chaturanan Mishra, requesting the Commission to undertake an investigation into the alleged deaths by starvation. The Commission had, thereupon, sent a team of officers, comprising the Secretary 'General and the Director General (Investigation) to visit the affected parts and submit a report to it. The Commission also received a joint memorandum signed by seven members of the Orissa State Legislative Assembly in which they listed 14 cases of deaths occurring allegedly as a result of starvation.

After due consideration, the Commission also arrived at the view that interim measures should be undertaken over a period of

two years, subject to such periodic reviews as it may consider appropriate and necessary, and that these interim measures should be as follows..

**a. Monitoring Arrangements:-**

· At the State-level, a Monitoring Committee is established under the authority of the Chief Secretary, to guide and supervise the over-all effort.

· In addition, and way wishing to transgress the normal lines of command and control, the Commission intended to appoint an eminent person to serve as its Special Reporter for the ‘KBK districts.’

**b. Specificity of Programmers:**

The Commission-after careful discussion with all concerned-received from the State Government a specific set of commitments district-wise and each of the 8 districts belonging to the ‘KBK’ group in respect of the programmers relating to Rural Drinking Water Supply, Soil Conservation and an appraisal in respect of these programmers.

**c. Emergency Feeding programme:**

After reviewing the suggestions and views on these programme, the Commission was of the opinion that:

The Emergency Feeding programme, as devised, should continue on a once-a-day basis. However, the programme should be available each day of the month.

If any needy persons had been inadvertently omitted from the programme, they could be added to those being fed, on the advice of the concerned gram. Promotion & Protection- both activities are included.



**15. Hiring By Security Forces In Bijbehara, Jammu & Kashmir.**

On 1 November 1993 the Commission, suo motu took cognizance of press reports about the death of about 60 persons in and around Bijbehara in Jammu & Kashmir as a result of hiring by security forces operating in the areas and called for reports from the Ministries of defense and home affairs as also the Government of J&K.

The Commission noted that disciplinary proceedings had been initiated under the security force act against 14 members of the force, and further that, on the basis of a magisterial inquiry steps may be initiated to launch prosecutions. Payment was recommended of interim compensation on a graded scale.

**16. Alleged Custodial Death Of Shri Shanskem Kharsaiot Followed By Death Of Two Persons In Police Firing In Meghalaya.**

The Commission took notice of an item broadcast over A.I.R. on 5 November 1993 that two persons had died as a result of Police firing on a violent crowd gathered outside Sohra Police station in Cherrapunjee in Meghalaya State... it was reported that people had gathered outside the Police station to protest against the alleged custodial death of Shri Shamskhem khasaior. The Commission immediately called for a report from the Chief Secretary, Meghalaya. It was further reported that the next of kin the deceased had been given Rs.25000/- to meet funeral.

With regard to the custodial death, it Stated that the Magisterial inquiry had prime facie indicated the Police officer concerned. Criminal case had been registered against him. It was

further reported that ex-gratia assistance of Rs.50000/- had been given to the next kin of the deceased and a near relative of the deceased had been given an appointment in Government on compassionate grounds.

**17 Alleged Custodial Death Of Shri Madan Lal In Delhi.**

The Commission suo motto took cognizance of a report published in a newspaper dated 30 November 1993 captioned “two cops suspended for custody death. It was reported that Shri Madan Lal, 22 years of age, had allegedly died in Police custody under mysterious circumstances.

The Commission called for a report from the Government of the National Capital territory of DELHI.

In this case interim compensation was granted of Rs.50000/- to the next of kin and the Commission also reasoned the protection to the family members of late Shri Madan Lal.

**18. Alleged Custodial Death Of Shri Om Prakash In Delhi.**

A report appeared in newspaper dated 10 November, 1993, captioned “Youth dies in custody” it was stated that negligence or the part of the Police led to the death of a 26 year old youth in lock-up in Sultanpuri Police station of the North-West district. The Commission suo motto called for a report from the chief secretary of the National Capital Territory of Delhi. Who had conducted the inquest, had concluded that the death of Om Prakash was due to head injuries which he might have sustained due to fall while driving a two-wheeler under the influence of alcohol. However, there appeared to be gross negligence on the part of officials who came in contact with Shri Om Prakash shortly before his death.

On 17 January 1994, the Commission directed the Government to furnish information regarding the result of departmental action. It was informed on 24 February 1994 that a departmental inquiry had been order against five Police officials for various procedural lapses, including delay in medical treatment of the deceased and a case u/s 304 A IPC has been registered.

**19. Alleged Custodial Death Of Shri Chandrasekhar IN PONDICHERRY**

The Tamil Nadu State legal aid and advice board brought to the notice of the Commission that Chandrasekhar had died on 29 December 1993 allegedly in Police custody. The investigation earlier ordered u/s 14 of the act was accordingly dropped.

The Commission appointed Mr. Gururajan for investigation but mean while Pondichery Government informed that Police officials has been suspended.

**20. Alleged Custodial Death Of RAJA In Dharamapuri District, TAMI NADU.**

The Tamil Nadu State legal aid & advice board brought to the notice of the Commission a press report concerning the disappearance of Raja, aged 15 years who had been taken into custody by house Police in Dharmapuri district of Tami Nadu. The local Bar Association and Denkanikotti Bar Sssociation had passed resolutions urging impartial inquiry. The Commission ordered for a report from the Government of Tamil Nadu.

The State Government informed the Commission on 22 February 1994 that the three Police officers concerned had been suspended and a Magisterial inquiry into the incident had been ordered by the collector.

**21. Disappearance Of S/Shri Ram Singh Biling And Avtar Singh Mander, Journalists, In Punjab.**

The writers in prison committee of international P.E.N. in its report dated 31 January 1994 had expressed concern over the alleged disappearance of s/Shri Ram Singh Biling and Avtar Singh Mander of Punjab.

Shri Ram Singh Biling, journalist for “Az di Awaj” daily newspapers, published in Jallendhar, and district secretary of Punjab Human Rights organization, was reportedly arrested near a Police checkpoint in Bhogiwat village on 3 January 1992. While being taken to the checkpoint, he is reported to have told a farmer that he feared his Life was in danger. The family members, who saw him at the checkpoint on 4 January, were not allowed to speak to him. A farmer’s delegation went to the Police checkpoint on 6 January 1992. They were told that Shri Biling had been detained temporarily, possibly on orders from security agencies. They promised an inquiry. Sources said that Shri billing had died in Police custody.

Shri Avtar Singh Mander, journalist for daily “ajit” newspaper, was reported to have been arrested on 23 September 1992 at his hours in Jalandhar, Punjab. There are no details of any charges pressed against him.

The Commission has called for reports from the Government of Punjab in respect of the above cases, and these are awaited.

In present case, Government of Punjab had paid a sum of Rs.5 lakhs to Shri Sohan Singh father of Shri Avtar Singh Mander, by way of immediate interim relief within a period of one month.

**22. Alleged Custodial Death Of Shri Balwinder Singh Alias Kala In Gurdaspur District, Punjab.**

The Commission received a complaint from Shri Narang Singh alleging the death of his son Balwinder Singh alias Kala on 25 January 1994 in Police custody. Shri Balwinder Singh along with three other had been killed in an encounter with the Police and a huge quantity of arms had been recovered from them.

Shri Narang Singh submitted to the Commission that the matter be inquired into by a retired judge as well as through its own investigating agency.

The Commission has called for a report on the incident from the State Government and this is awaited.

**23. Alleged Rape By An Official Of Punjab Police.**

The Commission had received a complaint from a woman, resident of Maharshl Balmlk Nagar, Ludhiana. That she was raped on 2 January, 1994 by Shri Jgjit Singh, are employee of the Punjab Police. He threatened her with dire consequences if she disobeyed him. The complainer there after narrated the incident to her elder sister who conveyed the same to the victim's husband, and later the victim made a complaint to the Police, but no action had been taken.

The Commission has called for a report from the director general of Police, Punjab, this is awaited. The Commission proposes to pursue the case.

**24. Complaint By All Assam Students Union (AASU) Alleging Killing Of The Advisor Of Their Unit Of Tinsukia District And Four Other Persons By Army Personnel.**

The all Assam Students Union had sent a representation dated 4 March 1994 to the Commission alleging that the adviser of their unit of Tinsukia district and 4 other

persons were killed by Army personnel on 23 February 1994. They were picked up from their homes during the period from 17 to 19 February 1994; their parents had approached the Tinsukia district magistrate, local Police stations and Army camps for their release. The District Magistrate had assured them of safe release. When however the youths were not released, the parents filed a writ petition before the Guwahati high Court.

The Commission, on 22 March 1994, called for a report from the ministry of Defense.

**25. Allegations Of Police Excesses In Dehra Dun District Of Utter Pradesh And Death Of Shri Asad Ali And Shri Kamal Kumar Aggarwal**

Shri E. Balanandan, Member of Parliament, had forwarded to The Commission a representation dated 13 January 1994 from the students Federation of India. U.P. State committee, Lucknow, alleging grave violation of Human Rights by the Police of Dehra Dun district leading to the death of Shri Aasad Ali and Shri Kamal Kumar Aggarwal on 5 and 7 January 1994, respectively. The member of parliament requested The Commission to take necessary action so that the perpetrators of the crimes are punished. The president, youth journalist association, Utter Pradesh, and Bar Association, Dehra Dun, had also separately sent complaint to The Commission alleging Police atrocities in Dehra Dun.

**26. Murder Of Dinesh Pathak, Editor Of A Newspaper In BARODA.**

The writers in prison committee of international P.E.N. had in February 1994 taken up with the Commission, inter alia, the case of Shri DINESH PATHAK who was stabbed to death reportedly by Shiv Sena activists on 22 May 1993. the Commission took cognizance of the case and directed the authorities concerned to submit a report.

**27. Alleged Death Of Korra Satya Rao, A Tribal, In Visakhapatnam District, Andhra Pradesh, As A Result Of Police Mistreatment.**

The secretary of the Visakhapatnam district unit of the Andhra Pradesh civil Liberties committee sent a complaint to the Commission in May 1994 alleging that Police officials raided Vasapanda village in the agency area of Visakhapatnam district. Rounded up a group of tribals and beat them supposedly they had provided food and shelter to Naxalites. It was further Stated that, as a result, one of the tribals, namely KORRA SATYA RAO, received severe injuries to his head and shoulders and that he succumbed to these injuries on 5 May 1994.

The Commission in its proceedings of 17 February 1995, recommended that the Police officials concerned be prosecuted Under section 304 of the IPC and that Rs.1 lakh be paid in compensation to the next of kin of the deceased.

The Government of Andhra Pradesh subsequently confirmed compliance with the Commission directions.

**28. Police Torture And Death: Rajasthan**

The Commission took cognizance of a news item which reported the death of one Hussein Teli, who was brought to the

Police station at Rajasthan for interrogation in connection with the case of the murder of one Prahlad Yadave.

On an examination of the information before it, the Commission noted that Hussein tile was called to the police station for interrogation and detained illegally. As Hussein Teli died the very next morning after he was released form Police custody and as it was found that blood was oozing form his mouth and nose. There was nexus between the death and conduct of the Police during investigation.

This was a fit case for award of compensation the dependents. Having regard to the circumstances. The Commission directed payment of interim compensation of Re. 50,000 to the dependents of the deceased Hussein Teli.

## **29. Police Turn Robbers And Kill Innocent Citizens**

The Commission received a complaint form one Rita Dhawna that the Maruti Van of her husband, while returning form Varansi, was surrounded by six placement, near the Police station Civil lines, Richer. Then they demanded Rs. One lack and, on being refused, shot at the petitioner's husband and other in the van form point blank range and killed him. They also removed the gold chain, rings and wrist watch from the body of the deceased. On notice from the Commission, the Under Secretary, Govt. of Bihar submitted a report stating that the SHO of the Police station on 5 December 1993, on receiving information that some criminals were absconding in the said van, followed the van alongwith other Police staff and as the persons in the van were firing recklessly, Police returned the fire and as a result three of those in the van were killed. A report was lodged about the incident, the Police officers



were suspended and a case under Section 302/379/201/31 IPC was registered against the SHO and others. The accused persons were arrested and the case was under trial in the Court of the Session Judge, Gaya. The trial ended in a conviction and several persons were sentenced to the extreme penalty of law. But the Commission decided not to close the case and issued notice to the Chief Secretary, Govt. of Bihar, as to why, in the circumstances of the case, Smt. Rita Dhawan should not be awarded an “immediate interim relief of Rs. 10 lakhs without prejudice to her private law Rights for damages. The State Government responded contending that as the accused persons had already been convicted and sentenced to death, the Government found no justification for paying a sum of Rs.10 Lakhs as compensation and that it would cause unnecessary financial burden on the State the State Government was compelled to the payment to smt. Dhavan.

**30. Death By Torture Of Pinya Hari In Kale In Policy Custody: Maharashtra**

The Supdt. of Police (Rural), Pune reported to the Commission that on 9 June

1998 the Police officials performing night duty noticed the suspect Pinya Hari Kale. On seeing the Police officials, Kale, according to the report, ran away and fell down sustaining injuries and became unconscious. The Police officials, it is further claimed, got him admitted in the Govt. Hospital, Baramati where he was declared dead.

The Commission also received another petition on the same subject from Prof. G.N. Devy alleging that Kale was taken into Police custody on 8 June 1998 and was tortured, resulting in his

death in custody. The petitioner apprehended that the post-mortem report may not reflect the real cause of death. Now, this matter moulded an element of private complaint .

The post-mortem was carried out by Dr. Suresh, Medical Officer, Government Hospital, Baramati on 9 June 1998 who gave his opinion that the cause of the death was due to the injuries over the body. He found seven injuries. The wife of the deceased made allegations on 12 June 1998 before the District Administration that Kale died in Police custody owing to Police torture. She also demanded the exhumation of the dead body and re-post-mortem. Accordingly, on 18 June 1998, the dead body was exhumed and sent to the Sassoon General Hospital, Pune for a second post-mortem which was performed on the same day. According to Dr. R.S. Bangali, who performed the second post-mortem on the dead body, death was due to multiple blunt injuries with evidence of head injury.

Commission explaining the meaning of ‘interim relief’ and the import of section 18(3) of the act observed.’ It is true that criminal charge has to be sustained on a standard of proof which is beyond reasonable doubt. However, for purpose of award of compensation, substantiation on mere preponderance of provability, on the standard of evidence in civil cases is sufficed. Even where a criminal charge may fail for want of evidence sufficed by standards requisite in criminal cases, yet a case of compensation can be sustained on a mere preponderance of provability’ The Commission further explaining the import and purpose of provisions contained in section 18(3) observed, “But apart from these standards in civil and criminal cases , for the limited purpose

of award of immediate interim relief, the jurisdiction for its grant under section 18(3) of the Act, the matter need not wait till the charge is proved in a criminal Court ...". The Commission took the view that for grant of immediate interim relief, a strong prima facie case was sufficient. It also took the view that the very nature of the concept of immediate interim relief and the purpose for which it was intended would be defeated if this remedy was inextricably linked with the outcome of a criminal trial. Thus, considering the case to be a fit one for grant of immediate interim relief, the Commission made recommendations for it.

**31. Death Of Sanabhai Bhuiabhai Machhar Due To Negligence Of Police Officials: Gujarat**

The District Supdt of Police, Godhra in his fax message dated 6 July 1996 reported to the Commission the death in Police custody of Shri Sanabhai Bhuiabhai Machhar on 4 July 1996. The brother of the deceased made a complaint and on that basis a FIR was lodged. However, the Magistrate who held the inquiry held no one guilty and Stated that the cause of death was due to a fall from a moving tempo and no action was taken against the Policemen named in the FIR. The Magistrate, after listing the injuries sustained, noted that the final cause of death as 'intracranial hemorrhage shock due to head injuries'.

The Commission formatted the view that the death of the prisoner occurred under suspicious circumstances and that the Police personnel on duty did not exercise the due diligence expected of them in the performance of their duties. The Commission, relying on provisions contained in sections 18(1) and 18(3) of the Protection

of Human Rights Act, 1993, recommended that a compensation of Rs.1 lakh be paid to the dependants of the deceased.

### **COMMENT**

The NHRC is empowered u/s 18 (3) of the Protection of Human Rights Act, 1993, to recommend to the concerned Govt. or authority the grant of 'immediate interim relief to the victim or to the members of his family. This provision has been generously operated and the power conferred under it is widely exercised by the Commission in deserving cases. The Commission has in this connection kept itself alive to the spirit of various United Nations instruments. Article 9 of the International Covenant on Civil and Political Rights makes it explicit that everyone has the Right to Liberty and security of person and nobody shall be subjected to arbitrary arrest or detention. It further mandates that anyone who has been the victim of unlawful arrest or detention shall have an enforceable Right to compensation. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985 makes it an obligation of the State to ensure that in its legal system, the victim of an act of torture obtains redress and has an enforceable Right to fair and adequate compensation,

In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. "Principle 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)", also prescribes for remedy of compensation, in case of any damage incurred because of acts of omission by public officials contrary to the Rights contained in the Body of Principles.

This case is a significant illustration of the widened scope of the meaning which the Commission has given to the concept of immediate interim relief. The Commission took the position that it is not required in a case to establish that the public servant was negligent in preventing the violation of Human Rights. It is sufficient to bring the case within the doctrine of *res ipsa loquitur* if the concerned public servant has not exercised due diligence. The Commission has thus enhanced the meaning of Section 18(1) and has broadened the horizons of S. 18(3) of the Act.

### **32. Of Punjabhai Somabhai Thakor Due To Police**

#### **Beating: Gujarat**

The deceased, Shri Punjabhai Thakor aged 55, was a suspect in a case of theft of an article worth Rs. 14,6957- from the house of a resident of Napa. An offence was registered under sections 457, 380 of IPC on 18 September 1995. The deceased and two other suspects were alleged to have voluntarily presented themselves on 13 November 1995 for interrogation. During the course of investigation, the deceased suddenly complained of giddiness and lay down. The PSO instructed that he be admitted in the hospital. Head Constable Juwar Singh and another Constable, Balwant Singh, took him to the Municipal Hospital. The doctor was not available. The Head Constable checked his pulse and found him dead. They left the body there and returned to the Police station to report the death. The death took place around 18.00 hrs on 13 November 1995. The inquest Panchanama was held on 14 November 1995 at 08.00 hrs. In the meantime, rodents had bitten the body.

The inquest Panchnama report Stated that there were dark spots of beating on the back, buttocks and the back of the thighs

and legs. The Magisterial enquiry found that the interrogation was conducted without arrest warrant and proper remand? Doctor was present in the hospital. In spite of no doctor being available, the body was left in the 'dead body room' without proper care.

Taking a serious view of the totality of the circumstance and the negligent behavior and non-performance of duty by the Police officials, the Commission refused to accept the home department's that death was due to cardio respiratory failure and not. Due to Police atrocities. To the contrary, the Commission took the view that the beating by Police officials and the overall effect of interrogation could have resulted in a cardiac failure resulting in death. The Commission, in this context, pointed to the post-mortem report which mentioned congestion and edema of the brain, to buttress its view. The Commission accordingly directed the State Government to pay a compensation of Rs.2 lakhs to the dependant of the deceased without prejudice to the criminal action initiated against the guilty officials.

### **33. Brutal Killing of Santosh Kumar Singh by Police: Bihar**

The Commission took cognizance of a complaint received from one Dharendra Prasad Singh of the village Joitali from the State of Bihar. A Police party led by SI Mukhal Paswan visited the village Joitali on 12 December 1998 after receiving information about the activities of the gang of Tolwa Singh in the area. The SI suspected the father of the deceased, Shri Dharendra Prasad Singh, (complainant before the Commission), who was also the uncle-in-law of Tolwa Singh, to be harboring the said criminal. Shri Santosh Kumar, the complainant's son, a totally innocent young man, with no previous criminal record, was stopped near the house of Jagdish

Jha and was asked for his identity in harsh and abusive language. A verbal altercation ensued between Santosh Kumar and SI Mukhlal, after Santosh objected to the Si's behaviour. The SI thereupon shot at Santosh and injured him. Santosh Kumar, who was still alive, was put in a jeep and taken towards Purnea along with four others. One of the four was allowed to get down in the village itself. Santosh Kumar died on the way to Purnea. SI Paswan did not permit water to be given to the injured Santosh despite his repeated pleas. Also at Purnea, the jeep was kept standing near the bungalow of the SP for one hour for consultation and guidance before Santosh's body was taken for post-mortem. The dead body of Santosh Kumar was handed over to persons from the village Jotaili, after autopsy, late in the evening on 13 December 1998. Sensing the intensity of public anger over the incident which had caused protests and demonstrations, the Police compelled the villagers to cremate the dead body at Purnea itself, at about 11.00 PM on 13 December 1998, without giving the next of kin of the deceased a chance to have a last glimpse of him.

The foregoing chain of events relating to the killing of Santosh Kumar, as contained in the report of Shri S.V.M. Tripathi, former DGP, UP who was entrusted by the Commission to make an on-the-spot inquiry, were found to be convincing by the Commission.

While Shri Tripathi did not doubt that Si Mukhlal must have received information about the movement of a gang, he considered the story of the near-encounter of the Police with the gang somewhat improbable. It is worth noting that Shri Tripathi was not shown the case diaries relating to the case in spite of his asking for them.

After carefully considering the original complaint of Shri Dhirendra Prasad, father of Shri Santosh Kumar, the assessment of Shri N.K. Singh, former CBI Director, who had visited the village after the incident, and the report of Shri Tripathi which was found to be convincing, the Commission made the following observations:

1. There is substantial evidence to prove that Shri Santosh Kumar was killed by SI Mukhlal Paswan, officer-in-charge of PS Barhara because he had expressed his resentment and objected to the use of harsh and abusive language by the SI.
2. The story of a Police encounter in the village Chai Tola was a clever fabrication and concoction of evidence to cover up the totally unjustified killing of Shri Santosh Kumar. SI Mukhlai Paswan had, by collecting the blood stained earth from the place where Santosh was injured and was still alive, revealed his intention to fabricate the story of an encounter, which he subsequently carried out.

The Commission, thus convinced of the serious violation of Human Rights of the deceased Shri Santosh Kumar, and also of the Right of his relatives, made the following recommendations:

1. The Commission further recommends that the Government should immediately consider placing SL Mukalal Paswan.
2. Shri R.S.Bhati, Supdt. Of Police, Purnea about whom there are serious suspicions of connivance in the cover up of the murder of Santosh Kumar, should immediately be transferred away from Purnea in the interest of investigation by the CBI.
3. The deceased, Santosh Kumar, was supporting the entire family. He has left behind his young widow and a small child. The Commission recommends that an immediate interim relief of Rs.



5.00 lakhs should be given to the widow without prejudice to her other Rights at law.

#### **34 Protection Of Rights Of Children/Women**

##### **(a) Suicide By A Dalit Woman, Following Rape By Eight Persons & Including Four Constables – Karnataka**

A complaint dated 10 April 1996 was received from Hasan Mansur, President, PUCL-Karnataka Wiat ABC (name withheld to protect identity), a Dalit woman was raped by eight persons of whom some were constables, and she subsequently committed suicide. The complaint further mentioned that one Ganga had also allegedly been killed by the Police.

In response to the Commission's notice, the Government of Karnataka sent a report stating that in ABC case, four Police officers had been kept under suspension and a charge sheet was filed against them on 5 November 1996. The case was pending trial, The report further admitted that the four Police personnel had misbehaved with ABC. Regarding Ganga's case, the report Stated that a case Cr. No.90-/95 was registered in Azadnagar Police Station and was pending investigation.

The Commission, therefore, directed the State to pay a sum of Rs.2 lakhs to the next of kin within six weeks. With regard to the death of Ganga, the Commission directed that if the charge-sheet had not already been filed by them, the investigation should be entrusted to the State CID.

##### **(b). Death Of Dinesh Chandra Misra Owing To Torture And Beating Given By Police**

The Commission was informed by the Superintendent of the District Jail, Faizabad, Uttar Pradesh that one Dinesh Chandra

Misra, an under-trial prisoner aged 25 years, had died in the Jail Hospital while under medical treatment. Having considered the facts and circumstances surrounding the death of the under-trial prisoner in custody, the Commission was prima-facie of the view that the deceased was wrongfully confined in the Police station and was not produced before a Magistrate within 24 hours. It further held that the death was probably the result of, or at least precipitated by, custodial violence which could be presumed in the circumstances of the case. As there was a prima-facie case of torture and unlawful confinement, the Commission ordered the payment of immediate interim relief of Rs.50,000/- to the dependents of the deceased and also the initiation of appropriate departmental action against the errant Police officials.

### **Comment**

Custodial violence is an unacceptable abuse of power and a serious violation of Human Rights by those whose duty it is to protect the law. It violates Article 21 of the Constitution of India which guarantees the fundamental Right to Life and Liberty and Article 3 of the Universal Declaration of Human Rights (UDHR)

Further, Article 5 of the Universal Declaration and Article 7 of the Covenant on Civil and Political Rights lay down explicitly that No one shall be subjected to torture, or cruelty, inhuman or degrading treatment or punishment.

### **35 Fake Encounters – The New Development**

#### **Killing Of Four Persons In A Fake Encounter By**

#### **Police : Uttar Pradesh.**

Shri Panna Lal Yadav, a resident of Village Daulatiya, District Varanasi, Uttar Pradesh, first by means of a telegram dated 19

October 1998 then through a longer complaint, alleged that his son Om Prakash and three others had been killed by the Police in a fake encounter on 17 October 1998.

The SP, Sant Ravi Das Nagar, through a communication dated 18 October 1998 also informed the Commission that four criminals had been killed in an encounter with the Police in the area of Police Station, Bhadoi on 17 October 1998. It was reported that secret information had been received by the Police that, on 17 October 1998, one Dhanjay Singh, a dreaded criminal carrying a reward of Rs. 50,000/- on his head, would commit a dacoity at the petrol pump of one Satyanarayan Harsh on the Mirzapur-Bhadoi Road. Accordingly, Shri Akhilanand Misra, Circle Officer, Bhadoi constituted three teams to track down the criminals and proceeded to the spot. At about 11.30 am, the Police found four persons coming towards the petrol pump who, on seeing the Police party, ran away and took shelter in the nearby bushes. They indiscriminately started firing at the Police party who returned fire. After 15 minutes of firing, the Police party at the site found four dead bodies, including one of the dreaded criminal, Dhanjay Singh, the son of the complainant.

On the basis of the enquiry of the CID, a case was subsequently registered against 36 persons including 34 Police officials. The CID inquiry, on the basis of evidence, opined that the encounter on 17 October 1998 was a fake one and that, in fact, four innocent persons had been taken out by the Police from a nearby hotel and later brutally killed.

The Commission ordered, by way of immediate interim relief, the payment of compensation of Rs. 4,00,000 each to the next of

kin/families of each of the victims, namely, Shri Om Prakash alias Munna Yadav, Ajay Kumar Singh, Krisan Harijan and Shamim Natte. The Commission ordered that, in each instance, Rs. 50,000/- should be paid in cash and the remaining amount of Rs. 3,50,000/- should be put in a fixed deposit for five years in the name of next of kin of the victim in a Nationalized Bank, the interest on which should be paid at quarterly intervals to the next of kin.

Government of Uttar Pradesh stating that of Rs. 4.00.000/- recommended by the Commission, Rs. 2.00.000/- has been paid to each of the families of four victims.

### **COMMENT**

The law in India recognizes the Right of a citizen to private defense and in the course of such private defense even the causing of death can be justifiable in some circumstances. The same Right of self-defense is available to a Policeman. In addition, the use of force if it results in causing of death in the course of an attempt to arrest a person accused of an offence punishable with death or imprisonment for Life, can also be justifiable under law. However, if a death is caused in an encounter that cannot be justified on the ground of a legitimate exercise of the Right to private defense, or in proper exercise of the power of arrest under Section 46 of Criminal Procedure Code, the Police officer causing the death would be guilty of the offence of culpable homicide. Whether the causing of death in the encounter in a particular case is justified will therefore depend upon the facts established after a proper investigation.

Deeply concerned by complaints of fake encounters, the Commission laid down the procedure to be followed in all cases

of encounters in its directions on complaint No.234 (1 to 6)/93-94 brought before the Commission by the Andhra Pradesh Civil Liberties Committee. That procedure, which was spelt out in a letter dated 29 March 1997 from the then Chairperson of the Commission to the Chief Ministers of all the States and Union Territories commended the following steps:

A. When the Police officer in-charge of a Police station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. The information as received shall be regarded as sufficient to suspect the Commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to death to ascertain what, if any, offence was committed and by whom.

C. As the Police officers belonging to the **same** Police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as the State CID.

D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if Police officers are prosecuted on the basis of the results of the investigation.”

### **36. ILLUSTRATIVE CASES**

An illustrative list of cases decided or considered during the course of the year indicative of the range of complaints addressed by the Commission is given below. Under the category of Police brutality, a representative sample of cases are summarised, relating

to custodial deaths, torture and fake encounter. These are followed by cases of Police harassment resulting from illegal detention, false implication etc. The other major sections include Human Rights violations in jail custody, negligence of public authorities, violations of Rights of women and children, Dalits, minorities, disabled etc., Human Rights violations by the security forces and other important cases. The Commission took suo-motu cognizance of a report which appeared in the newspaper "Naye Duniya", Bhopal on 15 June 1995 regarding the custodial death of one Hamid, son of Hafizutla. The news item said that the father of Hamid alleged that his son was picked up by the Police from his home for questioning in a theft case reported by his employer,

The Commission called for a report in the matter from the Government of Madhya Pradesh. The State Government in its report stated that Hamid was summoned on 14 June 1995 to the Police Station for interrogation and had consumed some poisonous substance while in the Police custody. He was rushed to the hospital where he was declared brought dead.

The post-mortem report indicated that there were simple injuries on his body. The Additional District Magistrate concluded that the death was, indeed, the result of the consumption of poison by Hamid during the period when he was illegally detained in Police custody. The officer-in-charge failed to take him to the hospital in an ambulance and, instead, took him in a Police van where the personnel were not trained in first-aid. As a result, Hamid died en route to the hospital.

Every citizen has the Right to Life which includes freedom from illegal confinement and torture. Hamid, an innocent citizen,

was illegally confined by the Police without any formal arrest and later died in Police custody. The Commission recommended that Government of Madhya Pradesh pay Rs.50.000/- as immediate interim compensation to Hamid's family members.

**B. Death Of An Accused In Police Custody Due To Beating**

The District Magistrate, Nagaur, Rajasthan informed the Commission of the death in Police custody of one Rameshwar Jat, who had been called to the Police station for questioning in a case. It was stated on behalf of the Police that the deceased remained in the Police station upto 4.15 PM on 19 July 1997 and thereafter quietly slipped out and that one Daulat Singh Rajput reported to the Police at about 6.15 PM that a young man had fallen into a well at about 5.00 PM. He was taken out with the help of neighbours and was identified as Rameshwar Jat. He later died in the hospital.

The Commission agreed with the report of the Inquest Magistrate and awarded a further compensation of Rs.50,000/- to the dependents of the deceased, in addition to the Rs.50,000/- already sanctioned by the Rajasthan State Government to his legal representatives. The Commission has received a compliance report from the State Government on the payment of compensation of Rs. 50.000/-.

**C. Fruit Vendor Beaten To Death By Police For Not Paying "Hafta": Delhi**

The Commission initiated proceedings in this case on the basis of a report received from the Sub-Divisional Magistrate, Shahadra, Delhi indicating that the death had occurred of one Mahboob Hussain on 13 July, 1996 following a severe beating

inflicted on him by two Policemen of Police Station, Geeta Colony, Delhi on 11 July, 1996.

The Commission subsequently received petitions from certain NGOs, namely the People's Union for Democratic Rights and the People's Union for Civil Liberties, and also from Shri Syed Shahabuddin, former Member of Parliament, who raised the general issue of the violation of the Human Rights of petty vendors in Delhi and elsewhere in the country. They felt that the Commission should protect this group from the atrocities committed against them by the Police and other authorities, including the demands made on vendors to pay 'hafta'.

The Commission further recommended to the Government of the National Capital Territory of Delhi that it ensure an effective and expeditious trial of the errant officials and make sure that they are punished in accordance with law and not allowed to go scot-free because of weak prosecution. It also directed the Government to ensure that the implementation of the scheme framed by the Municipal Corporation of Delhi in regard to hawkers/petty vendors be implemented at the earliest.

The Commission considered it deeply regrettable that an innocent fruit vendor of about 33 years of age and supporting a family of seven, lost his life as a result of a severe beating by two Policemen of the Delhi Police-mainly because he had failed to oblige them by paying the "Hafta" (the illegal weekly collection made to permit petty vendors to carry out their trade).

The Commission asked the Government of the National Capital Territory of Delhi to pay a sum of Rs.2.5 lakhs to the next of kin of Matloob Hussain who had died of Police violence.



The Commission also asked the Delhi Government to constitute a High Powered Committee to look into the menace of the collection of “Hafta” by the Police and other civic functionaries from the petty vendors and other similarly placed persons.

**D. Death Of Nageshwar Singh Following Torture And Humiliation In Police Custody: Bihar**

Shri Kameshwar Singh, in a complaint to the Commission, alleged that his brother Nageshwar Singh was arrested on 22 August 1993 by the Railway Police at Barauni and handed over to the Vidupur Police, District Vaishali. He was mercilessly beaten, tortured and humiliated in custody. His head was shaved, fece painted and he was driven around the town on a donkey, Shri Kameshwar Singh also alleged that the torture in Police custody was the reason for the death of his brother on 25 August 1993.

It was reported also that he was not produced before a Magistrate after his arrest and was kept in Police custody for more than 24 Hours. As many as 11 injuries on his person were recorded in the post mortem report, which also mentioned the fracture of three bones in the chest region

The DIG Tirhut range opined that the Station Officer(SO)-In-Charge of the Police Station was guilty and the Superintendent of Police Vaishali, was directed to take action against him.

**E. Death Of An Infant Child In Judicial Custody: Haryana**

The Commission received an intimation from Jail Superintendent, Rohtak, about the death of an infant female child aged about 2 months who, alongwith another female child aged about two years, were lodged with their mother in the Rohtak

District Jail. The Commission issued notice and called for a report in the matter from the Government of Haryana.

City Magistrate, Rohtak had made a magisterial inquiry under section 176 CrPC into the circumstances leading to the death of the infant and recorded the Statement of number of witnesses including the mother of the deceased child. He had concluded that the child had died of natural causes and that the family members of the child had no suspicion or grievance against anybody.

The Commission considered this report, the post mortem examination report and the Statements of witnesses examined by the City Magistrate during the course.

In the post mortem report, the doctor concerned had given the cause of death as malnutrition (starvation). The witnesses examined by the City Magistrate included the mother of the child, sister-in-law, matron of the women's ward of the jail, the Deputy Supdt. Of the jail and others. None of these witnesses put any blame on anyone. However, the mother of the deceased child categorically deposed that she did not get the diet to which she was entitled. The Commission noted that this, coupled with the opinion of the doctor conducting the post-mortem, would point a finger on the question of adequacy and quality of the diet which was given to the mother of the deceased child during her stay in the jail. The Commission arrived at the view that the death of the infant child could not be said to be 'natural'.

The Commission thus held the jail authorities guilty their duties and obligations; they were under an obligation to take special care of the infant child which was only 10 days old when brought to the jail along with mother. The Commission thus deemed

appropriate to recommend that State of haryana pay the mother a sum of Rs. 20,000/- by the of immediate interim relief.

### **F Beating By The Police**

In a news item published in 'Dainik Bhaskar' it was reported that one Pardeep Sharma was arrested in a case of theft and subsequently when his wife, Smt. Sunita, came to the Police station to enquire about her husband, she was asked to bring Rs. 2500- towards the cost of the stolen goods. She returned home. At night, two constables came to her residence and she was summoned to the Police Station. There the Policemen misbehaved with her, snatched Rs.500/-from her purse and when her son, Rahul, aged 10 years, who had accompanied her, became emotional and started arguing, he was mercilessly beaten at the Police station. On medical examination, 14 injuries were found on the body of the boy. The Commission took cognizance of the news item and gave notice to the S.P. Ajmer. According to the report received by the Commission from the SP Ajmer, Smt. Sunita had refused to accept the written information from the Police in the Police station and had threatened S.I. Dinesh that she would falsely implicate him for thrashing her son. It was also reported that the young boy was not brought to the Police station nor was Smt. Sunita called to the Police station and that the boy was beaten by his mother to manipulate a case against the Police.

The Commission felt that it was improbable that a mother could have caused such grievous injuries to her own son, especially in the circumstances that her husband was already in a lock-up and she herself was in distress. The Commission directed the

Government of Rajasthan to pay compensation of Rs.15,000/- to the injured boy.

### **COMMENT**

Custodial violence is an unacceptable abuse of power and the an abhorrent violation of Human Rights by the protectors of the law themselves. It not only violates Article 21 of the Constitution of India which guarantees the fundamental Right to Life and Liberty, but also infringes upon Article 3 of Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights, that every person has the Right to Life, Liberty and security and no one shall be arbitrarily deprived of Life. Further, Article 5 of UDHR and Article 7 of the Covenant on Civil and Political Rights lay down explicitly that no one shall be subjected to torture, or cruel, inhuman or degrading treatment or punishment. Article 9 of Universal Declaration of Human Rights and Article 9 of the Covenant emphasize that no one shall be subjected to arbitrary arrest, detention or exile. These provisions also lay down that anyone who is arrested shall be informed of the reasons of his arrest and shall be promptly informed of the charges against him. Article 22 of the Constitution protects the Rights of the individual in case of arrest and detention and in essence incorporates the principles of these United Nations documents. It is a fundamental Right under this Article, that the arrested person must be produced before the nearest magistrate within twenty-four hours.

The Commission has played an active role in redressing the grievances of the victims of custodial violence. In accordance with a circular dated 14 December 1993 issued by the Commission to

all State authorities, all cases of custodial deaths either in Police or in judicial custody, are required to be brought to the notice of the Commission within twenty four hours. The illustrative cases on custodial death reveal that the interventions of the Commission are increasingly securing better investigation of such cases and resulting in the providing of immediate interim relief to the survivors of the deceased victims of custodial violence.

In this connection, the Commission would like to recall the Judgement of the Supreme Court in the case of D.K. Basu Vs State of West Bengal (AIR 1997 SC 610), which dealt with the principle Ubi jus, ibi remedium i.e., there is no wrong without a remedy. The law wills that in every case where a man is wronged and damaged, he must have a remedy.

A mere declaration of the invalidity of an action, or the finding of custodial violence or death in a lock-up, does not by itself provide any meaningful remedy to a person whose fundamental Right to Life has been infringed. Much more needs to be done. While there is no express provision in the Constitution of India for grant of compensation for violation of the fundamental Right to Life, the Supreme Court has judicially evolved a Right to compensation in cases of established unconstitutional deprivation of personal Liberty or Life.

The claim in public law for compensation for unconstitutional deprivation of the fundamental Right to Life and Liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for torturous acts of public servants. Public law proceedings serve a purpose different from private law

proceedings. Award of compensation for established infringement of the indivisible Rights guaranteed under Article 21 is a remedy available in public law, since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their Rights and interests shall be protected and preserved. The grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental Rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental Rights of the citizen.

The quantum of compensation will, of course, depend upon the particular facts of each case. The relief to redress the wrong for the established invasion of the fundamental Rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done may, in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit. Some important judgements on compensation are:

Nilabati Behera Vs State of Orissa (1993)2 S.C.C. 746

Saheli, A Women's Resources Centre Vs. Commr. Of Police (1990)1 S.C.C. 422.

Bhim Singh Vs State of J&K (1985) 4 S.C.C. 677.

Sebastian M. Hongray Vs UOI & Others (1984) 1 S.C.C. 339.

Rudul Shah Vs State of Bihar (1983) 4 S.C.C. 141.

The judgments have had great bearing on the work of the Commission.

### **37. Negligence Of Public Authorities**

**A. Death Of Witness In Police Station Gujarat.** The death of one Hasmukhbhai Kanubhai was reported to the Commission by the Section Officer of the Department of Home of the Gujarat Government. It was Stated that he had died in the Mahuva Police Station, where he had been brought as a witness for interrogation. The report of the Sub-Divisional Magistrate Stated that the deceased had been detained overnight in the Police station. The next day, he had complained of pain in the chest and symptoms of diarrhoea. As his condition started deteriorating, his relatives had sought medical help but the Police officials on duty brushed aside their request saying that they were waiting for the Investigation Officer. After a considerable delay, the deceased was taken in an autorickshaw to the hospital, where he was declared as brought dead. The Government, however, did not consider the death as one in Police custody as the deceased was not an accused but a witness at the Police Station.

The Commission held this to be a case of gross negligence on the part of Police officials in the Police station as they had not provided timely medical assistance. It also took the view that custodial death did not only mean the death of an accused person in custody! (the term included witnesses taken into custody whose freedom of movement was curtailed by the Police. The Commission felt that this was a case of 'custodial ill treatment' resulting in death. It thus directed the State Government of Gujarat to pay

immediate interim relief in the amount of Rs.2 lakh to the dependants of the deceased, with Liberty to initiate proceedings for recovery of this sum from those who, by their highhandedness, had exposed the State Government to this liability.

**B. Negligence Of A Medical Officer: Uttar Pradesh**

Smt. Ram Kumari in her complaint to the Commission Stated that her late husband, Shri Krishan Kumar, died in a road accident when his truck collided with a tree and caught fire thereafter. The Police prepared an inquest report and sent the burnt body of her husband for post-mortem to Rai Bareilly. A team of three doctors performed the autopsy of the dead body on 17 May 1998 but were unable to give an opinion on the cause and time of death and, therefore, sought the opinion of the State Medico-Legal Expert. The opinion was delayed by six months, as a result of which the complainant was made to rush from Allahabad to Rat Bareilly to plead with the authorities to hand over the remains of her husband's dead body for performing the last rites. The complainant sought the Commission's assistance in getting the dead body released early.

in response to a notice issued by the Commission, the Special Secretary (Medical), Government of Uttar Pradesh, by his letter dated 28 December 1998 admitted the delay in the submission of papers to the Medico-Legal Expert.

From the reports, the Commission noted that the bodily remains of the deceased were handed over to the complainant nine months after the death his had resulted in mental agony to her and forced her to rush to Rai Bareilly to contact the authorities. The Commission held that this avoidable delay was directly attributable



to the gross negligence of the State authorities at different levels. In the circumstances, the Commission recommended the payment of interim compensation of Rs.10.000/- to the complainant by the Government of Uttar Pradesh within two months.

**C. Death Of An Innocent Person Owing To  
Negligence Of State Electricity Board : Bihar**

The Commission received a complaint from Smt. Ranjana Singh alias Ranju, a resident of Daltonganj, Palamu, Bihar alleging that on 2 August 1996, her husband Satyabrat Narain Singh came in contact with a live electric wire lying in front of Morehouse, Patna as a result of which he was electrocuted and died. She attributed the death of her husband to the negligence of the Bihar State Electricity Board (BSEB). She also Stated that BSEB had failed to award her any compensation though in a similar case the Supreme Court had awarded compensation.

The report also Stated that no compensation was paid to the wife of the deceased by the BSEB, as her husband died following a natural calamity. Angoori Devi vs. Municipal corporation, Delhi (AIR 1998 Delhi 305) and in Padma Behari vs. Orissa State Electricity Board (AIR 1992 Orissa 68)

There was also nothing on record to show that adequate safeguards were taken by the BSEB to guard the live wire of the transmission/distribution line falling on the ground, even if it had broken down as a result of the alleged storm. The authorities of the State Electricity Board had a duty to see that the live wire was removed immediately and/or that the power was switched off so as to make a public place safe. The Commission thus noted that there was a clear breach of duty on the part of the State Electricity

Board which had resulted in the death of Shri Satyabrata Narain Singh.

The Commission accordingly recommended of Rs. 2,00,000/- to the deceased by way of immediate interim relief.

### **COMMENT**

In *Manohar Lal Sobha Ram Gupta vs. M.P. Electricity Board* (1975 ACJ 494), the High Court held that it was negligence to omit to use all reasonable means to keep electricity from harming a person. The standard of care required was held to be high owing to the inherently dangerous nature of electricity, and the burden of proving that there was no negligence was on the authorities.

#### **D. Case Of Shri Devi Shanker Gunned Down By A Forest Officer:Rajasthan**

The Commission received a complaint from Shri Ghasi Lal from Dis. Sawai, Madhopur, Rajasthan, alleging that officials of the forest department, Rajasthan shot dead one Devi Shanker. It was alleged that a forest ranger, who had spread a reign of terror in the forest area of Bondal Naka. The complainant sought impartial investigation into the accident and payment of adequate compensation to the desperate of Devi Shanker.

The Commission directed that departmental inquiry also be initiated against the accused Forest Ranger for dereliction of duty in the gunning down of an innocent person, Devi Shanker. The Commission further directed the Government of Rajasthan to pay a sum of Rs.4 lakhs to the next of kin of the deceased as compensation within four weeks. Further, the Commission asked the Government of Rajasthan to release an amount of Rs.50,000/- immediately and the rest of the amount be deposited in a

Nationalised Bank on a long-term basis and the interest earned thereon be paid monthly to next of kin of the deceased.

**E. Death Of 64 Innocent Labourers And Destruction In A Village Owing To Negligence : Bihar**

The Commission received a complaint from Shri Rakhohari Biswas, a resident of Village Lakaruka, Dhanbad, Bihar alleging that 64 workers had been killed owing to the flooding of water in Gajlitand colliery and that villages located in the surrounding area were affected by a poisonous gas. Further, it was stated that cultivable land was destroyed following a fire inside the coal mines which also led to cracks in the houses of the villagers. The complainant alleged that the concerned authorities, namely, the management of the Bharat Coking Coal Ltd. (BCCL) and the Director General (Mines Safety), Dhanbad were insensitive to the situation and that he feared a danger to the lives of the villagers.

In view of the imminent danger to both human lives and cattle in the area, as brought out in the report; The Commission, in order to ensure that rehabilitation measures were taken, called for a further report within four weeks. The Commission, in addition, recommended the payment of Rs. 10,000/- to each of the affected families and Rs. 50,000/- to the families of the deceased, as interim compensation, by the management of BCCL.

**F. Death Of An Injured Person Owing To Negligence By The Police ; Bihar**

The Commission received a complaint from Smt. Phoolwanta Kuwar, a resident of Kamur, Bihar stating that on 16 September 1999, her husband Late Shri Bindeshwar Chaudhary had been brutally beaten by Brij Bihari and others in a false case relating to

the theft of a buffalo The complainant Stated that her husband died there owing to negligence of the doctor and the Police. It was further Stated that she became a widow at the age of twenty and that her husband had left behind a six-month-old child. The complainant a sought a high level inquiry into the matter and justice for herself and her innocent child.

It was also reported that the name of the deceased was in the crime diary part II in PS Mohania and he was also a suspect in case No. 179/96 under section 379 IPC. The post mortem report attributed the cause of death to respiratory caused on the body of the deceased.

The Commission recommended the payment of interim compensation in the amount of 3,00,000/- to the wife of the deceased. The Commission further directed that a sum of Rs.20,000/- may be paid by a demand draft to the complainant and the balance deposited in a nationalized Bank and interest be paid to her every month. The Commission also asked the Government of Bihar to expedite action against the accused Police officer.

Having regard to the facts and circumstances of the case, the Commission directed the Government of Bihar to pay Rs. 3,00,000 as immediate interim relief to the dependents of the deceased, complete the investigation of the case expeditiously, and prosecute the guilty Police officials invoking, if necessary, the provisions of Section 210 of the Code of Criminal Procedure.

### **COMMENT**

The Commission observed that it was unfortunate that the staffing of the investigation and departmental action for more than five years were being justified on the ground of pendency of a

private complaint filed by the brother of the deceased. This was the result of a misreading, designedly or otherwise, of the law. The pendency of a private complaint did not tie the hands of the investigation. The course to be adopted when there is a case 'pending otherwise than on a Police report before the Court is expressly provided for by Section 210 of the Code of Criminal Procedure. All that needs to be done is to bring the matter to the notice of the Court where the private complaint is pending. The Court would stay further proceedings to enable the Police to complete the investigation. Both cases would then be tried together. The pendency of the private case under which the Police tried to take shelter for their inaction, was by itself no ground for inaction.

**G. Death In Custody Due To Police Negligence:**

**Uttar Pradesh**

The death of an undertrial prisoner, Rajan Singh, was intimated to the Commission by the Additional Inspector General of Prisons, Uttar Pradesh. According to the report received, Shri Rajan Singh had been detained in District Jail, Agra since 18 January 1995. On 20 September 1995, he tried to escape from a Police truck while he was being taken to Court along with 13 other under-trial prisoners. It was further reported that another under-trial prisoner, Sanjay Tiwari, who was also traveling in the same truck, jumped and escaped from custody.

The post-mortem report Stated that death had occurred due to shock and hemorrhage caused by ante-mortem injuries. The magisterial report Stated that Rajan Singh had consumed liquor supplied by police personnel while in custody and had also picked up a fight with them under the influence of liquor. The report held

the Police personnel guilty of negligence for not having given adequate and satisfactory escort to the prisoner.

The Commission thus directed the State to pay immediate interim relief of Rs. 5 lakhs to the next of kin of the deceased. The Commission questioned as to whether the second under-trial prisoner, Sanjay Tiwari, had really escaped from custody or had been done to death and his body disposed of.

#### **H. Suicide In Police Lock-Up; Kolar, Karnataka**

The Commission was informed by the Superintendent of Police of Kolar District of the death of one Thimmaiah in the Mulbagal Police Station. Thimmaiah had allegedly committed suicide with a nylon rope hung from a window bar in the toilet of the Police station. The Commission also received a complaint from the People's Union for Civil Liberties, Karnataka suspecting foul play in this case and requesting the Commission to have the matter investigated, bring the culprits to justice and compensation awarded to the next of kin of the victim.

Accordingly, the Commission directed the Government of Karnataka to register a case against the errant Police officials and initiate departmental action against them. A case was also to be registered against the doctor who had conducted the post-mortem, on charges of destroying evidence. The Commission directed the investigation to be taken over by the Corps of Detectives of the Karnataka State and since there was a strong prima-facie case of violation of Human Rights, the Government of Karnataka was directed to pay an interim relief of Rs. 2 lakhs to the next of kin Of the deceased.

## **COMMENT**

The liability of the State for damages for violation of the Constitutional Rights to life, Liberty and Dignity of the individual has been recognized and established as a part of the public law regime. In the decisions of the Apex Court, in particular, in the case of Francis Coralie Muflin Vs. Administrator, Union Territory of Delhi and Others (1981) 1 Supreme Court cases 608 and Nilabati Behera vs. State of Orissa (1993) 2 SCC 746 the constitutional and juristic foundations of this liability of the State have been formally and finally laid down. Even the claim of sovereign immunity arising out of the State discharging sovereign functions is held to be no defense at all against the acts of violation of the constitutionally guaranteed fundamental Human Rights.

### **38. TORTURE**

#### **A. Torture By Kerala Police Which Led To Death Of Hussain**

A. J. Antony, a resident of Wynad District, Kerala made a complaint to the Commission alleging that one Hussain, a labourer, was brutally beaten by the Police on 19 February 1999 during a raid on a gambling place. According to the complaint, Hussain had explained to the Police that he had gone there to collect money from one Khalid Mohammad and not to gamble. However, the Police ignored his pleas and had beaten him so brutally that his spinal cord broke and he was paralyzed from below the neck. Since his family was not wealthy, he was brought home after the initial treatment. The complainant requested the Commission to recommend action against the guilty Police officials and to award a compensation of Rs.6 lakhs to the victim.

Subsequently, the Confederation of Human Rights Organizations informed the Commission that Hussain had died on 26 November 1999 as a result of the brutal torture inflicted on him by the Police. The Confederation also sought action against the Policemen for murder and for compensation of at least Rs.3 lakhs to the family of the deceased.

**B. Torture By Tiruchi Police Resulting In Death Of  
Shri Mohan**

The Commission received a telegraphic complaint from Smt. Ayeeponnu stating that her husband was picked up\*by the Police from their home on 3 September 1995, tortured at the Police station and was thereafter remanded to judicial custody. .While in remand, he was hospitalized in a serious condition and died. The Commission called for a report from DGP Tamil Nadu, Chennai. The DGP Stated that Mohan was arrested for selling arrack and had been produced before the Judicial Magistrate the same day and remanded to judicial custody. En-route to jail, he fell down following an epileptic fit and sustained a head injury. He was subsequently hospitalized and died. He also Stated that the widow denied having sent a complaint to the Commission.

The matter was further investigated by the Commission through the State Legal Aid and Advice Board, Chennai and an opinion was also sought from the doctor who had performed the autopsy. While the doctor Stated that the deceased appeared to have died of shock and hemorrhage due to a head injury, the Legal Aid and Advice Board also reported that the widow denied having sent a complaint. The Commission examined the facts and circumstances and concluded that the telegram itself was a very



telling one and it was obvious that the widow, being an illiterate person, wished to avoid a confrontation with the Police and therefore, denied having sent the telegram.

Based on the facts and clinical evidence available, the Commission came to the conclusion that the death was, indeed, due to head injuries inflicted by the Police. The Commission accordingly recommended that in order to compensate for the loss of the precious Life of the young man, the Government of Tamil Nadu should pay immediate interim relief in the amount of Rs. 2 lakh to his wife Smt. Ayepoonnu within two of the order. The district collector was also directed to arrange a house to deposit of the balance amount in her name in a nationalized bank.

**C. Allegations Of Death, Rape And Torture Of Tribals As A Result Of Actions Of The Joint Task Force Set Up By The Govenments Of Tamil Nadu And Karnataka To Apprehend Veerappan And Assoicates.**

Since mid 1997, the Commission had received a number of communications, both form individuals and from non-Government organization, concerning the activities of sandalwood smuggler, Veerappan, and the efforts of the joint special task force of the States of Tamil Nadu and Karnataka apprehend him. A constant there in the communication has been harassment caused to the villagers and tribal in the area of operation of the JSTF and the violation of their Human Rights. In there matters the Commission intended to pursue further.

**D. Illegal Arrest, Unlawful Custody And Death Of Madhya Pradesh**

The Commission was seized of the death of an under-trial prisoner Ram Bhajan Gupta in the Central Jail of Bhopal through a report sent to the Commission by the Additional District Magistrate of Bhopal.

Pursuant to the Commission's directions, the Government of Madhya Pradesh sent the magisterial inquiry report along with the post-mortem and other reports to the Commission. On perusal of the reports, the Commission noted that there was a dispute between Police personnel and the victim's father over the payment of money for tea from the latter's teashop. Shri Gupta, who had apparently protested over the non-payment, had been arrested along with his father by the Police on a series of charges under the IPC without any basis. He was produced before the magistrate who had made a remand order and the deceased had been remanded to judicial custody.

The Commission noted that Shri Ram Bhajan Gupta had been accused under Section 294 of the Indian Penal Code (IPC) which deals with obscene acts and songs. He had also been charged with preventing a public servant from discharging his duty, criminal assault and criminal intimidation of a public servant. The Commission was distressed to know that a barrage of penal sections was presented before the magistrate, while the public servants i.e. the Police were infact not discharging any duty or public service but only resisting a legitimate claim of a citizen for the payment of eatables that they had consumed. The Commission thus directed the Government of Madhya Pradesh to pay an immediate interim relief of Rs.2 lakhs to the next of kin of the deceased.

### **39. Atrocities On Dalits: Bihar**

The Commission took suo-motu cognizance of a matter reported in the newspaper 'Indian Express'<sup>1</sup> dated 27 January 1999 captioned "Bihar: old script, new victims, and upper caste Ranbir Sena kills 21 Dalits in Jehanabad". According to the report, the Ranbir Sena, a private army of upper caste landlords in Bihar, armed with sophisticated weapons, had killed at least 21 people including 6 children and 5 women on 25 January 1999 in Rukhsagar Bigha.

After discussing the law and order situation in the context of incidents like that which had occurred in Jehanabad, the Commission felt that this was a serious matter, requiring an in-depth study, with a view to finding a proper and timely solution. In this connection, the Chairperson made an appeal to all political parties to give their suggestions on the prices measures which, in the view of their party, could be taken to redress the situation and to ensure a climate of peace, justice and progress in Jehanabad district for all of its people.

### **40. OTHER IMPORTANT CASES**

#### **1) Alleged Killings Of 18 Persons By Masked Gunman In Baramullah District: Jammu And Kashmir**

Shri Ghulam Mohammad Bhat, an office bearer of Jamaat-E-Islami Party, Srinagar, Jammu and Kashmir complained of the killing of 16 persons and critically wounding of 2 others in District Baramullah, allegedly by masked gunman commonly known as 'lkhwanies'. In his complaint dated 28<sup>th</sup> September, 1989, he Stated that these surrendered militants were allegedly used by the political and other Government agencies. He added that Jamaat-E-Islami

J&K leaders and cadres and even their relatives were feeling insecure and their Right to Life, property, honour and Dignity threatened.

On 20 October, 1998, the Commission decided to take up the matter during its next visit to Jammu & Kashmir.

The Commission subsequently received the final report. Upon perusing it, the Commission on 8<sup>th</sup> September, 1999 observed that it was disquieting that 18 persons had admittedly lost their lives allegedly at the hands of counter insurgency elements, allegedly acting under the protection of the Police.

The Commission noted the fact that in none of the 18 cases, the assailants had been traced.

The Commission therefore, requested the Director General of Police, J & K to be present before the Commission to discuss this issue further. On 10 January 2000, the inspector General, Jammu Range gave an overall view of the current status of investigation these cases.

Reports received in these cases after the current reporting period under review was over have revealed that the killings of these persons were the result of factional infighting between Jamaat-E-Islami activists and Hizb.

## **2 Death Of Workers In Silicon Factories Of Madhya Pradesh.**

A news-item appeared in the “Sunday Observer” in September 1996 captioned “Death in the Air”. The Commission took suo motto cognizance of the news item and called for a report from the Government of Madhya Pradesh. The health of the majority of the workers employed in these factories

was affected due to inhalation of silicon dust. The Government had taken steps to provide medical facilities and ensure that all these workers were covered under the Employees State Insurance (ESI) scheme. There was a mobile van in operation to provide medical facilities to the workers. They were even provided with pensions on the declaration that the worker was affected by the disease, which was an occupational hazard. The district administration had advised owners of these factories to install BHEL machinery to minimize dust particles. However, many of the owners of these factories were unable to meet the cost of the sophisticated machinery. This resulted in the spread of silicosis dust and affected the workers' health. The Labour Inspector were visiting the factories and prosecuting those who were not applying the minimum standards laid down for prevention of this pollution. Having regard to the provisions of the Indian Constitution as well as to the International Human Rights instruments with regard to the Right to Life. The Commission gave the following directions to the State for compliance in future:

1. To ensure the establishing of BHEL machinery in the factories to prevent dust pollution and ensure that pollution free air is provided to workers.
2. periodic inspection, on a monthly basis, by the Labour Department and reports made to the State Human Rights Commission for monitoring.
3. Widows and children of deceased workers to be taken care of by the factory owner by providing assistance.
4. To ensure that Child Labour is prevented by the following methods:

- (a) Establishing schools at the cost of factory owners, with assistance from the State for the education of workers' children.
- (b) The provision of periodic payments for their education and insurance coverage at the cost of factory owners.
- (c) The provision of mid-day meals and clothing to dependent children or children of deceased workers.

### **COMMENT**

In examining this matter, the Commission observed that the Right to Health and Medical Care is a fundamental Right under Article 21, read with Articles 39(c), 41 and 43 of the Constitution. The Right to Life includes protection of the health and strength of workers and is a minimum requirement to enable a person to live with Human Dignity. The Universal Declaration of Human Rights as well as other International Instruments also speak of this Right. Continuous exposure to the corroding effect of silicon dust can result in the silent killing of those who work in such an environment. The duty of the State, under the Directive principles of the Constitution, is to ensure the protection of the health of workers employed in such slate factories in Mandsaur and elsewhere in the State.

### **3 Police Firing On Dalits: Tamil Nadu**

A complaint dated 28.2.1995 was received from Shri P.Kamnaya, Organizer and Treasurer, All Dravida Welfare Rights Sangh, Karaikudi, Tamil Nadu which said that two persons belonging to the scheduled castes from village Vashistapuram, District south Arcot were shot dead by Tamil Nadu Police on 17 January 1995, while they were trying to protect others of their

community who were being lathi-charged by the Police when they tried to hoist a flag of Dr. Ambedkar in the street. The allegation was that the Police even helped members of other castes to ransack the homes of those belonging to the scheduled Castes. Media persons were not allowed to file any report on the matter in the newspaper.

The Commission considered the report of the Director General (Investigation) and directed the chief secretary, Government of Tamil Nadu to pay Rupees one lakh as compensation to the wife of the deceased, Shri Shanmugham, and to give her a job to earn her livelihood. It was also directed that Rupees One lakh should be paid as compensation to the father of the deceased Shri Ramesh, who was also a victim of mob anger.

#### **4 Human Rights Violations: Jail Custody.**

##### **a) Death Of Bihari Babu Due To Negligence Of Doctor: Madhya Pradesh**

The Commission received a complaint from Shri Ajay Jain of Bhopal, Madhya Pradesh referring to a news item in the MP chronicle alleging that one Bihari Babu had died in the Morena Jail premises under mysterious circumstances. The death was attributed to the negligence of the doctor in-charge of the Jail. The Commission considered the matter and held that a punishment limited to a warning to the doctor for dereliction of duty was grossly inadequate and commended to the Chief Secretary, Madhya Pradesh, that disciplinary action be against the doctor and compensation in the amount of Rs.2 lakhs be paid to the next of kin of the deceased.

**5. Death Of Jagannath Paoji Ingule, Failure Of The part of The Medical Officer To Diagnose At An Appropriate Time: Maharashtra.**

The undertrial prisoner, Jagannath Paoji Ingule, aged 44 years, was received in NASIK ROAD prison from Thane Central prison on 7 May 1995. After nearly one-and-a-half years of under-trial custody. He complained of a swelling in the abdomen and general weakness. He was referred to the civil Hospital for expert opinion. Later, he was again admitted in the prison Hospital with amoebic dysentery and severe anemia and was referred to the civil hospital, Nasik for further treatment.

He was in custody for more than one-and-a-half years. He was being treated for amoebic dysentery while he was actually suffering from an advanced stage of tuberculosis-pulmonary as well as intestinal – a fact which was revealed in the post-mortem area of medicine. With the large-scale manifestation of this infectious ailment in the jails, any medical staff should reasonably be expected to.

While holding that there was negligence in the protection of the prisoner's Human Right to Life that the dependants of the victim were entitled to immediate interim relief under section 18(3) of the protection of Human Rights act, 1993, the Commission recommended that (i) an immediate interim relief of Rs.1 lakh to be paid by the State Government to the dependants of the deceased.

**COMMENT**

In the case of Shri D.K. Basu vs. State of West Bengal (AIR 1997 SC 610), detailed instructions were given by the Supreme



Court on the procedures to be followed by the Police in cases of arrest or detention. These instructions, inter-alia, include.

The arrestee should, when he so requests, be medically examined at the time of arrest and major and minor injuries, if any, as are present on his or her body, must be recorded in a memo. The inspection memo should be signed both by the arrestee and by the Police officer concerned, and a copy should be given to the arrestee.

The arrestee should undergo a medical examination by a trained doctor every forty-eight hours of his detention in custody.

The Supreme Court of India imparted a new dimension to the enforceability of these directions by attaching the sanction of commitment.

#### **6. NHRC Orders Compensation For Victim Of Police Firing In Bihar**

The National Human Rights Commission has ordered the Government of Bihar to pay a sum of Rs.1.00 LAKH to the father of a boy who was killed indiscriminate Police firing.

The Commission was seized of this case by means of a petition from one Shri Rajman Singh from Patna District of Bihar. He had alleged that the Police had killed his 11-year old son Arvind kumar as a result of unprovoked and unjustified firing. On issuing notice to the chief secretary of Bihar, the Commission received a report from the IG of Police, State-CID according to which the Police had opened fire to control a violent mob. It was not denied that Arvind kumar was killed in the incident but the report said that the deceased had been very much active in pelting stones and other violent activities. A case of arms act had been

registered against 40 persons in the same incident and on investigation 35 of them were charge-sheeted. Three persons including Arvind Kumar had died in the incident.

**7. NHRC Orders Rs.90000/- As Compensation For Victims Of Police Harassment In Madhya Pradesh.**

The national Human Rights Commission has ordered immediate interim relief by way of monetary compensation for nine members of a family in Raipur, Madhya Pradesh who were illegally detained by the Police for a period 14 days. During this period they were also tortured and threatened of false implications if they failed to pay a sum of Rs.50000/- to the concerned officials.

The Commission was seized of the matter on receipt of a complaint forwarded by Smt. Kiran Mayee Nayak, Advocate, Raipur Madhya Pradesh alleging harassment, beating, torture of a certain Shri Mangloo Ram and eight other members of his family by the local Police. The latter had also demanded Rs.1 LAKH as bribe threatening that the victim's family would otherwise be implicated in a murder case.

Pursuant to the directions of the Commission, a case was registered and investigation taken up by the State CID. The State Government has been moved for permission for their arrest and prosecution.

The Commission is of the view that the victims of this episode are entitled to 'immediate interim Relief' envisaged in section 18 (3) of the Protection of Human Rights act, 1993. It has thus recommended to the chief secretary, Government of Madhya Pradesh to pay a sum to Rs.10000/- to each of the nine victims, without prejudice to their other Rights.

**8. Mixed identities: NHRC orders inquiry into conduct of jail officials.**

The going price for a torture-free prison stay in central jail in Rajasthan is allegedly Rs.20000/- according to a complaint received by the national Human Rights Commission. A convict serving Life imprisonment there.... According to the petition, the superintendent of the jail had denied the complainant parole to organize the treatment of his ill wife (who subsequently died), by intentionally falsifying documents.

The superintendent allegedly used documents belonging to another prisoner a namesake of the complainant who had been previously released to dissuade the district magistrate from granting parole, claiming that the prisoner was likely to escape abroad. In response to the Commission's demand for a report the superintendent admitted that an error had occurred but maintained that it was a purely clerical one and devoid of malafide intent.

The Commission then sent its investigation Team to ascertain whether the mix-up was genuine or constituted harassment. According to the report submitted by them, Shri Singh was lodged in the central jail. Bikaner, consequent to his conviction of Life imprisonment in a murder case. The same day that he enters the jail, the jail Superintendent demanded Rs.20000/- from his son. He threatened that otherwise his father would have a bad time inside the jail. The son managed to bargain it down to Rs.14000/- but could pay only Rs.10000/- on the spot. After a few months when Shri Harbhajan Singh's mother expired, he was able to get seven days of emergency parole by paying Rs.3000/- to the jail superintendent as illegal gratification. He was told that he would

be required to bring the amount yet unpaid by his son, on his return from home. Not being able to pay the Rs.4000/- he was subjected to harassment and torture by the superintendent. After some time, when he again left the jail on seven days parole to attend his son's wedding. Shri Singh was reminded to bring the Rs.4000/-. Out of fear he managed to collect the money this time with great difficulty, and paid it to the superintendent. Much later when he applied for parole on account of his wife's sickness. Mr. Chauhan forged the letter of Shri Harbhajan Singh's namesake who had been released earlier.

The Commission's investigation Team recommended departmental action against Mr. Chauhan and the senior Medical Officer and opined that the mistake was malafide. The Team's investigation also revealed acts of extortion and torture of prisoners.

The Commission has also ordered that the complainant be awarded immediate interim relief of Rs.20000/- for harassment and deprivation suffered at the hands of the officials.

#### **9. NHRC To Look Into Human Rights Violation By 'Mafia' Group In Utter Pradesh.**

The Commission acted upon a complaint received from the president of the Vindhya Kisan Parishad of Mirzapaur, Uttar Pradesh and the responses received from the State Government and Director General of Police of Uttar Pradesh. The President of Vindhya Kisan Parishad had further submitted another representation which said that one Shri Kapurchnd, an activist of the Vindhya Kisan Parishad killed, allegedly, by the 'Mafia' said to be engaged in illegal activities of exploitation of natural resources in the area.

The representation pointed out that this was a serious violation of the Human and constitutional Rights of the local populace.

This case is mentioned as an illustration and reflection of the condition said to be prevailing in the area.

**10. X-Rays No Longer Compulsory For All Short-Listed UPSC Candidates.**

The Ministry of personnel, public Grievances, and pensions, Dept. of personnel and training has accepted the recommendation of the NHRC to limit conducting X-rays on all candidates called for interviews by the UPSC (Union Public Service Commission), only to those who have otherwise been found suitable for Government employment.

Both the Ministry of Health and Family Welfare and the UPSC, whose rules demand the X-rays of candidates, were in agreement with the recommendations of the NHRC and necessary steps have been taken to ensure that the relevant rules are amended.

**11. Compensation for Boy Electrocuted by Transformer.**

The National Human Rights Commission (NHRC) has directed the States Government of Uttar Pradesh to pay interim relief of 1 LAKH rupees to Pappu, an eight year old boy who was electrocuted by coming into contact with an electric transformer in Agra. Both the boy's arms were burnt and had to be amputated as a result of the shock. The NHRC received a complaint from the boy's father, demanding compensation for the disabled boy and appropriate action against the negligent officers. He also asked that the Uttar Pradesh State Electricity Board (UPSEB) issue directions to avoid such disasters in the future.

In response to the NHRC'S demand for a report on the incident, the UPSEB sent a report and Stated that the boy had been given compensation of Rs.20000/- by UPSEB, as well as Rs.5000/- in donations by officers and staff. The report further States that a temporary fence had been erected around the lethal transformer, but that the boy had brought it down when he fell on it.

The Commission found that the boy is entitled to immediate interim relief under Section 18 (3) of the Protection of Human Rights act, 1993. the sum of Rs.25000/- was found to be wholly inadequate to compensate for the fact that the boy is permanently disabled and will in all likelihood have to depend on others for the rest of his Life.

**12. Death Of Kidnapped Child And Also Two Others Due To Excessive Use To Force By Police: Uttar Pradesh.**

One Shri Jitender Singh a resident of Shalimar Garden, UP filed a complaint before the Commission alleging that his son, Gaurav, aged 6 years was kidnapped by four persons form his house on 30 March 1998 and that the kidnappers had made a demand of Rs.20 LAKHS as ransom for the release of Gaurav. On being informed, the Police reached the spot and transmitted a message on wireless to the Police control rooms of Haryana and Rajasthan to intercept the kidnappers. Subsequently, due to negligence of the Police, the complainant's son got injured during an exchange of fire between the Police and the culprits and later Gaurav succumbed to a bullet injury. The complaint prayed for an inquiry in the matter through CBI and also for an award of compensation of Rs.30 Lakhs.

On the Commission's notice, a report was received from the SP,CID (CB) Rajasthan, Jaipur Stated that the child sustained the bullet injury during an encounter which took place between the Police and the culprits, as the latter had fired from inside a car upon the Police party. The report added that the Police party was unaware of the actual number of the persons inside the car. The Commission, on considering the report, did not accept the Police version of sudden and spontaneous encounter. The Commission, noted that the Addl. SP., instead of exercising restraint on the Police personnel present, had personally resorted to the firing of six bullets in quick succession from his own revolver and had allowed his gun-men to fire 11 rounds from an automatic weapon. The Commission accordingly formed the view that inadequate efforts were made by the Police to deal with the kidnappers by means other than a recourse to indiscriminate firing. The Commission also recommended that the State Government of Rajasthan pay a sum of rs.25 Lakhs to the father of deceased child by way of immediate interim relief within a period of one month.

**13. Inaction Of Police On The Death Of A Railway Gatemen Due To Political Influence: Haryana.**

The National Commission for Minorities forwarded a complaint that it had received to the NHRC for inquiry and disposal. The complainant had Stated that her husband was a gateman on duty at a railway gate in Haryana. He had closed the gate, as goods train was approaching. An MLA and his gunman, however arrived at the gate in Maruti vehicle and asked the gateman to open the gate. On his refusal, he was assaulted severely and his body was thrown on the railway track. He died due to a collision

with the train. The complainant alleged that, though a case had been registered, no action was taken by the local Police owing to political influence and pressure.

The Commission sought a report from the DIG Railways. The report disclosed that there were three eyewitnesses in the case and they gave almost the same version as given by the complainant. The report further revealed that, according to the post-mortem report, shock and hemorrhage due to multiple injuries caused the death. The Commission, there after, directed its own investigation wing to conduct an independent enquiry. The report disclosed that the Life of the deceased was tragically cut short, as maintained by his widow. The gunman of the MLA was arrested. But released on bail and the sections invoked in his case were 332 (voluntarily causing hurt to deter public servant from his duty), 352 (Punishment for criminal force otherwise than on grave provocation), and 304-A (causing death by negligence) of the Indian Penal Code. The MLA deposed before the investigation team that he came to know about the incident only from the newspapers, whereas before the Police had attributed the whole occurrence to his gunman. During the period of six months before the arrest of the gunman and examination of the MLA, it appears that political pressure was brought to bear on the witnesses, as one eyewitness changed his Statement substantially. Another witness deposed that he was pressurized to change his version, or he would receive the same treatment as the deceased; this witness, however, maintained his stand firmly.



The photographs of the deceased reveal that his belongings were scattered over the place of the incident, confirming that he was actually dragged to the railway track.

The Commission stressed the need for a fresh, fair and impartial investigation. The Commission observed that it was surprising that though a case of 302 IPC (murder) was initially booked, no investigation was carried through to its logical conclusion.

The Commission directed the Government of Haryana to entrust the investigation to CBI.

#### **14. Death Of A Deputy Superintendent Of Police Due To Police Inertia: Bihar.**

Shri N.K. Singh, Member, National Executive, Samata party in his complaint to the Commission alleged that the death on 8 December 1998 of Shri Satyapal Singh, DSP and a Hawaldar, in an encounter with a gang of criminals allegedly.

Having links with one Mohammed Jaffer Alem, an office bearer of the Rashtriya Janta Dal, was attributable to the deliberate delay in the arrival of the Police reinforcements from the District Headquarters. It was further alleged that the reason for the hesitation in sending additional help was because of the political influence of Mohammad Jaffar Alam.

After examining the report of Shri S.V.M. Tripathi, former DGP, UP who was requested by the Commission to investigate the case, the Commission came to the prima-facie conclusion that the response from the District Headquarters to the request of DSP Satyapal Singh for additional reinforcements did not reflect the importance that the matter demanded, the action of the Supdt. Of

Police, in leaving the matter to the ASP, who reached the place of encounter with just 4-5 persons, four and a half hours after the receipt of the message, showed that the Supdt of Police had failed to realize the gravity of the situation. Shri Tripathi, in his report, had ascribed the delay in the arrival of the reinforcements to a lack of planning and urgency. Noticing that none of the five assailants involved in the case was arrested and the half-hearted action taken under section 82/83 Cr. P.C., and considering the political influence of the main accused, the Commission felt that it could reasonably be assumed that the Police deliberately did not take the job seriously. Taking a serious view of the matter, the Commission noted that the death of a young DSP, in an encounter with a gang of criminals known for its alleged political links had bearing on the morale of the Police force. Looking into the poor account that the Supdt. Of Police had given of his professional abilities and leadership qualities. The latter deserved to be dealt with suitably after obtaining and evaluating his replay to a show cause issued to him by the Commission on the following points:

It was his failure to realize the gravity and urgency of the request for reinforcements received from the Police party engaged in a daring encounter with a gang of criminals equipped with sophisticated weaponry. his decision to leave the matter to his ASP instead of himself rushing to the scene of encounter with adequate force himself; and his failure to ensure prompt arrests and proper investigation of the case registered against the assailants, particularly Mohammed Jaffer Alam.

Considering that there was a strong prime facie material to hold that the young DSP lost his Life owing to the negligence of

the Police, the Commission recommended that. The widow of the DSP should be paid an immediate interim relief of Rs.5 Lakhs by the Government of Bihar without prejudice to her claims under the law of the land. The Commission also recommended that the widow should be given a suitable job in accordance with her academic and other qualifications in the service of the Government.

**15. Atrocities Against Minorities :**

**Killing Of Australian Missionary And Sons: Orissa.**

Acting suo-motto on 25jan-1995, the Commission expressed deep shock and pain at the recent - attacks on the members of the Christian community in Madhya Pradesh, Gujarat and Orissa which had been in the press. The Commission further observed that. In each of the States, the investigating machinery of the respective States was said to have been set in motion to stop tragic events that had occurred.

**16. Killing Of 35 Sikhs By Militants In Chatisinghpora :**

**Jammu & Kashmir.**

The Commission took suo-motto cognizance of reports dated 22 March 2000, which appeared in all leading newspapers, concerning the killing of 35 members of the Sikh community in Chatisinghpora village of Anantnag District during the night of 21 March 2000 by heavily armed militants. It was Stated that all those killed were men, aged between 16 and 55. Later, a woman died of shock on seeing the bodies of those killed at least two families lost all of their male members. The incident occurred a few hours before the president of the United States of America was to begin an official tour to India. The Commission issued notice to the Chief Secretary and Director General of Police,

Government of J&K as well as to the Secretary, Ministry of Home Affairs, Government of India calling for detailed reports. As of the close of the period under reporting, the Commission was pursuing this matter.

#### **17. Custodial Death Of Mohammed Irshad Khan**

The Commission received information from the deputy commissioner of Police (DCP), North East District, Delhi about the death of Mohammed Irshad Khan. A complaint was also received from Shri Acchan Khan, Father of the deceased, alleging that his son has died as a result of beating by the Police.

The letters report indicated that on 12<sup>th</sup> oct – 2000, while the victim was driving his two wheeler scooter. He had collided with a cycle rickshaw. A Policeman had intervened and reportedly beaten the victim. The victim has been taken to GTB Hospital, Where he was declared dead. A Magisterial inquiry had been conducted by the SDM Seelampur. The Commission recommended RS 3 lakhs as an immediate interim relief. The Government of National capital territory Stated that the amount was given to the deceased's wife.

#### **18. Violation Of Rights Of Children/Women**

##### **Sexual Harassment In The Work Place And Suicide Of Sangeeta Sharma, Advocate.**

Dr. Kalpana Kannabiran ,President , Asmita Pusoura Centre for Women Secandrabad, Andhra Pradesh submitted a complaint in respect of the suicide of an advocate of Andhra Pradesh High Court, Sangeeta Sharma allegedly as a result of sexual Harassment by a fellow lawyer and some senior advocate in order to ensure proper investigation of the case and action against the accused. After completion of investigation by the CID a charge – sheet was

filed in the trial Court. Accordingly, such a committee was constituted on 21<sup>st</sup> Dec 2001, under the chairmanship of shree soli J. Sorabjee in his ex – officio capacity to consular all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalization also punishment for those who may be involved. The committee would also consider whether amenclements were needed to the Advocates Act, 1961 and the Bar Council Rules.

Now, this is the personal view of Present Research Scholar, that after Vishakha judgment still woman is not safe at workplace. Whether that woman is an illiterate rural resident or an educated, Professional and urban woman. The sexual harassment is an unavoidable nuisance for any woman at anywhere. So; in present scenario the statutory body like NHRC must be active in problems related to women.

**19. Death Of 12 Year Old Child Worker, Naushad : Bangalore.**

An NGO of Bangalore , & MAYA ( Movement for alternatives and youth awareness) , made a complaint to the Commission saying that a 12 year old child worker had died in the silk filature unit premises in Ramanagarm town on 14 Nov. 2000 having suffers 79% burns sustained in the unit. It was alleged that the age of the deceased was changed to 17 years by the Police, acting in connivance with the doctor who had conducted the post mortem, in order to save employer.

The Commission issued notions to Chief Secretary. DGP. Karnataka and the Labour Commissioner of Karnataka.

The Commission has been monitoring the progress in speed of the cases that act in Court.

**20. Death Due To Electrocutation - Strict Liability Of State.:**

The Commission took cognizance of a complaint from Maku Murmur, resident of Dumka, Jharkhand alleging that, her husband, Baba Ram, had died on a July, 2000 as a result of being electrocuted by a live transmission wire. She Stated that the death was the result of negligence of the Bihar State Electricity Board.

The Commission, while over ruling the contentions of the State held that the Bihar State electricity Board could not be absolved of its responsibility of properly maintaining the whole system, that rain storms were not an unusual phenomenon and care was needed to avoid such situations.

The Bihar State Electricity Board sought a review of the matter on two grounds, namely (i) that the State of Bihar had been bifurcated with the formation of the State of Jharkhand with effect from 1<sup>st</sup> Nov.2000 and that this hand transferred the liability to the State of Jharkhand ; and (ii) that the death of Baburam Tudu was in an accident resulting from heavy rains and a storm which had to the snapping of a high tension wire and the lowering of its height. The Commission did not find any justification in submissions. In a decision of 11 Jan – 2002, it refer to the doctrine of strict liability recognized and applied by the Apex Court in a similar situation in the case of M.P. electricity Board v/s Shail Kumari and others. The Commission accordingly recommended the payment of RS. 2 lakhs by the Bihar State Electricity Board to the next of kin of the deceased.

**21. Killing Of Mohinder Singh In Police Firing :**

A. The Commission received a complaint from one Gurmeet Kaur, wife of the late Sardar mohinder Singh, resident of Jammu in the State of alleging that her husband had been killed during the morning of 5<sup>th</sup> feb-2001 as a result of indiscriminate firing by the Police.

Open a notice being sent to the Chief Secretary and DGP the State Government submitted a reported dated 14 June 2001, stating that a tense situation had developed after the killing of six members of the Sikh community. The district Magistrate, Jammu had accordingly imposed a curfew on the city on 4<sup>th</sup> Feb.2001. However, in violation of curfew restrictions, members of Sikh community had assembled at Gurudwara Teg Bahadur and about 400-500 persons had then taken out a procession, armed with lathis, swords etc. while the Police contingent had tried to stop the procession peacefully the procession turned violent and stones were pelted. After warning the Police restored to lobbing tear – gas shells and a mild – lathi charge was under taken. There after in order to prevent damage to property the magistrate on duty ordered firing in which Sardar Mohinder Singh was injured along with others. The injured Sardar Mohinder Singh was taken to GMS hospital, where he died.

The office of the Deputy Commissioner, Jammu subsequently submitted a repply that magisterial inquiry had been ordered. Also the State Government had granted ex-gratia relief of RS 1 lakh to next keen of the deceased.

**22. Now, Some Latest Cases About Right To Life.**

**(a) NHRC Issues Notice To Police Commissioner Nasik  
On The Death Of A Dalit Youth**

Taking suo-motto cognizance of a report which said that Rangnath Shankar Dhale, a 23 year old resident of hutments at Muktidham in Nasik City was beaten to death by a mob for allegedly pelting stones on passing vehicles on Nasik Road. The report published in 'The Tribune' on Nov. 30,2006 said the incident took place during protests against vandalisation of a statue of Dr. B.R.Ambedkar in Kanpur, Uttar Pradesh.

**(b) NHRC Asks For Comments From Chief Secretary And  
DGP West Bengal On The Death Of A Newborn As Police  
Grilled The Mother In Howrah**

The report which appeared in the 'Times of India' dated December 1, 2006 said that on the morning of November 29, 2006 a newborn died of hunger and cold as the Policemen at Howrah Police station turned a deaf ear and continued to grill the mother. The report said the mother, Soma Giri was picked up a day earlier from Palpara, for bearing a child out of wedlock. She was mentally challenged, the report added. The mother of soma Giri who accompanied her pleaded the cops to let Soma off for the night as the baby needed to be nursed. The Policemen however, did not listen. As the temperature dipped, the four-day-old girl child shivered in the absence of warm clothes.

**(c) NHRC Sends Notice To Concerned Authorities In Andhra  
Pradesh On The Plight Of Tribals In Hakeerpeta Mandal  
Of Vishakhapatnam**



As per the news, televised on December 11, 2006 the tribals living in the villages of this Mandal are suffering from a peculiar fever that led to the death of about 100 tribals in the age group of 14 to 40 and a numbers of others are still suffering from the fever. The report also said that no medical help is available as these villages are far from the main town.

**(d) NHRC Sends Notice To Chairman, Railway Board For A Report On The Death Of Train Passengers In Bihar Following Collapse Of An Over Bridge**

The National Human Rights Commission has sent notice to the chairman, Railway Board on the recent accident in Bihar where an over bridge fell on a train, killing 37 people. Taking suo-motto cognizance of a news report which said that Ulta Pul road bridge was waiting to cave – in any moment. The Commission said if the contents of the report are true, they raise serious issue of violation of Human Rights of the passengers. The report published in ‘The Hindustan Times’ dated December 2, 2006 also said that a part of the bridge had been dismantled by the railways but the trains were allowed to ply beneath it in violation of railway safety norms. The report further said that three years ago, the over bridge, developed cracks due to heavy traffic road.

**(e) NHRC Seeks A Factual Report From District Collector, Gautam Budh Nagar On Abandoned Boy.**

The National Human Rights Commission has sought a report from the District collector, Gautam Budh Nagar about a media report which side a boy who was abandoned in a sedated condition by an unidentified man a week ago, was being looked after by a tea stall owner.

After going through the contents of the report, the Commission said if they are true, they raise serious issue of violation of Human Rights of children. The Commission has sought a factual report from the District Collector within two weeks.

**(f) NHRC Issued Notice To IG (Prisons), Maharashtra On The Death Of One Under – Trial And Injuries To Three Others**

The National Human Rights Commission has sought a report from the Maharashtra Government on a news report about the custodial death of one person and injuries to three others in Mumbai's Arthur Road Prison. The Commission has given two weeks time to the State's Inspector General of Prisons to submit the report. Taking Suo-Motto cognizance of the Times of India report published on December 24, 2006. The Commission said if the contents of the report were true, they raise serious issue of violation of Human Rights of the under – trial prisoners.

**(g) NHRC Issues Notice To The SSP, Ghaziabad On The Death Of A Disabled In Police Custody**

Taking suo-motto cognizance of a news report published on January 3, 2007 in "Dainik Jagaran" which said that the young man died in Nehrunagar hospital while in Police custody, the Commission has ordered a copy of the news item to be forwarded to the SSP, Ghaziabad.

According to the news item, the family members of the dead man have alleged that he died due to Police torture and demanded action against the officials responsible for it. But the official in-charge of Sihani Police Station said that man died due to epilepsy. He also told that an inquiry was on into the incident and action

would be initiated against the concerned if found guilty, the report added.

**(h) NHRC Issues Notice To The Chief Secretary, Up For Starvation Deaths Of Poor And Suicide Death Of Debt-Ridden Farmers**

The Commission took suo-motto cognizance of a news report which said that the starvation deaths of poor persons and suicide death of debt-ridden farmers in Bunderkhand area of Uttar Pradesh. The news report which published in the “Hindu” on October 20, 2006 captioned “UP downplays agrarian crises”, said that Bundelkhand has been witnessing drought-like conditions for the last four years, and it was in 2004-2005 that the region was declared drought-hit following more than 50 per cent crop loss in the seven district of Jhansi, Lalitpur, Jalaun ,Mahoba, Hamir pur, Banda and Chitrakoot.

The Commission expressing concern over the situation, said “the contents of the press report, if true, raise serious issue of violation of Human Rights of the poor people and in particular, the farmers of Bundelkhand area of Uttar Pradesh”.

**(I) NHRC Issues Notice To Chief Secretary & DGP,Punjab**

The national Human Rights Commission has issued notice to the DGP, Punjab on a report which said a six year old girl died after being beaten up by the teacher. Taking suo-motto cognizance of a report which appeared in “the Tribune” on January 14, 2007, the Commission said it raises a serious issue of violation of Human Rights of the students.

The Commission also took note of another report appearing in the same newspaper on December 27, 2006 which said that

farmers face Police violence. The report had indicated that the Police used brutal force while handling an agitation by farmers over land acquisition at Chabba near Amritsar.

The Commission expressing anguish over the report said if true, it raises a serious issue of violation of the Human Rights of the farmers. The Commission has asked for a factual report from the Chief Secretary and DGP, Punjab within two weeks.

**(J) NHRC Asks For A Report From Chief Secretary & DGP ,UP On The Present Status Of CBI Investigation Into The Missing Persons/ Children In Nithari Village; Asks To Specify Whether All Missing Case Have Been Entrusted To CBI**

The National Human Rights Commission has directed the chief secretary and DGP, Uttar Pradesh to submit a detailed report within four weeks, giving the present status of CBI investigation and specify whether cases of the missing persons or children in Nithari Village have been registered and investigation to CBI.

The Commission has expressed serious concern on the recent phenomenon of missing children. It said this is not confined to Nithari alone as similar incidents have been reported from other parts of the country as well. Taking serious view of the happenings all over the country, the Commission has said that the issue needs to be examined in depth and guidelines be evolved to deal with such cases effectively and meaningfully to protect and promote Human Rights of children. The Commission also said appropriate steps are to be taken so that their Rights are not violated.

**(k) NHRC Asks For Factual Report From Chief Secretary  
And Dgp Of J&K Govt. On Fake Encounter Case**

Taking suo-motuo cognizance of the newspaper report, appeared in the 'Asian Age' and 'Hindustan Times' on 31<sup>st</sup> January, 2007, which further indicated that the Jammu & Kashmir Police on 30<sup>th</sup> January, 2007 arrested four more members of the counter insurgency Special Operation Group (SOG) namely Head Constable Muhammed Ashraf, Surendra Kumar and Krishen Chand and Constable Shamim Ahmed for their alleged involvement in killing people in fake encounters to claim Government rewards. The report mentions that all the four-Policemen arrested were a part of the team that allegedly killed carpenter Abdul Rehman Paddar in an alleged fake encounter Ganderbal area on the outskirts of Srinagar recently.

After going through the report, the Commission has been said if the contents are true, they raise the serious issue of violations of Human Rights of citizens.<sup>7</sup>

**5.5 Conclusion:-**

Now; in this present chapter, cases related to Right to Life described chronologically. From the year of 1992, current cases up to year 2007 has been included. A study of all these illustrative cases prove that the Right to Life.

The Present Research Scholar has found out some facts after studying these cases they are mentioned here one by one :- (All details are related to year 1992 to 2007) At first; cases solved by the Commission with State wise figures:-

- (a) U.P.-16
- (b) Bihar-7

- (c) Gujarat-4
- (d) Maharashtra-5
- (e) Delhi-4
- (f) Karnataka-4
- (g) J & K -3
- (h) Punjab -3
- (i) Manipur-2
- (j) Andhra Pradesh-4
- (k) Rajasthan-3

And Tamilnadu, Orissa, Assam, Nagaland, Kerala, Hariyana, Meghalaya, Jharkhand, & Andaman-Nikobar –all States have one case related to Right to Life.

This is to note that most of States have minimum one case related Right to Life maximum number of cases have been registered from U.P. & Bihar.

Now; information related to complaint registration and cognizance :-

- one complain by Advocate from M.P.
- Twenty (20) cognizance from press reporters.
- Two from electronic media.
- Nineteen privet complaint has been registered.
- Nine complain by NGO. Some was combined with private complaint.
- one complaint by S.H.R.C.
- Five complaints by Government officials.  
Either by district Magistrate or by district Superintendent of Police.

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7 All cases has been downloaded from the Commission's website.[www.nhrc.nic.in](http://www.nhrc.nic.in)

- Two private complain by Telegram.
- Two recommendation for taking cognizance to the Commission by Amnesty International.
- Now Some characteristics in relation to compensation:-
- one ex-gratia relief.
- monetary compensation with monthly allowance.
- Fourteen cases of interim compensation
- Fourteen cases of compensation
- Three interim relief of fixed amount and rest amount was put down on fix deposits.

The compensation also recommends a partial payment of whole amount by cash / DD as an interim relief. With this the rest amount to be always kept in Fixed Deposit in a Nationalized Bank. Also it is notable from the study of latest cases (especially from the year 2007) , the Commission has taken most of cognizance from press reports. But the Commission reacts very cautiously; after checking the correctness of the news.

## CHAPTER – 6

### RIGHT TO EQUALITY

#### 6.1 INTRODUCTION :-

Equality has had a long history. It has figured prominently in many different contexts and has been given a great number of meanings and definitions. Some have viewed it as a fundamentally spiritual and religious notion namely that “all men are equally the children of god and equal in his sight despite their widely differing circumstances”. Others have stressed its affinity with and supposed derivations from the state of nature, wherein all the power and jurisdiction is reciprocal, no one having more than another’s and where all are equal one amongst another, without subordinate or subjection”.

To recognize the equality of human beings is to recognize the prominence of persons in a world of things. If it is to draw the line between the human and non-human. To insist on the equality of man is to affirm humanity.<sup>1</sup>

Equality does not exclude anybody. We are all human, women and children too, and no one is left out of the valuable states of persons. Equality is a membership. To be equally members of human race is to have all the rights and privileges. The members differ individually. They lack uniformity, and there is little observable exterior similarity among them. Since the equality is a not excluding principle. Then it follows that the right to recognition as a human is not subject to forfeit. Equality is the inalienability and undesirability of being human.

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1 Naikar L.D. ‘The Law Relating To Human Rights’ – 2004 Puliani & Puliani publishers private Limited, Bangalore PP.410-411



Equality blends with other, ground concepts of human purpose not only liberty and happiness. Equality calls for maximization of liberty of each individual everyone is equally face, though their freedoms will differ as they themselves differ as persons. Equality does not mean uniforms. It does mean differences have the same worth.

Our country becomes Republic on 26<sup>th</sup> January, 1950 with a written Constitution. It is a fall of noble thoughts. Great jurist late Mr. N.A. Palkhivala pointed out, the same matter. He said, "We commenced with one priceless advantage. Namely, 5000 years of civilization behind usage. "A civilization" in the words of Ralph welds Emerson reached "Summit of human thoughts." He repeated "there are 12 great "living religions" in the world and all the 12 religions flourish in India. It is because the very other of India is to learned and India has differences are also watchful.<sup>2</sup>

All the persons are equally subject to law, though the law to which some are subject may be different from the law to which others are subjects. Equal protection of law is which others are subject. Equal protection of law is exclusively associated with written Constitution and embodies guarantees of treatment normally applied not only to the procedural informant of laws but also to the substantive Constitutional principal, which demands, that law will only be legitimate if they can be described as just & equal.

## **6.2 Equality – Legal and Real**

As Equality postulates not merely Legal Equality, but also Real Equality. The Equality of the opportunity has to be distinguished from the Equality of Result. The various provisions of our Constitution and particularly those of Articles 38, 46, 339, 338 and 340 together with the Preamble, show that the Right to Equality enshrined in our Constitution

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<sup>2</sup> From Article 'Common Man and the Constitution of India' – A.I.R. 2001/1.

is not merely a formal right or a values declaration. It is a positive right and the state is under an obligation to undertake measures to make unequal to enable all to compete with each others on an equal plane. It is necessary to take positive action. The civilized society has taken these measures in various work. They are :-

### **6.2.1. International Measures:**

Specially the Universal Declaration of Human Rights is the greatest source for the concept of right to equality. The declarations in Article no.1, 2 & 3 deal with fraternity Equality & Liberty. By this declaration for the first time, government agreed on a standard against which to measure their treatment of citizens. It includes the Right of Equality before the law.

Article 2 of the universal declaration of Human Rights says that “No person should mint against which measure their treatment of citizens. It includes the Right of Equality before the law.

Article 2 of the Universal Declaration of Human Rights says that, ‘ No person should be discriminated against on the basis of race, religion, caste, color or any other status.

This Universal Declaration inspired many regional conversions i.e. European Convention of Human Rights and the American Convention on Human Rights. Both these conventions include the Right to Equality before the law. This Universal Declaration has highly impressed the founding fathers of our Constitution so; our Constitution also includes various co-related rights under the part-III the present research scholar wants to discuss them one by one.

### **6.2.2 Rights to Equality under the Indian Constitution**

Article. 14 says, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The source of Article 14 lies in the American and the Irish Constitution. It may be mentioned that the preamble to the Indian Constitution & speaks of equality of status and of opportunity and this Article gives effect to that principal in the fact of the Constitution. In a sense, the almond of for Equality is linked up with the history of the freedom movement in India. Indians wanted the same rights and privilege that their British masters enjoyed in India and the formation of the Indian National congress in 1885. the Common Wealth of India bill, 1925 in clause & demanded ‘interlay’, Equality before the law and providence especially there was to be “no disqualification or disability on the general only of sex” also with the provision that all persons were to have equal rights to the uses of “roads, courts of justice and all other places of business of dedicated to the public. The Right to Equality finds places.

The Right to Equality finds place in the report drawn up by Motilal Nehru as chairman of the committee appointed to determination principles of the Constitution of the India (1928). The Karachi Resolution (March 1931) reiterated, this right in the resolution on fundamental right and economic and social change. The Sapru Report (1945) incorporation the proposals of the Sapru Committee, which laying emphasis on minorities did enunciate the fundamental rights and page of the proposed new Constitution as a standing warning to all –

“That what the Constitution demands and what expects is perfect Equality between one section of the community and another in the matter of political and civic rights Equality of liberty and security in the enjoyment of the freedom of religion worship and the pursuit of the ordinary application of life.<sup>3</sup>

### **Comment**

Broadly speaking, judicial decision interpreting article 14 while recognizing the paramount nature of fundamental rights, recognize the need on consideration of reality to have certain limitations. It is often stated that Equality before the law guaranteed by the first part of article 14 is a positive concept. Neither part of the articles is above the the recognition of exceptions and qualifications on special grounds. The Constitution does give moreover some of its provisions as interpreted result in a certain amount of discrimination. For ex., the liability of the State in tort is even today in India not necessarily the same as the liability of a private employer. According to current theory no suit lies against the government for an injury in the course of exercise of the sovereign functions of the Government State of Rajasthan.

Similarly in the statutory framework of India one does conforunately come across provisions which introduce or maintain a certain amount of in Equality between Government officers and ordinary citizen i.e. file a suit against the government or be done by the latter in his official capacity a two month notice is ordinarily required under see 80 of the Code of Civil Procedure 1902.

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**3** S.P.Basu J. ‘Law to protection of Human Rights Under the Indian Constitution and allied Law’s (2002) Modern Law publication Allahabad. P.83

Similarly where a public servant who is not removable from his office except by or with sanction of the government, is accused of an offence committed by him while acting or purporting to act in the discharge of his official duties.... Criminal Courts are barred from taking cognizance of such an offence without previous sanction of the Central Government or the State Government as the case may be under sec. 1947 of the Code of Criminal Procedure 1973.<sup>4</sup>

1. At first Article 16 guarantees Equality of opportunity for all citizens in matter relating to employment or appointment for all any office under the state.

In a view of its great significance, it has been enacted as a distinct and separate fundamental right because as a principle, equality of opportunity in public employment is vital to the building up of the new classless society in the Constitution.

Article 15 denies discrimination on the basis of religion race, caste, sex or place of birth by the State. Also Article 38 recommends to the State for Equality. Especially its II clause states “The state shall in particular strive to minimise the inequalities in status, facilities and opportunities not amongst individual but also amongst group of people residing in different areas or engaged in different vocations.

Article 46 also state that to protect caste scheduled caste and other backward class against injustice and exploitation by promoting them in education field and economic field. (Now only SC, ST, OBC)

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4. Naikar L-d. ‘**The Law Relating to Human Rights**’ (2004) – Piliani & Puliani Publishers private Limited Bangalore. P.91

Also Article 335, 358 & 340 also have some special provision for of SC , ST, OBC Article 338 provides for establishment of National Commission for an improvement of the conditions of backward classes.

So here mentioned provisions of Constitutional Law of India, either directly or indirectly prevails Right to Equality. Right to equality is a fundamental Right. Not only Constitutional Law of India; but also statutory bodies are active for the promotion of Human Rights as illustrated here. National Commission for SC & ST is working for upliftment of SCT & STS. In the same way, National Human Rights Commission is working for the protection and promotion of Human Rights. The Right to Life is the Right to Equality. The Right to Liberty & the Right to Dignity are primarily recognized as Human Rights.<sup>5</sup>

In this chapter the Present Research Student is discussing about Right to Equality so; it is necessary for the Present Research Student to discuss above cases solved by the National Human Rights Commission. They are described here one by one.

### **6.3 Cases solved by the commission for preservation Right to Equality :**

#### **1. End to discriminatory treatment in the remission of unexpired portion of life sentence in Orrisa.**

In a Sessions trial in 1975, four persons, Gopal Banerjee, Ashit Dey, Amulya Rai and one other were convicted and were sentenced to life imprisonment by the Sessions Judge of Cuttack, Gopal Banerjee was lodged in custody at the Dum Dum Central Jail, Culcutta. Ashit Dey and Amulya Rai were released prematurely in

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5. Baxi P.M. 'The constitution of India' (2002) Universal Law, Co. Pvt. Ltd. New Delhi – P.17

1989 and 1993 respectively, upon the State Government remitting the unexpired portion of their sentence.

In response to a writ petition filed by the wife of Gopal Banerjee in 1992, the Supreme Court had asked the Orissa Government, which considered the mercy petition praying for premature release of her husband, had rejected the same.

The Commission examined the matter following an application from Smt. Gopal Banerjee and felt that the State Government's stand in the case affected the Right to Equality of treatment.

**2. Right to form Association, State Government's order prohibiting teachers and other faculty member of Universities from associating with Andhra Pradesh Civil Liberties Committee (APCLC) : Andhra Pradesh**

The Commission received a number of complaints from NGO's and academic institutions from India and abroad stating that the Government of Andhra Pradesh issued a circular ordering universities to prevent teachers and other faculty members of Universities from associating themselves with the Andhra Pradesh Civil Liberties Committee (APCLC). It was alleged that such a directive was violative of the Freedom of association and Political Rights. Five academics of Osmania Krishnadevaraya and Nagajuna Universities were asked to resign from the membership of APCLC, a non governmental organization. It was stated that the NGOs membership of a Human Rights Organization could not be construed as political activity.

The Commission took cognizance of the matter and issued notice to the Chief Secretary, Andhra Pradesh. In reply to the

Commission the Government of Andhra Pradesh informed that they are reviving the whole matter.

### **3. HIGH-HANDED ACTS OF POLICE:**

#### **UTTAR PRADESH**

Shti Brijendra Singh in a complaint to the Commission alleged that on 9 April 1994, certain police officials came to his house, destroyed his household articles as well as those of his family members and caused a loss of Rs.2,00,000/- under the directions of the SHO. Despite protest by the local population, the doors and windows of his house were extensively damaged. The police allegedly also took away Rs. 18,400 in cash and 500 gms. of gold. The complainant supported his allegations by photographs showing the extent of damage done to his property.

In response to the notice issued by the Commission, the Government of Uttar Pradesh submitted a report stating that in a pending case against the complainant, the police had gone to his home on a number of occasions to apprehend him. During the course of attachment, the State Government admitted that some police officials had committed irregularities for which censure had been recorded in their personal files and disciplinary action had also been taken against the Inspectors and subordinate police officers.

The report was also silent regarding the allegation of destruction of property worth Rs. 2, 00,000/- by the police and the taking away of Rs.1 8, 400 in cash and 500 gms. The Commission, therefore, rejected the report and called for a fresh report from the Chief Secretary. The word “irregularities”, the



Commission observed, was an apologetic euphemism for wanton destruction.

The Commission further noted that the photographs filed along with the complaint corroborate the allegation of damage to the property.

Having regard to the facts and circumstances of the case, the Commission made the following observations and recommendations:

1. The penalty imposed by giving a “censure” in the service book of the Circle Officer was disproportionate to the gravity of the offences on his part.
2. As there was prima facie evidence to hold that the petitioner had suffered humiliation, harassment and mental torture at the hands of the Circle Officer and three Sub-Inspectors; sustained losses owing to irregularities, admittedly committed by the police officials in the presence of a Gazetted Police Officer while executing the process of attachment; and keeping in view the ransacking of articles, destruction of property as admitted by the State Government in its report, an interim relief of Rs.1,00,000/- be paid to the complainant Shri Bijendra Singh.

**4. Non-supply of relief materials to Kuki refugees in Manipur**

The Commission took cognizance of the complaint from the President, Health and Medical Research Development Welfare Union .Manipur alleging that relief materials for Kuki refugees were not reaching them and that they were being subjected to oppression, torture and killing by Naga militants. The complainant

also asked that these refugees to provide with homeland supplied food grains, clothing, utensils, medicines and other essential commodities. Upon receiving notice from the Commission, the State Government reported in detail on the steps that it had taken to redress the suffering of the Kuki refugees. These measures included the construction of 2183 houses for the Kukis. Further, substantial allocation of money was also made to meet the requirements of the refugees. As a result of the special efforts made by the State Government, clothes received by way of gifts, had been distributed in the affected areas.

The Commission, therefore, suggested that serious attention should be devoted ask of bringing about reconciliation between the two ethnic groups and called upon the State Government to work to this end. So, the Right to Equality can be maintained.

#### **5. Disparities in Maternity Leave to the Employees of Private Schools: West Bengal**

A complaint was received by the Commission alleging that management of certain private schools in West Bengal had not been providing maternity leave benefits to the teaching and non-teaching women employees. The Secretary, Department of Education, Govt. of West Bengal on notice from the Commission submitted a report based on inquires. The Commission observed that there was no uniformity in the rules/ code framed by different boards like the ICSE and the West Bengal Board of Secondary Education with regard to maternity leave and were at variance with the maternity leave rules framed by the Government. So the Right to Equality implements. The Commission directed the Government of West Bengal to undertake a review of the existing

rules / codes and to bring about uniformity and also to incorporate the provision of grant of 120 days maternity leave to the teaching and non-teaching women employees of various educational institutions. The Commission further stated that it was up to the authorities of the State Government to restrict the facility of maternity leave to two child births, if it thought necessary and appropriate.

#### **COMMENT**

Though women constitute half the world's population, there is still no society in which they enjoy full equality with men. Patriarchal attitudes and consequent power imbalances have adversely affected women culturally, socially, politically and economically. The Universal Declaration of Human Rights, reaffirming faith in the dignity and worth of the human person and in the equal rights of men and women, envisaged the enjoyment of such rights without any distinction of any kind, including discrimination on the basis of sex (Preamble, Article 2). However, gender discrimination constitutes one of the most pervasive forms of violation of human rights. In the light of this fact, the Vienna Declaration of 1993 explicitly asserted that the human rights of women are an inalienable, integral and indivisible part of universal human rights and eradication of all discrimination on grounds of sex are priority objectives of the international community. State Parties have thus undertaken to eradicate this evil under various articles of the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW). The Indian Constitution propagates the spirit of equality before law through Art. 14 and mandates the State, through Art. 15, not to discriminate between

citizens on certain grounds, including the sex of the person. Art. 15(3) is an ameliorative provision which authorizes the State to make special provision for women and children. The Commission thus strives to fulfill the obligation of the State under various human rights instruments and the Indian Constitution to protect and promote the rights of women.

Among these instruments is the UN Declaration on the Elimination of Violence Against Women 1993, which 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 private life. As regards the latter, further violence against women includes the physical, sexual and psychological violence occurring in the family, including battering, other traditional practices harmful to women, non-spousal violence and violence related to exploitation. For long, due to public and private dichotomy in human rights jurisprudence, violence perpetrated against woman within the four walls of her home remained ignored and could not be brought under the purview of UN instruments and local legislations. However, the international human rights discourse has identified and recognized the 'private sphere' violations of the human rights of women. The Commission's intervention in one of the cases mentioned above is a reflection of this recognition.

The Platform for Action and Beijing Declaration (1995) defines health as a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. The health of women involves their emotional, social, and physical

well being and is determined by the social, political and economic context of their lives, as well as by biology. Expecting mothers are therefore entitled to special care and protection and their motherhood should not become a hindrance to their right to favorable conditions of work. Art. 10 of the International Covenant on Economic, Social and Cultural Rights 1966, recognizes that special protection should be accorded to mothers during a reasonable period before and after child birth.

During such period mothers should be accorded paid leave or leave with adequate social security benefits, It is pertinent to note that by virtue of its being a signatory to CEDAW, India is under an obligation, under Art. 11, to protect the right of health and safeguard the function of reproduction in case of working women. Further, the State is under a duty to prevent discrimination on grounds of maternity and to ensure that effective right of women to work is protected by introducing maternity leave with pay, or with comparable social benefits, without loss of employment, seniority or social benefits. The Commission, in fulfilment of Article 11 of CEDAW, directed the State of West Bengal, in one of the above-mentioned cases, to undertake a review of the existing rules/ codes and to bring about uniformity by ensuring appropriate provision for the grant of 120 days maternity leave to teaching and non-teaching employees in the schools of that State.

#### **6. Escape of Inmates from Juvenile Homes, etc**

In this groups of 87 cases, the attention of the Commission was drawn to the escape of several inmates from the Beggars' Homes/Juvenile Homes/ Remand Homes situated in different parts of Maharashtra. The escape of such a large number of inmates was

indicative of the fact that there were either serious infrastructural deficiencies or that security arrangements were faulty.

The Commission directed that the Chief Secretary, Government of Maharashtra should review the functioning of the Beggars' Home/Juvenile Homes/Remand Homes

### **COMMENT**

Progressive criminology propagates the use of non-institutional treatment of offenders. The loss of liberty, separation from the family and the social environment in institutions often results in unwanted consequences. Considering this, Rule 19 of the UN Standard Minimum Rules for the administration of Juvenile Justice (1980) aims at restricting institutionalization in quantity and in time. Rule 19 lays down that the placement of juveniles in an institution shall always be a disposition of last resort and for the minimum necessary period. Article. 3 of the Convention on the Rights of the Child (CRC) mandates the State to ensure that the institutions responsible for care or protection of children shall conform with the standards established by competent authorities. Article. 19 of that Convention further mandates that the State shall take all appropriate legislative, administrative, social and educational measures to protect the child in all Respects, while in the care of parents etc. or any other person. Art 40 of that Convention recognizes the State's duty to treat the child offender in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others. Rule 26 of the Beijing Declaration says that the juveniles shall receive care, protection and all necessary assistance, e.g. social, educational, vocational, psychological,

medical and physical, which they require due to their age, sex, personality and in the interest of their wholesome development.

The order of the Commission sought to review of conditions in the institutions for children, in order to bring them into conformity with acceptable standards.

## **PROTECTION OF OTHER RIGHTS**

### **7. Protection of Right of Victims in cases of industrial**

#### **hazards: Uttar, Pradesh**

The petitioner, Ms. Suhashini AH, drew the attention of the Commission to the occurrence of a ghastly incident In the factory premises of Jyoti Capsules on 4 January 1998 in Kanpur, in which 8 workers had lost their lives. The accident occurred due to an explosion caused by the leakage of an inflammable chemical, Hexane. The petitioner alleged that the factory had resumed production without taking due care of safety conditions.

The Special Rapporteur of the Commission investigated the case and stated that the accident was the result of criminal negligence by the factory owner in handling and storing explosive chemicals and that he had failed to maintain safe working conditions in the factory. A major contributory factor was supervisory lapse on the part of the Inspectorate of Factories. The Labour Department of the Government was directed to investigate the reasons for the supervisory lapse and to penalize the culprits. The intervention of the Commission brought about the award of immediate relief of Rs. 5000 each to the victims

## COMMENT

The Directive Principles contained in Article. 48A of the Constitution direct the State to endeavors to protect and improve the environment. This is the provision for equal treatment to all.

Principle 13 of the UN Declaration on Environment and Development (Rio Declaration, 1992) proclaims that States shall develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Public Liability Insurance Act 1991 is in consonance with the spirit of principle 13 of the Rio Declaration, in as much as it aims at providing for public liability insurance for the purpose of providing immediate relief to persons affected by accident occurring while handling any hazardous substance or matters connected therewith or incidental thereto. Under the Act, any person handling any hazardous substance is required to take out insurance policies so that he is insured against liability to give relief in case of death or injury to a person, or damage to any property, arising from an accident occurring while handling any hazardous substance. This Act has been enacted subsequent to the Bhopal Gas leak disaster where MIC leaked from the plant of Union Carbide India Ltd. and caused the death of over 3000 persons and serious injuries to a large number of others.

It is important to mention here that in the case brought before the Commission by Ms. Subhashini AH, negligence was involved on the part of the factory owner. In such cases, exemplary compensation and damages are to be awarded to the victims. The Supreme Court of India has modified the English rule of strict liability in *M.C. Mehta vs. UOI* (AIR 1987 S.C. 1087) and has



laid down the concept of 'absolute liability in the case of industrial hazards, even though there might not have been any negligence on the part of the enterprise owner. By providing additional relief and ordering the expeditious criminal trial of the culprits, the Commission has kept in mind the Constitutional obligations of the State and also the UN Declaration on the Environment and Developments.

**8. Healthy Environment and Traditional Rights of Tribals:  
Harassment and Torture of Tribal by Forest Officials:  
Uttar Pradesh**

A complaint received by the Commission alleged that the Van Gujjars living in the forest area which fell under the proposed Rajaji National Park, Dehradun were being harassed and tortured by the directors and staff members of the park. The complainant maintained that the tribals were not allowed to fetch fodder for their animals, sell the milk or have access to medical aid as an ambulance was not being allowed into the area and that this had resulted in loss of human life. The complainant further alleged that the notification for the establishment of the National Park was issued in contravention of the provisions of the Wild Life Protection Act, 1972. The efforts of forest officials were directed to seek forcible eviction of Gujjars and, in a few cases, they were cheated in order to obtain declarations that, in exchange for two acres of land, they were ready to leave the forest.

The Commission issued a notice to the Chief Secretary, UP. A report by the Chief Conservator of Forests was submitted in which all allegations were denied and a copy of rehabilitation policy for Gujjars was enclosed, it was stated in the report that

Gujjars were, in fact, disturbing the system by indiscriminate felling of trees in the forest. A reference was made to writ petition 79/89 filed in the Supreme Court. The Supreme Court had directed speedy settlement of Gujjars outside the Rajaji National Park. The settlement process had already started and 62 families were resettled in Pathri region of Haridwar. in accordance with the salient features of that project, each Gujjar family was entitled to be given two acres of land and Rs. 10,000 for transporting the building materials. Road construction, drinking water, schools, ambulances transport and other facilities were envisaged in the rehabilitation project. It was also brought to the notice of the Commission that Writ Petition No. 202/95 was pending before the Supreme Court in which different acts relating to the conservation of forests were to be examined. The Commission sent a copy of the report of the Chief Conservator of Forests, the order of the Supreme Court and the order of rehabilitation project to the complainant, for his response. The complainant reiterated his allegations and, thereafter, the Commission directed a Special Rapporteur to examine the matter.

The State was concerned about the denudation of forests and wanted to protect the forests and the wild life. The Gujjars asserted their traditional rights to sustain their livelihood. Right to livelihood is developed concept of Right to Equality.

The Commission brought together the complainant and the authorities so that they may understand each others' problem. For instance, regarding the grazing and lopping, the forest authorities conceded that these rights of Gujjars needed to protect. The Commission directed that the areas where Gujjars could take their animals for grazing, outside the National Park, could be ascertained

by the authorities. But in any case, no coercive steps were to be taken. It was also pointed out that the Gujjars should not claim unfettered rights to lop the trees; rather, areas should be specified, chosen on the basis of the age and growth of trees, by the authorities. Considering the very important aspect of entry of vehicles, including the ambulance, the Commission directed that the permission to enter should not be declined and, in rare cases when this is done, the reasons must be recorded in writing, immediately.

**9. MEASURES TO PREVENT DEATHS DUE TO  
STARVATION: ORISSA**

This case finds mention in the previous annual reports of the Commission. The Commission took cognizance of the matter relating to alleged starvation deaths in KBK districts of Orissa on a communication received from the then Union Agriculture Minister Shri Chaturanan Mishra in November 1996. Later, the Supreme Court of India, in its order dated 26 July 1997, directed petitioners before it, namely the Indian Council of Legal Aid and Advice and others (Writ Petition Civil No.42/97) to approach the National Human Rights Commission for seeking interim measures for preventing deaths by starvation in the KBK districts of Orissa. The Commission has been reviewing the implementation of various measures taken by the Government of Orissa. During the course of the year, Shri Chaman Lal, Special Rapporteur, had visited the districts of Koraput, Malkangiri, Sonepur, Raigada, Kalahandi, Naupara and Bolangir and submitted his observations on the progress of work.

While appreciating the initiatives taken by the State Government for action on various aspects of relief work, the Commission observed that the extent and pace of the relief programmer ought to have been better. It directed the Chief Secretary, Government of Orissa, who was present in one of the hearings, to sensitize the administration at all levels so as to achieve the desired performance level. The Commission asked the State Government to bestow particular attention to the strengthening of the emergency feeding and mid-day meal programmed through maintaining an adequate stock of food grains and requisite staff. It also called for a review of entitlements under the Public Distribution System and a review of the existing scale of one tube well per 1 50 person, in order to reduce the distance traversed for water from 1½ to ½ km. The Commission further emphasized the need to maintain existing tube wells, the prompt filling-up of vacancies of doctors and para-medical staff in the hospitals, and also the payment/distribution of pensions on a regular basis under various schemes. The Commission was of the view that the State Government needed to speed up programmers relating to land reforms, a forestation, soil conservation and literacy. These kinds of activities promoted Right to Equality which is guaranteed in our considered Law of India in various ways.

The Commission expressed its concern and disappointment at the lack of progress in regard to soil conservation work in some parts of the KBK districts and emphasized the need to initiate steps on an urgent basis to curb the menace of ghost ration cards. The Commission will continue to monitor this case.

**10. EDUCATION OF CHILDREN OF SEX WORKERS:  
DELHI**

The Joint Women's Programme (JWP) and Mashaal Mahila Sangathan (MMS) sent a petition to the Commission on 17 February 1997 complaining about the reluctance of the Municipal Corporation of Delhi (MCD) to allocate one additional room in the MCD Primary School, GB Road, Delhi for the education of children of sex workers and attempts to vacate them from the existing room which was allotted to them.

The MCD added that the terms of the initial allotment to JWP to organize their part-time programme after school hours in room no. 9 had been violated and that the MCD was itself providing education to all children in the school run by Corporation. The MCD also said that it would be open to the children of sex workers to get admitted in that school.

The Commission in its proceedings of 7 July 1999 noted that the increased inflow of students every year compelled the JWP to commit a breach of the conditional order of allotment. The Commission was of the considered view that the breach was inconsequential. Having regard to the circumstances, the Commission held that MCD, being a local authority and an arm of the State, had a duty to implement the programme of education and health care of the children of sex workers. In the light of the provisions of the Constitution, relevant Supreme Court judgments and the provisions of International instruments, the Commission recommended the allotment of an additional room to the complainant organization, in addition to it retaining possession of the existing room.

## **COMMENT**

In *Gaurav Jain vs. Union of India* (AIR 1997 SC 3021) the Supreme Court held that, “It is the duty of the State and all voluntary non- government organizations and public spirited persons to come to the aid of sex workers and to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person”.

The children of sex workers are entitled to facilities and opportunities for their education and health care. Article 19(2) of the Convention on the Rights of the Child stipulates that/ State authorities shall take all legislative, administrative, social and education measures to protect the child from neglect or negligent treatment, mal-treatment or exploitation including sexual abuse’. Articles 28 and 29 of the Convention on the Rights of the Child set out the obligations of States party to the Convention in respect of the education of children. This case shows an illustration of protection & promotion activity conducted by the National Human Rights Commission . this case also indicates not only a protection of Right to Equality; but also a promotion of Right to Dignity.

### **11. REHABILITATION OF PHYSICALLY HANDICAPPED: MADHYA PRADESH**

Shri Bihari Lal Thevait, a resident of District Bilaspur, Madhya Pradesh sent a petition to the Commission wherein he said that he was a 26-year old man whose lower limbs had been affected by polio. He also suffered from a cardiac problem. He had approached the District Collector for assistance and employment.

Although the District Collector arranged for his operation at a private hospital, free of cost, the operation was not successful

and even after four to five years he was not cured. He alleged that the operation was suggested instead of providing him with a tricycle. The District Collector also provided him with assistance at the rate of Rs.2000/- per month and this continued until such time as that Collector was in office. The Collector also passed an order for his appointment as an Assistant Teacher. However, this did not materialise. He, therefore, sought compensation of Rupees Fifty lakhs for violation of his fundamental rights, treatment of his heart ailment, management of his disability and employment as an Assistant Teacher.

Though the Commission does not normally take action on petitions which relate essential to service matters, the Commission in this case issued a notice to the Collector and called for a report as the petitioner was a disabled person. The Collector responded saying that the complainant was affected by polio when he was one-and-a-half years old and that both his feet were deformed. The opinion of Orthopaedic Doctors was sought, and they had certified that the complainant would have to move on hands and knees, in a crawling position, unless he was operated upon. Accordingly, he was operated upon in 1988 and his limb deformity was corrected to a large extent. In five months time, he was fitted with calipers and a walking frame to help him stand erect. The Collector also stated that the complainant was entitled to be considered for a job under the quota for persons with disabilities. According to the Collector, the complainant had tried to obtain a certificate of complete recovery to enable him to get the job of an Assistant Teacher. He was advised to obtain a disability certificate from the competent authority. The petitioner apparently made the complaint

as he was aggrieved by this advice. The report of the Collector was sent to the complainant for his comments. However, the petitioner stood by his complaint and stated that the operation, which was performed, was not successful and his defect was not cured even after four years. The complainant claimed Rupees twenty lakhs as compensation for mental and physical torture he had undergone and Rupees thirty lakhs for protection of his rights and for his living.

The Commission considered the matter carefully and expressed appreciation of the action taken by the District Collector. The question whether the condition of the petitioner worsened after the operation, as claimed by him, was not probed further. However, the Commission felt that the State Government, in a Welfare State, should help alleviate the suffering of such disabled persons. Accordingly, the following recommendations were made by the Commission to the State of Madhya Pradesh:

- (a) To grant ex-gratia monetary relief to the tune of Rupees One lakh to the petitioner, either from the fund established by the State Government for the welfare of the handicapped persons, or from the Chief Minister's Relief Fund.
- (b) To offer a job to the petitioner commensurate with his academic qualifications and physical ability, in accordance with the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, or on compassionate grounds. So; by making recommendations for Mr. Biharilal, the Commission tried the best to prevail Right to Equality, because our



Constitutional law permits a special treatment for weaker section of the society.

**12. Protection of Rights of Dalits, Minorities, Disabled & others : Attacks against Christians in several states**

In its previous Annual Report, the Commission recounted in detail the steps it had taken in respect of the killing of an Australian priest, Mr, Graham Stewart Staines and his two sons in Orissa as well as the attacks that had occurred on members of the Christian community in Madhya Pradesh and Gujarat. The Commission observed that, given the recurrent character of these grievous occurrences, a pattern transcending any single state appeared to be emerging, threatening the pluralistic character of the country and Constitutionally guaranteed human rights.

During the year under review, the Commission took cognizance of six specific complaints alleging violations of the rights of members of the Christian community. These were complaints from:

1. Mrs. P. Lal Joseph, Barabanki, Uttar Pradesh regarding harassment, torture and • an attack on Christians by one Vijay Singh;
2. Dr. J.J. Bennett concerning attacks on Christians by activists of the Vishwa Hindu Parishad (VHP) and Bajrang Dal in Gujarat;
3. Shri Samsom C. Christian, concerning acts of religious intolerance by certain groups in Ahmedabad, Gujarat;
4. Shri P.P. Joseph alleging attacks on Christian minorities by VHP and Bajrang Dal activists in Gujarat;

5. Shri Samsom C. Christian alleging attacks on some Churches of South Gujarat.
6. In addition, suo-motu cognizance was taken on reports covering the alleged kidnapping and mistreatment of a nun working in Bihar.

Greatly concerned by these developments, the Commission was in frequent touch with the Chief Secretaries and Directors General of Police of concerned States.

### **13. Facilities For Foreign Nationals Detained At Lampur Seva Sadan -Delhi**

While considering the petition concerning the possible deportation of Shri Rongthong Kuenley Dorji, it came to the notice of the Commission that he had been detained at Lampur Seva Sadan, an institution for rehabilitation of beggars, administered by the Social Welfare Department of Government of NCT of Delhi. On 24 May 1999, the Commission directed the Director General (Investigation) [DG(I)] of the Commission to visit Lampur Seva Sadan to make an assessment of the conditions prevailing therein. After his visit to Lampur Seva Sadan, DG(I) submitted his report in which he stated that the foreigners were confined to a few barracks in one segregated corner of the campus, with a compound wall and a gate. Security was being provided by a section of the Rajasthan Armed Constabulary,

After considering the report, the Commission recommended that separate enclosures be created for foreign nationals and that the Government of NCT of Delhi undertake immediate repairs and to take the following steps to improve the arrangements:

- (i) Replace the asbestos sheets roofing with roofing made up of some other material that would not be harmful to inmates.
- (ii) Post adequate number of conservancy staff immediately for the cleanliness of the area and for the maintenance of the toilets/bathrooms.
- (iii) Make separate cooking arrangements for the foreigners instead of supplying them food from the beggar's home as that might hurt their sentiments and sense of dignity.
- (iv) Consider provision of separate STD / ISD booths for use of the foreign detunes.
- (v) Establish MI Room where a doctor and the para-medical staff are available round the clock for medical cover.
- (vi) Issue proper instructions to ensure regular visits by senior officers to this detention centre.

The Commission also directed the Principal Home Secretary, Secretary and Director, Social Welfare Department and the FRRO of the Delhi Administration to visit the Lampur Seva Sadan and work out a proper strategy for bringing about ameliorative changes not only for the foreign detunes but also for the institutions for beggars located in the campus. The Commission has received a compliance report.

**14. Non-release of travel document to Shri Abdul Gani Lone, Ex Member of A.P.H.C., Kashmir for his medical treatment in a foreign country.**

Shri Abdul Gani Lone, Chairperson of the J&K People's Conference and an Executive Member of the All Parties Hurriyat Conference (APHC), in a petition to the Commission made various

allegations including those of violation of his civil and political rights, threat to his life, illegal detention and destruction of his property, and the withholding of a travel document to him since 1994, depriving him of the opportunity to go on Haj and the denial of medical treatment of his choice.

On notice to the Union Home Secretary and Chief Secretary, Government of Jammu & Kashmir, reports were received by the Commission. The report from Government of Jammu & Kashmir dealt with various matters including that of a bomb blast that destroyed Shri Lone's house on 7/8 June 1998, and the detention of Shri Lone alongwith his associates on various occasions. On the issue of withholding of travel document and denial of medical treatment of his choice, the Home Department took the view that, as the treatment needed by Shri Lone was available at Escorts Hospital in New Delhi. The report also added that Shri Lone was deeply involved in the separatist movement in J&K. The report from the Union Home Ministry, focusing more on the alleged withholding of the travel document, stated that leaders of the APHC had tried to internationalize the Kashmir issue during their visits abroad. Ostensibly going to participate in various conferences, these leaders had been presenting a wrong picture of the human rights situation in the State of J&K. The report of the Union Home Ministry also stated that, during his last visit to the USA in 1993, on the pretext of getting medical treatment, Shri Lone had indulged in anti-Indian activities/propaganda. A passport had therefore been denied to him under Section 601 of the Passport Act, 1967. The Union Home Ministry also emphasized in its report that withholding Shri Lone's travel document and hindering his going on Haj would

not constitute a violation or infringement of his rights under Article 25 of the Constitution, as these rights were subjected to public order, morality, health and other provisions of Part-III of the Constitution.

The Commission, after giving careful consideration to both the reports, took the view that the issue regarding Article 25 guaranteeing Right to Freedom of Religion was of relevance earlier in 1994 when Shri Lone's request for a travel document for the purpose of going on Haj was considered and rejected. But in present consideration, it felt that the issue that the petition of Shri Lone really raised was concerning the provisions of Article 21 of the Constitution relating to the Right to Life. The Commission, in this context, further noted that despite Shri Lone having been repeatedly treated at Escorts, an institution of the highest caliber by any standard, his health was failing. Indeed, an angioplasty and stenting in June, 1998, followed by a by-pass operation in November, 1998 and a further angioplasty in February, 1999 had not succeeded in arresting the decline in his health. While taking full account of the serious views expressed by the Home Ministry in regard to Shri Lone's antecedents and the past reasons for the denial of a travel document, the Commission thought that it was under a duty at this stage of the case to recognize that the matter now related to the Right to Life itself. The Commission felt that, in the circumstances that Shri Lone was facing, respect for his Right to Life would necessarily imply that he be allowed to travel abroad to seek such further medical advice and treatment as he considered essential to his survival. The Commission recommended that the Govt. of India urgently issue the appropriate travel documents to Shri Lone.

However, the Commission added that it was open to the Govt. to make such restrictions as it considered appropriate in respect of such matters as duration and the countries for which they would be valid. So to save petitioner's life the Commission's recommendation equal treatment for him by going back his travel document. And commission also recommends the government to permit the petitioner to go abroad for medical treatment.

**15. NHRC takes up the cause of persons displaced By Indian Navy project**

Smt. Margaret Alva, former Union Minister brought to the notice of the Commission what she considered a "denial of basic rights to shelter and security for the people ousted from their homestead in various parts of North Karnataka coast for the purposes of location of Sea Bird Project of the Indian Navy".

The Commission felt that the problem of outsets from lands acquired for larger projects undertaken in national interest has been a recurrent theme of debate in developmental economics and human rights discourse. These raise certain basic and fundamental issues as to the social cost of dispossession, dislocation and mass transportation of large segments of the populace. There is an increasing body of knowledgeable opinion that in the evaluation of the cost-benefit projections and extrapolations of such projects, sufficient heed is not paid and sufficient recognition not bestowed on the environmental, human and other intangible factors including future economic burdens and factors such as social discontent, hostility, distrust, loss of a sense of community, disillusionment with governance for which society may, at a later date, have to pay a bitter price.

Hence, the Commission requested its Director General (I), Shri D.R, Karthikeyan, visit to the location. Shri Karthikeyan has since submitted his report. Rehabilitation plan which included providing rehabilitation grants, residential plots, agricultural land, rehabilitation centers, alternative means of livelihood, health care, schools, roads, electricity, water, transportation facilities etc. Unfortunately, the plan was not carried out and families were evacuated without proper rehabilitation and resettlement.

Even though the matter has been taken up with the Karnataka High Court and two Commissioners, appointed by the High Court had been visiting the area, the effective people requested for the intervention of NHRC to give relief to the people.

Taking all these circumstances into view, the Commission has recommended that the Chief Secretary, Government of Karnataka and Defence Secretary, Government of India should:

Furnish an up-to-date detailed report on the state of implementation of the rehabilitation and resettlement schemes as on 1 June, 1999;

Ensure the immediate rectification of all the deficiencies and shortcomings noted in the rehabilitation centers so that no displaced family is allowed to suffer during the forthcoming monsoon, and direct the Revenue Commissioner, Karnataka, Resident Commissioner Karnataka, and Additional Secretary, in charge of the Sea Bird Project in the Ministry of Defense, to make a joint visit to the affected areas, meeting all concerned and ensure immediate execution of all rehabilitation and resettlement measures.

## **16. Inhuman Treatment Of Mentally Ill Patients At Sultan Alavudeen Durgah: Tamil Nadu**

After a visit to the Sultan Alavudeen Durgah at Goripalayam, Madurai on 23 July 1998, Prof. (Mrs.) D. Nazneen, Head of the Department of English, Sri Meenakshi Government College for Women, Madurai, brought to the notice of the Commission what she described as the pathetic plight of mentally ill patients located in the Durgah. She mentioned that there were a few hundred persons staying there, with their wards, seeking a cure for mental illness. According to her,, many of the mentally ill patients were chained and kept in sheds that were open from all sides; there was no space even for free movement of their limbs. When certain of the patients turned aggressive, they were severely beaten.

The Commission took cognizance and obtained a report from the Collector of Madurai. He stated that about 92 mentally ill patients were staying in the Durgah for “treatment” and that they were being taken care of by their relatives. There was no evidence of the beating of patients.

Following directions of the Commission, the Director General (Investigation) of the Commission visited the said Durgah and gave an assessment of the situation. He observed that about 500 patients/devotees were staying in the Durgah. According to him, faith in the Durgah cut across religious lines as about 75% of those patients were Hindu and rest were Muslim. The accommodation in which these people were living comprised of thatched sheds or open verandahs. The DG(I) also mentioned that, in addition to the Goripalayam Durgah, similar places existed in Tamil Nadu.



The Commission observed that it was the helpless situation of the patients and the members of their family that was largely responsible for recourse by them to such courses of treatment.

The Commission sought a report from the Government of Tamil Nadu as to what steps were being taken to alleviate the hardship of the mentally-ill persons and the persons attending them by providing housing, medical care and other basic amenities. As the response that was received from the Government of Tamil Nadu was inadequate to the situation, the Commission considered the matter again and itself constituted a Committee comprising of Dr. K.S. Mani (former Director, NIMHANS, Bangalore), Dr. (Ms.) Sheela Fenn (retired Professor of Psychiatry, Medical College, Madurai) and the District Collector, Madurai to visit the Durgah and to make specific recommendations to the Commission for the proper treatment of the patients located in the Durgah.

#### **17. Discrimination Against Dalits: Gujarat**

The Chairman of Social Justice Committee, a Non-Governmental Organisation in Amreily, Gujarat made a representation to the Commission on 4 January 1999 where he stated that the Patel Community of Devalia village in Amreily District was committing atrocities and practising discrimination against the Dalits of the village. The Patels were preventing the supply of water, milk and butter milk and other essential commodities to the Dalits. They were not being engaged as laborers and the Patel community even prevented the neighboring villages from engaging the Dalits for labour work. They were prevented from going out of the village, and the crops grown by them were

being destroyed by the Patels in the presence of the police who were mute spectators.

The Commission took note of the complaint and issued a notice to the Collector of Amreily to visit the village and hold discussions with the threatened groups and send a report within two days. Shri P.G.J Nampoothiri., Special Rapporteur of the Commission was also asked to coordinate action in this matter. In his report dated 20 May 1999, Shri Nampoothiri stated that he had contacted the Collector and the SP of the district. The Collector had indicated that due to his busy schedule, he had been unable to visit the district. In the meantime, another NGO called 'Navjeevan Trust' of Ahmedabad filed a Public Interest Litigation in the High Court. The main thrust of the PIL was the discriminatory methods being followed by the dominant community, namely, Patels against the Dalits in the district. The problem had begun with encroachment of land which was done by both Patels and Dalits. The High Court had ordered the Panchayat to remove all encroachments. However, the Panchayat, while permitting the Patels to continue with their encroachments, dispossessed the Dalits of the land encroached by them. The Patels had even prevented the Dalits from getting jobs under the Drought Relief Programme initiated by the Government. The District Magistrate in his report of 21 May 1999, stated that he had organised a meeting with the villagers and discussed various problems in the presence of different communities. The Dalits had made demands for continuous police protection, creation of wage employment opportunities, provision of bank loans, etc. The District Collector, with other concerned agencies, was working out the possibility of fulfilling the demands.

However, the District Administration had not taken a decision on the economic help to be provided, as the matter was subjudice. Security cover was, nevertheless, being provided to the Dalits.

The Commission noted, after perusal of the response of the Collector to the Writ Petition that the High Court had further appointed a Committee of three Advocates and officials to inspect and submit a report. This Committee had found that the Collector's report was not an accurate reflection of the actual situation. There appeared to be large scale discrimination against the Dalits<sup>^</sup>, which was not properly represented in the reply of the Collector. The Gram Panchayat officials also did not cooperate with the Committee when the inquiry was being done. As for the Committee formed by the District Collector, it had not taken any initiative to solve the problem.

The Committee observed that the Collector was resting on the plea that a Writ Petition was pending in the High Court of Gujarat. The Commission *expressed* anguish at the fact that, even after fifty years of Independence, the violation of human rights was flagrant and that unwarranted discrimination against Dalits continued, specially in rural India. The dependence of Dalits on agricultural earnings, is the root cause of their being subjugated. The few Dalit youths who strove to rise above their circumstances, the help of education, and asserted their right to equal treatment, were branded as extremists. The Commission further examined the question of whether pendency of the Writ Petition in the High Court actually prevented the District Magistrate from organising economic empowerment programmes and doing real social justice to the Dalits and whether the Commission was precluded from

directing the administration to protect human rights and prevent the violation of the human rights of Dalits. Keeping in mind the Constitution of NHRC, it was felt that just as the Hon'ble High Court had powers of jurisdiction and authority under Article 226 to grant such relief as it deems appropriate to the affected persons in the pending Writ Petition, the NHRC was equally possessed by and entrusted with the same function to grant redressal of violation of human rights of the Dalits. The Commission had, therefore, gone into the magnitude of the problems faced by the Dalits and, accordingly, directed the State Government of Gujarat and the District Magistrate Amreli to ensure the economic empowerment of the Dalits adopt the following measures:

1. In accordance with Article 39(B) of the Constitution, the District Collector and the Magistrate, Amreily to ensure delivery of physical possession of the lands to all the remaining Dalits who were given "pattas".
2. Grant "pattas" of any other land available in the village Devalia and within Gram Panchayafs jurisdiction, as is economical for cultivation as per the rule and, if necessary, organise Cooperative Farming Societies composed of Dalits.
3. To organise loan facilities to the youth for self-employment schemes or small scale industries.
4. To evolve any other suitable scheme for economic empowerment keeping in mind the availability of local raw materials.
5. The State Government and the District Administration to pay ex-gratia compensation at rates varying between Rs.30,000/- to Rs.50,000/- per family depending on the

magnitude of suffering undergone by the family. The sum already paid to four Dalits may be deducted from the total payment.

6. To ensure supply of drinking water and other essential commodities at controlled prices through Fair Price Shops.
7. To continue police protection till the law and order situation becomes normal.

### **COMMENT**

Article 15 of the Constitution of India expressly prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15(2) further stipulates that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 46 of the Constitution, under the Directive Principles of State Policy, stipulates that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Under Article 17 of the Indian Constitution, untouchables are abolished and its practice in any form is forbidden. The enforcement of any disability arising out of unsociability is an offence punishable in accordance with law.

## **18. Violation Of Human Rights Of Members Of Reang Community Of Mizoram**

The President, Akhil Bharatiya Vanwasi Kalyan Samiti and seven other such like-minded persons submitted petitions to the Commission wherein they alleged that since September-October 1997, the Reang community members had been living in an atmosphere of terror created by the Mizos, with the tacit support of the local administration and police. As a result of this, over 30,000 Reangs left Mizoram for Tripura. There were apparently several incidents of killing, rape, abduction and burning of houses by the Mizos. The condition in the refugee camps established by the Government of Tripura was also not satisfactory. The petitioners requested intervention by the Commission.

The Commission called for report-from Governments of Mizoram., Tripura and Assam, The Government of Tripura in their report stated that although the influx of Reangs started with alxnit 10,000 people in October 1997, the number had gone up to 30,000. The Government of Tripura was finding it difficult to bear the burden though they were financially helped by the Government of India. They mentioned that efforts made to persuade the refugees to return to Mizoram had failed.

The Government of Assam in their reply stated that some families had gone into the Karimganj and Balkandi districts of Assam and were living there in forest villages, earning their living by labour on daily wage basis. No refugee camps had been set up. However, medical aid was being provided.

The Government of Mizoram in their reply stated that the administration was making efforts to take action against the local

Mizos who had indulged in burning of houses of some Reang families. It was the demand of the Group National Union of the Reangs for an autonomous district council and the murder of a Mizo forest guard by suspected Bru-Reangs militants, which led to violence between the two communities. Some arrests had been made in this regard. The refugees had been requested by the Home Minister of Mizoram to return and they were also given Rs.2,000/- for reconstruction of their houses and a week's ration. However, some of the Reangs received the amount and again went back to the refugee camp in Tripura.

The Commission, taking into consideration the reports from Member, NHRC and Special Rapporteur made the following recommendations:

- (i) The Reangs are lawful inhabitants of Mizoram and the Government of Mizoram should not only take them back in accordance with the agreement made in November 1997, but should also instill in them a sense of confidence and security.
- (ii) The Government of India should play an active role to arrange repatriation of the Reangs to Mizoram and should also give special attention to the safety and security of the Reangs on their return to Mizoram.
- (iii) The Ministry of Home Affairs and the State Governments of Mizoram and Tripura shall keep the Commission informed of the progress made at regular intervals.

The Commission has received reports from the Governments of Tripura, Mizoram and the Government of India with regard to the action taken on its recommendations.

**19. Rights Of Persons With Disabilities :- Commission Provides Assistance To Shri C.S.P. Anka Tappo, A Blind Medical Student Enable Him To Complete His MBBS Course :**

One C.S.P. Anka Tappo Approached the commission on 1<sup>st</sup> Sep.2000, stating that he had been denied permission to appear for the final MBBS examination conducted by the All India institute of Medical Sciences (AIIMS) in May 2001 for 'Wants of Approved guidelines from the medical council of India (MCI) he also alleged harassment by the faculty and mix inflammation in respect of final examination, even though he could now treat the normal books retried for the course with the help of a computer and a scanner.

Shri Tappo had originally been selected for MBBS course at AIIMS in 1989. He passed the first and second professional examinations and was to appear in the final examination in dec. 1993. but barely two months before the final examination. He lost his sight and a series of operations had not been able to restore any vision.

On the advise of he Commission, which also drew attention to similar instance having arisen in others country over the tears. The authorities at AIMS discussed the issue arising from Shri. Tappo's case with some of its former directors of deans. They reached the opinion however, that in view of the severe visual loss suffered Shri Tappo, It would not be possible for him to work in the medical profession. The authorities informed the Commission that they could, never the less, grant shri Tappo a degree in Human Biology and also help him to get employment at AIIMS. Shri



Toppo, however, insisted on pursuing his medical career despite the loss of his sight. In the course of the proceedings, Mr. Anuradha Mohit Commissioner for persons with disability, Institute of Physically handicapped appeared before the Commission on behalf of the petitioner. She elaborated on the provisions of the persons with disabilities act 1995 which comprises statutory provisions to provide persons with disabilities with equal opportunities in all matters, including the acquisition of knowledge and employment.

Shri. Toppo brought to the notice of the Commission that his case was not the first of its kind. As one Dr. Parmeswarappa of Karnatak had been allowed to complete his MBBS under similar circumstances in 1977 by the Bangalore Medical College. The Commission then asked the authorities at AIIMS to consider whether the methods adopted for examine Dr. Parmeswarapaa would be applied in the case of Anka Toppo.

At its sitting on 28<sup>th</sup> may, 2001 the Commission placed n record its appreciation of the efforts made by the Director, AIIMS Dr. P.K.Dave and his colleagues. The commission was recently, his colloquies. The Commission was recently informed that Shri. Toppo had appeared for his final MBBS exam and that he had passed his examination.

This illustration shows that the commission is really active for the protection of Right to Equality.

**20. NHRC Issues Notice Chief Secretary, NCT And The Chairman, Delhi Jai Board On The Poor Quality Of Water Supplied To Resettlement Colonies.**

The report published on December 28, 2006 in The Hindustan Times said that according to a study carried out by the NGO Hazard Centre, 92% of water samples collected from five slum clusters and six resettlement colonies were not fit for human consumption due to an alarming presence of a variety of pollutants including biological wastes. The report further added that the same authorities provide better quality water to the affluent parts of the city.

The Commission, after going through the contents of the report said if true, they raise a serious issue of violation of Human Right to Health of the citizens. The right to clean air or water also includes the right to health. And repressive interpenetration of our Constitution consider Right to Health is also a part of Right to Equality. In this way, every citizen of India has right to health equally.

## **21. Human Rights Day Celebrated With A Cell Eradicate Poverty And Strengthen The Dignity Of The Poor.**

Human Rights Day was celebrated today with a call to eradicate poverty. Speaking at a function organized by the National Human Rights Commission in association with United Nations information Centre (UNIC), India, at the Stein Auditorium at India Habitat Centre, New Delhi the Chief Guest H.E. Shri Bhairon Singh Shekhawat, Vice President of India said that what is needed is to make the poor strong enough so that no one exploits them. He said the rights of the poor are to be protected and this can only happen when we are able to make them aware of their rights. The Vice President said what we need is the grassroot level awareness of the human rights so that a country like India with a vast

population is able to distribute the fruits of development judiciously. He said dignity is the spine of human rights and the very foundation on which human rights rest. Human rights have a direct relationship with human development, and, therefore, universality of human rights demands eradication of global inequities and to achieve this end the importance of “Right to Development” cannot ever be over-emphasized, the Chief guest added. Addressing the gathering the acting Chairperson of NHRC Dr. Justice Shivaraj V.Patil highlighted that persistence of poverty in many parts of the world points out not only to an inequitable distribution of economic, social and political opportunities, but also to a violation of Human Rights.

Eleven publications of the NHRC were released on the occasion. These include eight dossiers- specially meant for University students, two journals, and one publication in Hindi on the concept of Human rights in Indian Culture and a desk calendar for the year 2007.

The Vice President also gave away prizes to the winners of intercollegiate debate competition and Essay competition for school children. The winners of Para-military debate competition on human rights issues were also presented trophies on the news shows as that the commission favors right to equality by promotion activities.

**22. NHRC Issues Notice To District Collector, My Sore, Karnataka On The Reported Ostracizing Of Eight Dalit Families In A Village.**

NHRC has issued notice to the District Collector, Mysore, Karnataka following a newspaper report which said that eight dalit families were ostracized in a village in the District. The report

which appeared in The Decca Herald' on December 14, 2006 said that these eight families in Kamanakerehundi village were leading a miserable life as they have been ostracized by the upper caste people for the last three years. The report further said that these families are getting such horrendous treatment because they refused to obey the orders of the upper caste. These families have been denied access to water, shops, telephone, hospital, cable facility and sanitation. The report also highlighted that these dalits have not only been barred from entering the village temple but also from walking in the vicinity of upper caste people and their fields. Villagers have been told not to employ members of these eight families. Twenty-two dalit families in the village work as field laborers.

After going through the contents of the newspaper report, the Commission said it raises a serious issue of human rights violation. The Commission has directed that a copy of the press report be sent to the District Collector, Mysore for a factual report within two weeks.

**22.** The Commission also came across distressing news which appeared in the "Hindu" on the same day. The news report highlighted the sufferings of the people of Andaman and Nicobar Islands since the Tsunami struck in December, 2004. The report said that despite Government promises, very little relief and Rehabilitation work has been taken up in the Islands and most of the islanders are still waiting for their compensation. Giving details of the struggle for survivor by the people, the report said that these people are living in sub-human tin sheds with no food, security, electricity, education, basic health or livelihood. Besides

the temporary houses built immediately after the Tsunami have not been replaced by permanent house structure. The report also threw light on vested interests from the mainland who were spoiling the economy and the environment of the islands. The news report said that apart from the model house constructed for display, not a single house has been built for the 10,000 Tsunami survivors. The report further says that the islanders are yet to get boats and nets so as to resume their livelihood. Taking into account the plight of the Tsunami survivors highlighted by the report, the Commission said it is violation of human rights of the citizens of the Islands. Equally it is a violation of Right to Equality.

**23. NHRC issues Notice to Chief Secretary, Secretary, Labour and Principal Secretary, Education, Delhi Government**

The National Human Rights Commission has asked for comments from the Chief Secretary and Secretary, Labour Department, NCT of Delhi on a report which said that children are still employed in a number of places in Delhi despite a ban on child labour two months back. Taking Suo-Motu cognizance of a Times of India report published on December 23, 2006, the Commission said if the contents of the report are true, they raise a serious issue of violations of human rights of children. The Commission has given four weeks time to the two officials. The report based on a survey said that most of these children work well past midnight to earn a livelihood. The report also said that the Labour Department of the Delhi Government has not rescued even a single child from these road side restaurants or houses in the last two months. The report further says while the Government was supposed to open 40 transition education centers (TECs) for

rescued child laborers, not even a single center has been opened so far.

**24. NHRC Camp At Lucknow – Draws Authority’s Attention To Failure In Filing Firs And Delay In Compliance; Directs State Government To Complete All Pending Magisterial Inquiries Within Three Months.**

The National Human Rights Commission (NHRC) has drawn the attention of Uttar Pradesh authorities to a range of issues including failure to file FIRs, delay in compliance with its ‘recommendations, in cases where it has recommended prosecution or disciplinary action and delay in sending requisite details of reports in custodial deaths.

The Commission said it was a matter of concern that the number of Juvenile Justice Boards, Child Welfare Homes, Observation Homes and Special Homes were far below the number of districts in the state. Juvenile Justice Boards have been set up in only nine districts and Protective Homes in 51 districts. Child Welfare Committees were still being set up and information regarding setting up of Children’s Homes for infants in 63 districts, for boys in 56 districts and girls in 67 districts were still awaited, the Commission expressed concern.

With regard to the status of juvenile observation homes the Commission said it was disturbing due to lack of hygiene, opportunities for education etc. NHRC will hold national level consultations on February 2 and 3,2007 to improve the status of juvenile justice in the country.

The Commission also discussed the plan of action adopted by the State to prevent and end trafficking of women and children.

The Commission also recommended revival of the system of card of visitors in jails. The Commission drew the attention of the State authorities to repeated instances of bonded and child labour in the State. During discussions the Commission expressed concern at the high infant mortality rate, maternal mortality rate and malnutrition in the State. It expressed satisfaction that the State government had completed the Chaitanya Vihar Phase II in Vrindavan for destitute women.

In the three day sitting, 32 cases of Full Commission and 150 cases of Single Members were disposed of. Nearly 1000 cases were listed for these three days. The Commission impressed upon the State authorities to expedite responses and reports. The State authorities in some cases furnished reports in Lucknow itself and assured that the responses and reports will be expedited within the timeframe.

The full Commission meeting in Lucknow was held following a decision by the Commission on November 21,2006, to hold sittings in State capitals in order to expedite disposal of pending complaints, furnish status of complaints, to receive complaints and sensitize the State functionaries on the human rights. The Lucknow camp is the first in the series of sittings to be held in State capitals. Now: there activities conducted by the Commission at Lucknow including by the Commission has promoted Right to life. Equality & Dignity.

## **25. NHRC organizes a National Conference on Juvenile Justice System in India**

The National Human Rights Commission is organizing a two-day National Conference on Juvenile Justice System in India

on February 3 & 4, 2007. The Commission which has been concerned about the plight of Juveniles had written letters to the Chief Secretaries/Administrators of all States/ Union Territories on the reporting of deaths/rapes in Juvenile/Children's homes within 24 hours. The Law Division of the Commission has been dealing with the cases of violation concerning the Juveniles and the Research Division has been collecting information about such violations in the States and Union Territories.

Till October 31, 2006 at least 2,885 cases related to children have been registered by the Commission. The Commission has been monitoring all situations where children are being affected and also approved a proposal for undertaking a study on the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, in February 2004 submitted by the Socio-Legal Information Centre, New Delhi.

Since independence, the country witnessed several initiatives both official and non-governmental which led to the development of a pronounced Juvenile System. In 1960, the Indian Government passed a Central Children's Act to look into the problems of neglected and delinquent children. The Government however did not make any effort to apply the law throughout the country uniformly. As a result, most of the states continued to enforce their own existing laws. In the year 1974. The Government declared its National Policy for Children recognizing children as the most important asset whose welfare programmes should form a prominent place in the National Plan for the development of human resources. As a result, a National Children's Board was created in 1975.



By 1986, almost all the states had passed their own children's legislation, however they lacked consistency in terms of defining delinquency, court procedures, institutional and non-institutional practices. So, the Government of India felt the need for a Children's Justice Act which could be applied uniformly throughout the country. The outcome was the Juvenile Justice Act, 1986 which could be called as the first all-India child welfare enactment. This Act had a more treatment oriented and humanistic approach compared to the earlier Juvenile Laws. However loopholes in terms of separate trials, confidential court proceedings and age determination still existed. These concerns resulted in a number of national meetings in the 90s. The ratification of UN Convention on the Rights of the Child (CRC) in 1992, set the Government thinking to recast the 1986 Juvenile Justice Act. Thus the new bill, the Juvenile Justice (Care and Protection of Children) was introduced in Parliament, which was passed in 2000. The new Act included uniform definition of Juvenile irrespective of gender, use of better terminology, community placement options and counselling to families of children in conflict with law. The 2000 Act however overlooked the inclusion of certain substantive and procedural due process rights. An amendment to the 2000 Act was brought in 2006 to cover the gaps but questions are still being raised concerning the implementation of this law.

The two-day Conference being organized against this backdrop, aims to analyze the existing status of Juvenile Justice in the country with special reference to Human Rights, the existing situation of children and to develop appropriate linkages and

cooperation between the formal system of Juvenile Justice and voluntary agencies engaged in the welfare and development.

**26. NHRC sends notice to DG(P) Karnataka, Chief Secretary Andhra Pradesh and Secretary, Ministry of Social Affairs, Andhra Pradesh**

The National Human Rights Commission has sent notice to the DG (P), Karnataka, on a media report which said that “70 percent of juveniles overshoot remand. The report which appeared in the “Deccan Herald” on Feb 9, 2007, alleged that these children have been in the Observation Home in Madivala, from seven months to more than one year without being charge sheeted. The report also highlighted that as per Juvenile Justice (JJ) Act rule, an enquiry against a child apprehended by police for an offence should be completed within six months, and a charge sheet essential forth juvenile justice board to decide upon a case. This is a branch of Right to Liberty of invoices. It is also a violation of Right to Equality by denying a Right to Liberty from not preceding for charge sheet so; the Commission’s interaction became necessary.

The Commission also took notice of another news item, which said that the problem of drinking water in seven districts of Andhra Pradesh was forcing the villagers to bring water from a distance of one kilometer. The report published in the “Enadu” on Feb 14 2007 said that the State Government had taken up the drinking water schemes and had spent crores of rupees but they villagers in Nalgonda, Warangal, Kurnool, Anantpur, Guntur, Prakasham and Ranqa Reddv districts still continue to reel under-scarcity of drinking water. The report, further said though there are 71540 units of drinking water supply in the villages, only half

of them function Taking cognizance of the matter, the Commission has sent notice to the Chief Secretary Andhra Pradesh, for a factual report within four weeks

**27. NHRC issues Notice to DGP. Andhra Pradesh & Principal Secretary, Health, IG ( Prisons), Maharashtra**

The Commission's move comes following a press report, which appeared in "Deccan Herald" on January 12,200 and said that as many as 3,000 pending cases of missing children are lying with various police stations across the State and majority of the missing children are girls. The report also said that the police rarely puts out notice of missing children on the pretext that they are too expensive and sometimes do not register cases saying the children are delinquent and would return home of their own.

The report also highlighted that Child Right Activists in the State are demanding the Government to disclose the status of these cases of missing children and direct the police (Anti-Trafficking Police) to trace them. An NGO has already reported that 2079 children are missing in Telangana region and 1016 children from coastal Andhra and Rayalseema regions in 2006. The report also said that the number of missing could be higher as not all are reported to the police. The report further said that 1023 cases of missing children in Hyderabad since 2004 have not progressed. The NGO also pointed out at the lack of communication between police.

The Commission also took notice of a news report which said that prisoners of Thane Central Jail and Kalyan's Adharwadi Jail prefer to stay in Thane Civil Hospital than in prison. The report which appeared in "Daily News & Analysis"(DNA), Mumbai

on January 18, 2007 said this was happening by paying a bribe of Rs. 10,000- to some doctors and staff of the said hospital. The report also cited two instances where former Forest Minister and a former Additional Chief Secretary both were ordered imprisonment but spent a major period of their term in the hospital. In another case, a suspended Police Inspector and his wife who were involved in a cheated case connived with senior doctors of this hospital to avoid going back to jail.

‘Taking suo-motto cognizance of the news report, the Commission said that it is a serious issue of corruption and negligence on the part of public servants. The Commission has directed that a copy of the news report be sent to the Principal Secretary, Public Health and IG (Prisons), Maharashtra for a factual report within four weeks.

**28. NHRC Calls For Upgrading Healthcare Facilities In The Country; To Constitute A Special Group For Recommendation On The Issue Of Silicosis**

The NHRC Acting Chairperson Dr. Justice Shivaraj V. Patil has called for upgrading the existing healthcare facilities in the country. Speaking at the end of a review meeting on “Right to Health” in New Delhi- Justice Patil said that maximum benefits of healthcare could be utilized properly if the medical staff is able to dedicate time for the rural population of the country. He said for this, we have to create all infrastructure facilities at the village level so that there is no shortage of doctors in rural areas as doctors are reluctant to move to these areas.

Dr. Patil said that Medical Council of India and the Nursing Council of India should have a re-look and work out a methodology

to recognize course for nursing practitioner. He stressed that having doctors will not be enough, we should also equip the primary health centers and community health centers with all available tools so that they don't have to rush to urban areas in the event of emergency. Referring to the availability of drugs, Dr. Patil said that there is a need to have a proper drug procurement mechanism to ensure availability of essential drugs at the primary health centers. Citing the example of Tamil Nadu, he said good practices of one State should be taken as standard pattern and followed by others.

He stressed on forging public-private partnership to maximize the benefits of healthcare facilities. Dr. Patil however stressed that such a move needs to be regulated and monitored. He also highlighted that the immunization programmes of the Health Department should be followed regularly so that childhood diseases are contained at the earliest. Referring to the user fee being levied by the hospitals, he said the Commission will come out with comprehensive recommendations on Right to Health and the issue will be looked into. This activity of National Human right commission is to save the human life. To save human life equal medical treatment must be provided to public. So' equal distribution to all medical facilities must be arranged by the government.. it is the suggestion of a chair person of the Human Rights Commission for the promotion of right to equality.

The Commission also came across a distressing news report, which said, "Parents starve tribal girls to death" in Andhra Pradesh. According to the report published in the "Asian Age" on March 14, 2007, the tribals of Lambada sect in Cheruvu Mundali Tanda of Kulkacharla mandal let the infants die by refusing to feed them.

According to their tribal practice they wrap up girl child in a piece of cloth and leave them to die as they cherish only male babies going through the distressing news report, the Commission said it raises a serious issue of /violation of human rights concerning female infanticide. It is violation of Right to Equality. The Commission has asked the Chief Secretary, Andhra Pradesh and Secretary, Ministry of Social Affairs Andhra Pradesh, to submit comments within four weeks.

**29. NHRC asks for factual report from the District Collector, Karnal, on Violation of Human Rights of Dalits**

The National Human Rights Commission has sent notice to the District Collector, Karnal, Haryana asking for factual report on violation of Human Rights of dalits of Bibipur village. Taking suo-motu cognizance of newspaper reports the Commission said if the contents are true, they raise the serious issue of violation of human rights of dalits of Bibipur village.

The reports published in the “Hindu” on 14 & 15th March, 2007 captioned as “A Dalit temple’s encounter with official India” and “A System against Dalits”, which brought out the atrocities committed on dalits in village Bibipur, Tehsil Indri, District Karnal, Haryana. According to the newspaper articles, in Bibipur a small village in Haryana’s Karnal District, the Dalits struggled to build a temple against severe resistance from forward class people and officials. However, their temple has been razed ostensibly because it was sought to be built on village school land. However, a shrine constructed by forward class villagers in the same village remains on public land. It is further reported that many of the dalits women do “begar labour “(a form of bonded labour) working in the fields from sunrise to sunset for little more than subsistence level food. The forward caste people refuse to admit dalits into their temple.

There is no sanitary facility available for Dalits, which puts the women at considerable risk. It is also reported that, in Haryana violence against Dalits is constant and it is quite often brutally physical. This is a violation “Rights to Equality” Specially those are enshrined as “abolition of untouchability”

#### **6.4 Conclusion:-**

The present chapter proves the variety of cases solved by the National Human Rights Commission from its existence to present in such a short era the commission has solved many cases of Right to Equality. The Present Research Scholar wants to classify the cases related to right to equality, as here :-

By case study; it could trace out that

- There are even private complain
- Four complaints by NGO
- One shootout cognizance by Commission from newspaper.
- One private Complaint
- Some are self cognizance
- Two complaints only received in any manner. Which are not classified annual reports published by the Commission.
- One complain from union activist
- One complaint was done by Ex-Union minister Smt. Margaret Awa.
- One complaint from policies for not releasing him for medical treatment in foreign country.
- One complaint by private person by visiting the place where mentally ill patients were kept.

And; in matter of relief compensation the Commission recommended various remedies i.e.’ interim relief ‘, monetary relief, Ex-gratia relief & rehabilitations programmed also.

## Chapter 7

### Right to Liberty

#### 7.1 Introduction

The Concept of Liberty had its origin in ancient Greeks thought. For the Greeks the concept of liberty was the outcome of two nations. First protection of group from attack. Secondly, the ambition of the group to realize itself as fully as possible thought self-realization of certain stipulated threesomes of self- individuals.

Since then, liberty as “freedom to go where one may choose and act in such manner. Not inconsistency with equal Right of others. As one’s judgment may dictate for protection of ones happiness”. Had a long journey while passing through the Revolution of England – 1688. Also in French Revolution and finding place in declaration of on Right of man. At last in the “Bill of Rights” and almost all Constitutions of the world.<sup>1</sup>

Liberty has a very wide meaning. It takes in it all freedoms. It extends to the full range of conduct. Which the individual is free to pursue. It “postulates the creation of climate where there is no suppression of human spirits. Where there is no denial of opportunity for the full growth of human personality. “Where head is held high and there is no servility of the human mind enslavement of the human body.

In the narrower sense Dicey defines it as Right to Personal Liberty means ..... a persons Right not to be subjected to imprisonment, arrest or Physical coercion in any manner ..... that does not admit legal justification. “In simple words, it means nothing more than the liberty of the Physical body – freedom from arrest and detention, from false imprisonment or wrongful confinement.

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**1 Naiker L.D. “The Law Relating To Human Rights (2004)**  
Puliani & Puliani publishers private Limited PP427-428 OF Bangalore.



Our India was a British colony., The Constitutional Law of India relies highly on British system. So present Research Student wants to discuss about some some characteristics of our Constitution

## **7.2 British situation about Right to Liberty: -**

The meaning we have given to the expression “Personal Liberty” is in harmony with the meaning given to it in English Constitution Law.

Prof. D.E.Smith wrote: - “The traditional legal approach to civil liberties in British can be summed up in three prepositions. First freedoms are not to be guaranteed by Statements of general principal. Secondly, they are residual. Freedom of public assembly for example means the liberty together wherever he chooses. Except in so far as others are legally entitled to present the assembly from being held or in so far as holding or a criminal offence. “To define the content of Liberty one has to subtract from it’s totally the sum of the Legal restraints; to which it is subject. Thirdly, for every wrongful encroachment upon one’s liberty there is a remedy awarded by an independent Court of justice “Ubi jus ibi remedium.” (There is no wrong without a remedy).<sup>2</sup>

Now, Present Research Scholar wants to discuss about the pre Constitution era in India.

## **7.3 Pre-Constitution Era :**

Before our Constitution came into force on 26<sup>th</sup> Jan, 1950. The situation in India was the same as in England. A person enjoyed the freedom to do everything except the doing of things for which he could be deprived of his physical liberty. But, these principles operated difficulty in England and India. In the early days of the Indian National Congress, the nationalist complaint was that Indian subjects of her Majesty were

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2 Seervai H.M. "Constitutional law of India" (1998). Universal book Traders Delhi. P. 985.

being denied the freedoms and the Right enjoyed by her subjects. In England, besides if the extent of human freedom depended on the restrictions laid upon it by law.

Ambit of such freedoms could be narrowed and was in fact narrowed, in India by numerous laws. For the enactment of fundamental Rights in the Constitution it self. So, that cherished human freedoms would not be at the mercy of chance majorities in elected legislatures. Although, the freedoms conferred by Article. 19 are, and have been enjoyed in England for federation. They are more secured then they are in India. After independence, the method of secured of human freedoms conferred by Art. 19 in India remains the same citizens of India enjoy many more freedoms than are conferred by Art. 19(1), all that Articles.19(1)(9) to (8) has done is to select seven freedoms whose high value has long been recognized in free civilized societies. Article-19 like other articles conferring fundamental Rights, acts as a limitation on legislative power. Further, Article-19 does not secure the Rights conferred by it by a “mere declaration” Article-13 makes all laws abridging or abrogating fundamental Rights ‘protanto’ void Art. 32 and 226 arm the Supreme Court and high Court with power to issue appropriate writ against laws and executive acts violating fundamental Rights. Although the framers of our Constitution have departed from Prof. D.E.Smith’s first proposition which is namely. “First, Freedoms are not to be guaranteed by Statements of general principals. The framers did so by meeting the underlying objection in such “Statements of general principals”. Prof. D.E.Smith described the underlying objective thus :- “There is something peculiarly exasperating about a broad affirmation of fundamental Human Right undercompained by any machinery of giving them legal effect.

This is what Dicey had in mind: “The Habeas corpus Acts declare no principal and define no Rights.

But are for practical purpose worth a hundred Constitutional articles guaranteeing individual liberty. “Had he been alive in 1948, he might have added “or a thousand Universal Decelerations of Human Rights”.

#### **7.4 Constitution Philosophy Of Personal Liberty : -**

The Constitutional philosophy of Personal Liberty is an idealistic view. The curtailment of liberty for reasons of States security, Public order, description of national, economic discipline etc. Because of all these are envisaged as a necessarily evil to be administrated under Constitution restriction. In *Iehhudevi V/s Union of India*. Bhagwati J. Spoke of judicial comment.<sup>3</sup>

“The Court has always regarded personal Liberty as the most precious possession of mankind. So, Refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade”.<sup>4</sup>

“This is an area where the Court has imposed a ban most strict and scrupulous in ensuring observance with the requirement of the law and even where a requirement of the law is breached in the slightest measures. The Court is not hesitated to strike down the order of detention. “*Hem Lal Bhandari V/s State of Sikkim*, it was observed : -

“It is not permissible in matters relating to the personal Liberty and freedom of a citizen to take either a liberal or a generous view of lapses on the part of the officers.

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<sup>3</sup> AIR 1980 SC CS 31

<sup>4</sup> Basu P.J. “**Law Relating to Protection of Human Rights under the Indian Constitution And Allied Laws** – (2002) – Modem Law Publications. Allahabad.P.617.

## **7.5 Personal liberty and Democracy :<sup>5</sup>**

Personal Liberty is Fundamental to the functioning of our democracy. The lofty purpose of Article – 21 of the Constitution of India would be defeated if the State does not take adequate measures for ensuring compliance with the same. The State has to control and curb the malefic propensities of those who threaten life and liberty of others. It must shape the society so that the life and liberty of the individual is safe and is given Supreme importance and value. It is for the State to ensure that persons live and behave like and are treated as human liberty. So it must serve its purpose of ensuring human dignity, human survival and human development. The State must strive to give a new vision and peaceful future to its people. Where they can co-operate, co-ordinate and co-exist with each other so that full protection of Article – 21 is ensured and realized Art -21 of the Constitutional letter high dormant, decomposed, dissipated and inert. It is rather a pulsating reality throbbing with life and spirit of Liberty. That spirit must be made to reach out to every individual without the country. It is the duty and obligation of the State to enforce law and order and to maintain public order. So, that the fruits of democracy can be enjoyed by all section of the society irrespective of their religion, caste creed, colour and language. Article-21 is an instrument and device to attain the goal of freedom of an individual from deprivation and oppression and its violation cannot and must not be tolerated. The preamble to the Constitution clearly indicates that justice, liberty and equality must be secured to all citizens. Besides, it mandates the State to promote fraternity among the people ensuring the dignity among the individual and the unity & integrity of the nation. Article-38 of the Constitution also requires the State to promote welfare of the people by

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<sup>5</sup> AIR 1987 SC762

securing and protecting, as effectively as it may a social order in which justice, social economic and political, shall inform all institutions of the national life.<sup>6</sup>

These are the goals set by the Constitution and Article-21 and other fundamental Right are the means by which those goals are to be attained. Therefore, it becomes the responsibility and avowed duty of the State to adopt means and methods in order to realize the cherished aims.<sup>7</sup>

The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with expect under the authority of law. It is a principal which has been recognized in all civilized countries. In our Constitution, Article-21 guarantees protection of life and Personal Liberty not only to citizens of India but also to aliens.

The Court affirmed that Article-21 of the Constitution asserts a basic Human Right to Life and Liberty. It is the State which is prevented from taking away this Right expect in accordance with the procedure established by the law. In short, Right to life and Personal Liberty is the most precious, sacrosanct, inalienable and fundamental Right of citizens. It is bulwark against infringement of fundamental Right by the State instrument.

After this wide discussion about the concept of Liberty the Present Research Scholar wants to describe about some International standards about Right to Liberty. Because all these standards are measures to protect the Right to Liberty.

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<sup>6</sup> Supra Note 3 P 61

<sup>7</sup> Basu P.J. “**Law Relating to protection of Human Right under the Indian Constitution And Allied Laws**-(2002) – Modern Law publications. Allahabad. P.619.

## **7.6 International Standards : -**

### **7.6.1. International Covenant on civil and Political Right:**

Article 9 of the International Covenant on Civil and Political Rights declares that : -

“Every one has the Right to Liberty and Security of the person. No one shall be deprived of his liberty except on such grounds and in accordance with such producers as established by law.

### **7.6.2. European Convention for the protection of Human Right and Fundamental Freedoms :**

**Article 5 declares that :**

“Everyone has the Right to Liberty and Security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law : - (a) the lawful detention of a person after conviction by a completed Court. (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a Court or in order to secure the fulfillment of any obligation prescribed by law”.

### **7.6.3 The Inter-American of Human Right : -**

Article -7 of this Convention declare that “Every person has the Right to Personal Liberty & Security”.

After this discussion about Right to Personal Liberty, the present Research Scholar wants to describe illustrative cases solved by National Human Right Commission.

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**8** Naikar L.D. “**The Law Relating To Human Right**” ( 2004 ) Puliani & Puliani Publishers Private Limited. Bangalore. p.429.

## **7.7 Cases solved by National Human Right Commission : -**

### **(1) Alleged kidnapping of Jhirmal Singh by Police of Punjab:**

Upon the intervention of the Commission, the Punjab Police has registered a case against an Assistant Sub-inspector, Who was involved in the alleged kidnapping of Singh.

This followed a complaint lodged with the Commission by Bachan Singh, father of Jhimal Singh, alleging that his son had been kidnapped by an Assistant sub-inspector and some constables on 17 January 1994 and that his subsequent whereabouts were not know. He started that he and his son along with a group of persons, were returning from a Court on that day, when his son was picked up.

The Commission issued noticed to the State Government asking for a detailed reply in regard to this incident. The State Government, in its response, indicated that Jhirmal Singh had four cases pending against him in the local Court.

The evidence of the three witness, the Commission felt, indicated in clear terms that Jhirmal Singh was present with them on that date and was forcibly taken by the Asst. Sub-inspector and his men.

The Commission also asked the State Government to ensure that Bachan Singh, members of his family and other witnesses are not harassed and pressurized in any manner. The Commission continues to monitor this case.

### **(2) Commission moves the Supreme Court on Chakma Refugees in Arunachal Pradesh : -**

In response to complaints received by the Commission in 1994 from several non-government organization alleging serious threats to the life and property of Chakma and Hajong refugees from the erstwhile East Pakistan who had settled in Arunachal Pradesh, the Commission called State Government and the Union.

Government to accord protection to the person and property of the members of the two Commission and to ensure that their Human Rights were not violated.

The Supreme Court allowed the petition by its judgment dated 9 January 1996, and directed the Arunachal Pradesh State Government to ensure that the Life and Personal Liberty of each and every Chakma residing without that State be protected. The further ordered it to repel any attempt to forcibly evict Chakma out of the State by Organized groups such as the All Arunachal Pradesh Students Union (AAPSU), if necessary by requisitioning the services of the para-military or Police force. The State Government was directed to ask the centre to provide such additional force as was necessary to protect the lives and liberty of the Chakmas. The Apex Court further held that the Chakma shall not be evicted from their homes and shall not be denied domestic life and comfort therein except in accordance with law.

- (3) Commission investigates complaints of Police high-handedness against the villagers of Mannikere, Karnataka : -**



The Commission attention was drawn to this matter by a letter from Shri H.K. Patil, leader of the Opposition, Karnataka Legislative Council. In that letter it was Stated that, because of Police action on 31 October 1995 and 1 November 1995, the villagers of Mannikere had fled their homes.

The primary school in the village was closed and milk vendors had not been allowed to enter the village. There was an atmosphere of fear and panic all over the area, the letter added.

The investigation team noted evidence of over-reaction by the Police. A large number of villagers, including women, had been detained in Police custody for more than 48 hours. Because of Police high-handedness, many of the villagers had left their hearts and home in fear and panic. The team found that a land dispute, which was compounded by political rivalry, was at the core of the problem. This couple with Police high-handedness led to a siege of Mannikere village. No immediate and tangible efforts were made by the administration to restore normally, the team noted.

The Director General (Investigation) later met the Chief Minister and the Home Minister of the State and conveyed to them the views o the Commission. He also met the Director General of Police, Karnataka and other senior Police officers and urged them to take immediate steps to restore normalcy in the affected area and instill confidence in the minds of the villagers.

**(4) Appeal for expeditious arrangements for heart surgery of Harihar Behara lodged in Central Jail, Berhampur, Ganjam (Orissa) : -**

The Commission receive a representation from Shri D.N. Panda, Advocate Cuttack stating that prisoner Harihar Behara in Central Jail , Berhampur, in the State of Orissa needed immediate heart surgery as advised by the Cardiology Department, S.C.B. Medical College Hospital Cuttack and asked for the intervention of the Commission.

On 24 March 1994, the I.G. prisons further informed the Commission that on the petition of the wife of Shri Harihar Behara for release of her husband on special parole for a period of 90 days for open heart surgery at C.M.C. Vellore or at AIIMS, New Delhi at her own cost The Government of Orissa had sanctioned 90 days special parole. Accordingly, Shri Harihar Behara had been released on special parole for 90 days with effect from 28 February 1994.

**(5) Police action against Human Rights groups gathered to observe World Human Rights Days in Darrang District of Assam : -**

The Commission, suo motto, took cognizance of an incident reported in a newspaper dated 12 December 1993 captioned 'Human Rights groups flay Assam Government'. It was reported that certain NGOs were trying to convene a meeting to observe World Human Rights Day at Kalalgaon in Darrang District of Assam. The Police resorted to lathi

charge and arrested many people. The Commission called for a report from the State Governments.

The State Government reported that the gathering was without prior permission and in violation of prohibition orders promulgated section 144 of Cr Pc. Apprehending breach of peace. The Magistrate ordered dispersal of the gathering. The State Government reports that no force was used while making arrests and there was no lathi charge on the gathering.

Shri Ravi Nair, Executive Director, South Asia Human Rights Documentation centre, New Delhi who was among the persons arrested wrote to the Commission and met the chairman at the latter's request. Pursuant to this meeting and on pursuing the report of the State Government, the Commission decided to order an investigation into the incident under section 14 of the protection of Human Rights Act, 1993. The Commission has appointed the Sessions Judge, Guwahati, to institute appropriate judicial proceedings and report within three months.

**(6) Disappearance of Shri Harijit Singh In Punjab**

Amnesty International in its report dated 11 February 1994 had expressed concern over the lack of process in the legal proceeding initiated in October 1992 to clarify the whereabouts of Harjit Singh Who had disappeared after his arrest in April 1992.

According to the report, on 29 April, 1992, Harjit Singh, an employee of the Punjab State Electric Board was arrested by Police officers. The Police did not have an arrest

warrant and subsequently denied the arrest. The Police claimed that Harjit Singh and another man were captured on 11 May 1992 after an armed encounter with them. They were attacked by armed militants, during which the two men were killed. However, Harjit Singh was twice seen alive by his father in Police custody after the Police claimed that his son had been killed.

The Commission has taken cognizance of the incident and called for a report from the Government of Punjab which is awaited. This will be pursued by the Commission.

**(7) Illegal detention/torture by Police complaint on Shri Babakhan : Rajasthan**

A complaint was received from Shri Babakhan of Kota alleging illegal detention and torture by the Police. The Commission took cognizance of the complaint directed the Chief Secretary and Director General of Police, Rajasthan to submit a report. The report submitted by the State Police said that the allegations were investigated by the Investigation Division. The Commission accordingly, recommended payment of compensation to the victims: Rs.15,000/- to Shri Babakhan Rs.20,000/- to Shri Mirza Khan and rs.5,000/- to Shri Yousuf Irani.

**(8) Compensation for illegal detention complaint from Shri Ranbir Yadav: Uttar Pradesh**

The Commission took cognizance of telegraphic complaint received from Shri Inderjit Yadav alleging that his brother Shri Ranbir Yadav was forcibly taken away by the Police on 23 April 1996 from their milk dairy located at Lal

Kuan, District Ghaziabad and illegally detained unit 27 April 1996, purportedly for questioning him in regard to the murder of a certain Rajpal.

In pursuance of the Commission's Directors, the Investigation Division called for a report from SSP Ghaziabad. The report Stated that Rambir Yadav was called to the Police Station on 27 April 1996, in connection with a case and allowed to go the same day. When the Police version was communicated to the complain, he contradicted it and reiterated the allegation, saying that his brother was picked upon 23 April and released on 27 April 1996 by Investigation Division to undertake a spot inquiry. On the basis of the report of its investigation division the Commission was convinced that this was a case of illegal detention and was a compensable case. As such the Commission recommended payment of compensation of Rs. 10,000/- to the victim.

**(9) Torture By Police and False Implications In a Criminal Case : Haryana**

The complainant Shri Sher Mohammad Khan alleged that on 8 March, 1996, SHO Police Station Sadar , Gurgaon along with 4-5 Police constables and a few others forcibly entered his house and mercilessly beat him with sticks, as a result of which he sustained injuries on his hand and back. He was then removed to Police station Sadar where again, allegedly he was beaten – up after wrapping him up in a blanket which resulted in the fracturing of his leg. Sher Mohammad Khan got himself medically examined at the

Government Hospital, Gurgaon. He further alleged that he was falsely implicated in case under section 448/506 IPC. According to the complainant, the SHO resorted to unlawful acts to pressurize him to withdraw a complaint against some member of a group housing society and to resolve a dispute relating to a plot of land in favour of his opponent. The complainant further alleged that the Supdt of Police, Gurgaon was also involved in the case.

The Commission considered the report and was of the view that there was no legal bar either for the prosecution or initiation of departmental action against the SHO and others found to be in the wrong. The Commission observed that a complaint against the SHO in the Court of the Addl. Chief Judicial Magistrate did not bind the Police authorities and did not compel them in to inaction in a case where the Police found that there was unlawful conduct on the part of the SHO and others, amounting to offences under the penal laws and otherwise also amounting to grave misconduct on their part.

The Commission recommended that a sum of rupees twenty – five thousand (Rs.25,000/-) by way of immediate interim relief be paid by the Government of Haryana to the complainant Shri Sher Mohammad Khan.

**(10) Compensation to victim of illegal detention – Punjab**

Shri Kuldeep Singh of Golden Park, Delhi, made a complaint to the Commission alleging illegal detention by Punjab Police from 9 November 1993 to 2 December 1993. It was further Stated that, the complaint was implicated in

a false case, maltreated and beaten. The Commission issued notice in this case in the Commissioner of Police, Delhi and the Principal Secretary (Home), Government of Panjab, On consideration of the reports received from them, the Commission by its order dated 22 January 1996 furnished copies of the reports to the complainant for his response. The complainant's response to the reports indicated that he was not satisfied. The Commission, on further consideration, passed an order on 23<sup>rd</sup> May 1996 calling upon the Investigation Division of the Commission to investigate the matter, to ascertain the actual parameters of the dispute and the genuineness or otherwise of the allegations of harassment. As a consequence, the SP Jagraon had initiated departmental proceedings against the errant Police officials, an Assistant Sub-Inspector and two Constables.

The Commission recommended an amount Rs. 10,000/- by way of interim relief to the complainant to be paid by the State of Punjab.

**(11) Illegal detention : Delhi**

The Commission received a complaint dated 23 June 1995 from one Shri I.R.Singh, Advocate, Delhi High Court alleging three persons namely, Dhanraj, Amar Singh and Raisuddin, residents of DDA Flats Mata Sundari Road, New Delhi were arrested by the Police station Preet Vihar, Shahdara on 22 June 1995 at 8:30 P.M. when they were walking on the road and that the Police had not produced them in the Court within 24 hours as rules of Article 22 of the Constitution of India.

On the direction of the Commission, its Investigation Division undertook an investigation. It was brought out that the above-named persons were actually arrested the Police on 22 June 1995, but the Police had shown their arrest on 24 June 1995 and produced them before the Magistrate only 25 June 1995.

The Commission found that the illegal detention of three persons for more than two days was highly probable. Even so, when the Commission called upon the Commissioner of Police to give a report, no meaningful enquiry was held and the Deputy Commissioner of Police (Vigilance) gave a self service and incorrect report that was convenient to the Police, about the arrest.

The Commission recommended that disciplinary proceeding be drawn up against those who were concerned with the illegal detention of these persons as well as those who manipulated the Police record so as to show their arrest after two days of the actual arrest. However, as a case of wrongful confinement, violative of the Constitutional Rights of the three persons was established on a preponderance of probability, the Commission recommended that the Government of the National Capital Territory of Delhi should pay an interim compensation of Rs. 5,000/- each to them subject and without prejudice to their private law Rights.

**(12) Release of foreign national in Indian jails : -**

A complaints was received from Shri Sazwara Khan and four other nations of Pakistan, alleging that they were confined illegally and unConstitutionally by the Government



of Rajasthan under Section 10 Cr. P.C. and were confined in different jails of Rajasthan. The Commission took cognizance of the matter and issued notice to the Government of Rajasthan and Government of India.

The External Affairs Ministry vide its communication dated 24 December 1997 intimated that the Government had decided to repatriate Shri Sazwara Khan in view of his advanced age.

**(13) False Implication And Torture Of Shri Rajiv Rattan By The Police**

Shri Rajiv Rattan, a clerk-cum-cashier at the Sahauran Branch of Shivalik Kshetriya Gramin Bank, Hoshiarpur, Punjab made a complaint to the Commission that he was falsely implicated, illegally detained for 13 days and was tortured by the Police in a theft case that had taken place in the Bank. The Commission, being dissatisfied with the report of the State Government that the Police had neither illegally detained him for 13 days nor had tortured him, directed its Director General (Investigation) to take up field investigation and submit a report. The NHRC investigation team, after considering the Statements of independent witnesses, bank correspondence, medical papers and opinion given by the doctors at PGI Chandigadh concluded that the Police had tortured the complaint on account of which he sustained the fracture of the neck of the femur bone of his leg.

The Commission held that the Police perpetrated brutalities on the complaint causing a fracture of the neck of the femur bone for which he will have to undergo periodic

operations after every eight to ten years. While holding that the Police of the Ropar Police Station has disabled Shri Rajiv Rattana permanently by its brutal action, the Commission awarded him an immediate interim compensation of Rs. 2.5 lakhs and ordered an in-depth inquiry and initiation of criminal proceeding the delinquent Police.

**(14) Custodial Torture Of Rakesh Kumar Vij : Uttar Pradesh**

The Commission had received a complaint from one Raj Kumar Vij of Varanasi alleging that his son, Rakesh Kumar Vij had subjected to severe physical torture by the Uttar Pradesh (UP) Police. This had necessitated the hospitalization of Rakesh in order to save his life. The complaint alleged that the Police had illegally detained his son in connection with a murder investigation. It was mentioned in his petition that the victim was ill-treated and tortured and that electric shocks had been administered to him by making him urinate on a live electric coil – in order to elicit information about the murder. He was also not allowed to meet any family member. The torture had totally incapacitated the victim.

The Commission subsequently received a number of petitions from various non-governmental organization and social activities regarding this case. Taking cognizance of the matter, the Commission issued notice to the Director General of Police, UP. The report received from the senior Superintendent of Police, Varanasi Stated that the victim had sustained injuries as a result of a fall while trying to run

away from Police custody. It also mentioned that Shri Rakesh Vij had a criminal record. The Commission then directed its own Investigation Division to inquire into the incidence. The report of the investigation team affirmed illegal detention and severe torture of the victim.

The Commission also asked the UP Government to constitute a Medical Board to assess the extent of physical disability suffered by the victim. The complainant requested the Commission to assess the authenticity of the medical report.

In view of grave apprehensions of justice, the Commissions got the victim examined by the Delhi Trauma and Rehabilitation Centre, which gave an entirely different assessment. Due to the discrepancies between the two medical reports, the Commission then directed that Shri Rakesh Vij be referred to the All India Institute of Medical Science (AIIMS) for reassessment of his health status.

According to the report from AIIMS, the victim's spinal cord was compressed leading to deterioration of power in his lower limbs and in his neurological functioning in lower limbs, sensory loss of bladder and bowel movement.

There were 60 to 80 per cent chances for improvement, but only if the victim undertook high-risk surgery. He was suffering from hearing loss and some of his teeth were missing. He was suffering from severe Post-Traumatic Stress with no proven treatment.

The Commission was thus convinced that Police officials had perpetrated custodial violence . This was a

case of a gross violation of Human Right of a citizen resulting from barbaric acts of torture perpetrated on victim. The State was therefore, liable to compensate Shri Rakesh Vij for damage suffered by him.

The Commission thus directed the UP Government to pay Shri Rakesh Vij Rs. 10 lakhs by way of immediate interim relief. It was also directed to arrange for the complete medical treatment of Shri Vij at AIIMS, New Delhi or PGIT Lucknow, as Shri Vij preferred. The expenses of the treatment as well as the traveling expenses of Shri Vij, along with one attendant from his native place to the place of medical treatment would also be borne by the State Government.

#### **COMMENT**

Under Section 13(1) for the protection of Human Rights Act, 1993, the Commission shall while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908. Section 13(2) further provided that the Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

Section 15 of the Protection of Human Rights Act, 1993 protects those who give evidence before the

Commission. It also provides for prosecution of those who give false evidence. Medical personnel have a crucial role in unearthing vital evidence in cases of allegation of torture and custodial violence. They have a duty to ensure that an accurate description of victim's injuries is provided to the Commission. In this case, the Medical Board constituted by the Government of Uttar Pradesh gave a misleading report to the Commission on the extent of injuries suffered by Shri Rakesh Kumar Vij. The Commission however, got a further assessment made by the Delhi Trauma and Rehabilitation Centre and then by the All India Institute of Medical Science (AIIMS). The Commission, using the power conferred on it by its statute, recommended the initiation of appropriate action against those who tried to mislead the Commission. Article 10(1) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that each State Party shall ensure that education and information regarding the enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. Article 10(2) further requires each State party to include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons. In other words, medical personnel not only have a role in the Prevention of Torture but are duty bound to do so.

The people's Union for civil liberties (PUCL) drew the attention of the Commission through a complaint, to the suffering of one Smt. Nilmani, who was falsely charged in case relating to the murder of her sister- in- law. As she could not engage a lawyer to defend herself, she had remained behind bars until she was finally acquitted by the Court having spent more than ten years in jail. The Commission was also informed that Nilmani was living in difficult circumstances after her release. She was reportedly suffering from paralysis and was unable to walk. The PUCL sought compensation to the victim as her rehabilitation.

Having regard to the facts and circumstances of the case, the Commission directed the Government of Bihar to pay Smt. Nilmani a Sum of Rs. 2,00,000/- as compensation for her rehabilitation.

**(15) Illegal Detention/Abduction Of Rama Rao By Andhra Police**

Smt.T.Nagarathnam filed a complaint with the Commission alleging that the Police abducted her husband T.Rama Rao from his house on the night of 12/13 November 1995 and that his whereabouts were not known. The Commission immediately called for a report from the State Police. The report received was however not found to be satisfactory and therefore, the Commission directed its own Invention Team to look into the matter and submit a report.

The NHRC Team upon investigation found that Shri Rama Rao was picked up in the presence of his wife involvement in an attempt to murder one Tejeshwar Rao, a

local CPI leader, on 4 October 1995. He was initially taken to the town Police station Srikakulam from where he was moved to Luvaru Police station and was tortured to extract a confession. However, when nothing could be established against him he was produced before an Executive Magistrate on 14 November 1995 and released after his executed a personal bond of Rs. 5000/- Due to the torture that he underwent, Rama Rao's first desire was to be free and he did not, therefore, lodge any complaint immediately. On 13 November, however the Andhra Pradesh Civil Liberties Committee (APCLC) had submitted a memorandum to the Commission alleging that Rama Rao had been abducted and that his Rights had been violated. The Police records on the other hand Stated that he was arrested on 14 November and released on the same day after execution of a personal bond. From the investigation by the NHRC team, it became clear their misdeeds. The Commission recommended that the Government of Andhra Pradesh pay Rs. 25,000/- as immediate interim compensation to Rama Rao that they initiate departmental proceeding against the Police officials and take such other appropriate action against them as may be necessary.

Article 9 of the Universal Declaration of Human Right as well as Article 9 of the International Covenant on Civil and Political Right emphasize that no one shall be subject to arbitrary arrest, detention or exile. In the above case, there is a violation of the fundamental Right guaranteed in Article 21 of the Constitution which stipulates that no one

shall be deprived of the life or personal liberty except according to procedure established by law.

Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic Human Right of Liberty. Nevertheless the Constitution of India as well as International Human Right law recognize the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Although Article 22(1) of the Constitution provides that every person placed under arrest shall be informed as soon as the ground of arrest and shall not be denied the Right to consult and be defended by a lawyer of his choice and Sec.50 of the Code of Criminal Procedure, 1973 (Cr. Pc) requires a Police officer arresting any person to “forthwith communicate to him full particulars of the offences for which he is arrested or other ground for such arrest”. In actual practice these requirement are observed more in the breach.

Likewise, the requirement of production of the arrested person before the Court promptly which is mandated both under the Constitution [ Article 22(2) and the Cr.P.C.(section 57) is also not adhered to strictly.

A large number of complain pertaining to Human Right violations are in the area of abuse of Police powers, particularly those of arrest and detention. The Commission has, therefore, found it necessary, with a view to narrowing



the gap between law and practice, to prescribe guidelines regarding the arrest even while at the same time not unduly curtailing the power of the Police to effectively maintain and enforce law and order and proper investigation Arrest were sent to Chief Secretaries of all States / Union Territories on 22 November, 1999 with a request to translate these Guidelines into their respective regional and make them available to all Police officers and in all Police station for compliance.

**(16) Alliged Illegal Detantion And Custodial Toture Of Shri Inder P. Choudharie In Himachal Pradesh : Administration Of Directore Test.**

The Commission had received a petition dated 12 May 1997 from Shri Inder P. Choudhrie, a resident of New Delhi. he alleged that he was arrested by the Police in connection with a murder and thereafter subjected to various kinds of custodial torture for period of 13 days in Police custody in Shimla, Where he had gone to attend the hearing of a civil suit. He added that he was illegally detained, tortured and subjected to “Lie Detector Test” without his consent after giving him a certain intravenous drug. He sought an enquiry into the case by the CBI.

As the complaint had also approached the High Court of Himachal Pradesh and later the Supreme Court without any success, the Commission declined to intervene in the matter. Subsequent review petitions field before the Commission by the petitioner were also dismissed. However, while dismissing the last review petition vide its order dated

20 October 1999, the Commission had taken up the issue of the administration of the Lie Detector Test.

After a careful consideration of the matter, the Commission laid down the following guidelines relating to the administration of the Lie Detector Test.

- No Lie Detector Test should be administered without the consent of the accused. Opinion should be given to the accused as to whether he should avail of the test.
- If the accused volunteers for the tests, he should be given access to a lawyer. The Police and the lawyer should explain the physical, emotional and legal implications of such a test to him.
- The consent should be recorded before a Judicial Magistrate.
- At the hearing, the person should also be told in clear terms that the Statement that is made shall not be a “confessional” Statement to the Magistrate but will have the status of a Statement made to the detaining authority including the length of detention and the nature of interrogation.
- The actual recording of the Lie Detector Test shall be done in an independent agency (Such as a hospital) and conducted in the presence of a lawyer.
- A full medical and factual narration of the manner of information received must be taken on record.

These guidelines were circulated to the Chief Secretaries of all States as well as Union Territories by the Commission through a letter dated 11 January 2000.

## COMMENT

The National Human Rights Commission has, from time to time, laid down guidelines to guide the various State and other public functionaries in the proper discharge of their duties. These guidelines ensure that while discharging their duties and responsibilities, these functionaries do not violate Human Rights. These functionaries have a Constitutional obligation to respect and the Directive principles of State Policy. The Constitution has made fundamental Rights justifiable. The Supreme Court, while interpreting and enforcing fundamental Rights has whenever possible interpreted these Rights in the light of the Directive principles of State policy. The Supreme Court has also held (vide *Visakha V. State of Rajasthan*, (1997) 6 SCC 241 AND *Nilabati Behara V. State of Orissa*, (1993) 2SCC 746, that any International Convention not inconsistent with fundamental Rights and in harmony with its spirit must be read into these provisions to enlarge their meaning and content in order to promote the object of the Constitutional guarantee. The State in its functioning at various levels, is therefore obliged to respect and preserve these basic Human Rights. The Supreme Court, has in several cases, laid down guidelines and directions for this purpose. (Vide a recital of such cases in *Vineet Narain V. Union of India*(1998) 1 SCC 226 at 265).

Under Sec. 12 of the Protection of Human Rights Act 1993, the National Human Rights Commission is entitled, not merely to inquire into any violation of Human Rights or

negligence in the prevention of such violation, it has also wider statutory obligation for the promotion and protection of Human Rights, e.g. it has a statutory obligation to “review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of Human Rights and recommended measures for their effective implementation.” [see Section, 12 (d)]. The Commission is also required to “review the factors including acts of terrorism that inhabit the enjoyment of Human Rights and recommend appropriate remedial measures “[see Section 12 (e)]; to “Study treaties and other International instruments of Human Right and make recommendations for their effective implementation” [see Section 12 (f)]; and to undertake “such other functions as it may consider necessary for the promotion of Human Rights “ [se Section 12 (j)]. The National Human Rights Commission is, therefore required, from time to time, to lay down guidelines for the effective implementation by the State authorities or other public functionaries of the Constitutional guarantees and International Human Right norms as interpreted and applied under the judgments of the Supreme Court of India. These further the objective of protection and promotion of Human Right of ordinary men and women in this country.

The guidelines for conducting the Polygraph Test which require prior injection of a drug are meant only to protect and prevent violation of the Human Right of the person to be examined; his Rights to this effect being guaranteed under Article 21 and Article 20(3) of the

Constitution. The guidelines merely spell out in detail the protection available under these Constitutional provision and have been formulated on the discharge of the functions entrusted upon the Commission by clause (1) of Section 12 of the Act. The effect of conducting the Polygraph Test without the voluntary consent of the person is a serious violation of his Human Rights guaranteed under the Constitution. Moreover in the evidence recorded becoming inadmissible in a Court of law and also violative of the provisions of the Constitution and Statues governing the field.

These guidelines help to establish the “best practices” for law enforcing agencies to follow and have usually been accepted and acted upon by the concerned authorities. In fact, the guidelines also help the concerned authority to ensure that the authority does not act in a manner that is unConstitutional or illegal and violative of Human Rights.

**(17) Police Harassment**

**(A) Illegal Detention : Utter Pradesh**

The Commission was seized of a complaint from Ms. Kamini Sharma of Mathura, Utter Pradesh alleging that father and one of her brothers had been made to ascertain the whereabouts of her brother Kapil who was a suspect in a murder case.

The Commission called for a report in this matter from the SSP Mathura. The report Stated that the three had been called to the Police station but had been let off after a brief interrogation. There had been no illegal detention.

Finding the report unconvincing, the Commission directed the matter to be investigated by its own Investigation Division. The report of the investigation team confirmed the truth of Ms. Kamini Sharma's complaint. It was prima facie established that the arrests and detentions had been illegal and the conclusion was inescapable that they had been detained to put pressure on Kapil Sharma to surrender.

The Commission thus directed the Utter Pradesh Government to get a case of illegal arrest / detention registered against the delinquent Police officials and lack of concern for the Human Rights of the citizenry of the country. The Commission also directed the payment of Rs. 10,000/- to each of the victims by way of immediate interim relief.

**(B) Harassment Of A Social Worker By Police : Utter Pradesh**

The Commission received a complaints from one Dr. Rajendra Prasad Pandey, a resident of Lucknow, Utter Pradesh alleging that he was imprisoned for 24 hours by the local Police on 27 December 1995 to please his opponent. The complainant was a social worker and was the convenor of Hindu Chetna Samiti. The next day, the SHO handcuffed him and took him around the town in broad daylight. The complainant to the higher authorities, he did not any justice. The incident had an advance psychological effect on him and had reportedly been condemned by the intelligentsia of the town.

In response to the Commission's notice, the SSP Lucknow submitted a report stating that the concerned SHO

was found guilty of handcuffing the complainant, who was a man of status and a social worker. An order was issued to punish that official under the relevant rules.

Having regard to the loss of dignity of the complainant in the eyes of the society when he had been handcuffed and taken round the city. And having regard to the loss of his liberty, the Commission directed the Government of Uttar Pradesh to pay a sum of Rs.2,00,000/- as immediate interim compensation to the complaint within three weeks and observed that the State was at liberty to recover the whole or part of it from the concerned official.

**(C) Harassment Of Denitrified And Nomadic Tribals Belong To Pardhis Community In Bighwan Village, Pune, Maharashtra**

Shri G.N.Devy, secondary, Denitrified & Nomadic Tribals Right Action Group, Baroda , Gujarat submitted a complaint to the Commission alleging atrocities on the Pardhis community, a identified community of tribal living in the backwaters on the banks of the Ujni Dam, Bigwan village, Taluka Indapur, Pune, Maharashtra by persons in plain cloths serving in the Railway Police on 12 July 1998. It was further alleged that their houses, fishing nets, boats and other materials were burnt. The Police had also beaten up the women of the community, including pregnant women and had attempted rape on two teenaged girls.

In view of the facts and circumstances, the Commission recommended: of the four women victims, namely, Smt. Shalan Pratap Kale, Smt. Manda Latif, Kum.

Jyoti and Smt. Alka Chandrasal Lele, Rs. 1,50,000/- as immediate interim relief. A sum of Rs. 10,000/- may be paid to each of the families of the Pardhis who were staying on the bank of Ujni Dam, as compensation by way of “immediate interim relief” In case a charge – sheet had not yet been filed in the Court against the erring Police personnel, the case may be entrusted to the State CID and a charge - sheet be filed thereafter against all the culprits in the appropriate Court disciplinary action may be initiated against the erring Police personal.

**(D) Illegal Detention Of Three Year Old Child For Ten Years Due To Apathy Of The Police And Other Authorities**

Syed Shahabuddin, former MP, drew the attention of the Commission to the plight of a young girl who had witnessed a murder and was thereafter detained in Police custody for about ten year, as a result of which her childhood was lost. The incident had been reported in “The Times of India” under the caption “Witness Spent 10 Years in custody – Case yet to begin”.

The Commission immediately took note of the letter and called for a report from DGP West Bengal. The office of the DGP forwarded by the complaint or in the newspaper item, the report was presumably about a girl named Kalpana Mistry. According to the report, on 30 March 1990, the learned SJDM Kalani Nadia had ordered that Kalpana Mistry, who was an eyewitness in a case in which her father had allegedly murdered her mother and when required. She as last produced in the Court on 20 September 1996 and she



failed to identify the accused. She was taken to Liluaha Home on 29 September 1996. In between ,in 1992, she was shifted from the Liluaha Home to a chilled care Home (NGO) on the orders of Shri R.M. Zameer, IAS,SP and Ex-officio Director of Special Welfare, West Bengal or proper upkeep, schooling, protection, care and further rehabilitation. However, when the said NGO moved the learned Court for approval of transfer, the learned sessions Judge termed the act as highly irregular and asked for explanations the Director of Social Welfare for having transferred the child without approval and intimation to the Court.

The Commission expressed its shock at the inhuman and apathetic manner in which the case was handled by the Police other authorities. The Commission found the very idea of retaining a girl child, who was three years old at the time of the incident, and considering her competent to a witness in a Court of law and keeping her waiting for the commencement of the authorities in the welfare of the innocent child resulted in depriving her of her normal childhood which could never be regained. No amount of compensation, the Commission felt, would be adequate for the loss She had suffered. However, in order to alleviate her suffering to some extent, the Commission recommended to the Government of West Bengal to ensure that child is suitably rehabilitated and educated in the SOS children's Home or sent to a reputable institute run by an NGO in or around the city of Calcutta, till she became a major. The Commission also recommended that a sum of Rs. 50,000/-

be deposited in her name through a Court guardian, the interest of which would be paid to the institute looking after her, and the principal amount to be released to her on her becoming a major to enable her to settle in life.

### **COMMENT**

In the Universal Declaration of Human Right, 1948, the United Nations has proclaimed that the child is entitled to special care and assistance. Article 3 of the Convention on Children, 1989 stipulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the **BEST INTERESTS OF THE CHILD** shall be a primary consideration.

#### **(E) NHRC's Investigation Team To Enquire Into' Plight At Govind Ashram, Meerut**

The National Human Rights Commission has directed its Investigation Team to enquire into the allegations reported by a newspaper on the conditions faced by juveniles in the Govind Ashram located in the Juvenile Court at Sanket, Meerut, UP. The news story along with a photograph captioned "Masoomo Ke Liye Kala Pani Jail" was carried in the Meerut edition of Hindi newspaper, the news report drew attention to the pathetic condition of 59 juveniles who were taken to the Meerut Court for appearance before. While the total capacity of the jail is 50 as on 19 September 2005 there are 118 inmates, it was reported. One of the children even alleged that he apprehended a threat to his life from the jail officials. The children are believed to have revealed

to the correspondent that they are being given rotten food and contaminated water. It was reported that there is only one teacher in the jail, which teaches them for half an hour only and they do not have books to read. The Commission on reading the news report observed that through it is not clear from the news story whether the children have been produced before the Juvenile Justice board yet, if the contents are true. They raise a serious concern about the violation of child Rights.

**(F) Two Pak boys languishing in Rajasthan jail to be repatriated**

Two young Pakistani boys presently lodged in jail in the State of Rajasthan will be repatriated to their country. This assurance has been given by the Ministry of Home affairs, Government of India after the National Human Rights Commission Took up the case on receiving a petition from Ms. Asma Jahangir, AGHS Legal Aid Cell, Lahore, Pakistan. Government of India Stated it has received their travel documents for endorsement of exit permission and the report discloses that the two Pakistani nationals would be repatriated to Pakistan immediately after receiving confirmation from the State Government of Rajasthan regarding their non-involvement.

**(G) Censure Punishment Awarded By UP Police In Torture, Extortion Case Distresses NHRC**

The Commission has expressed its distress on nothing the approach adopted by the disciplinary officer in awarding minor penalty of 'censure, to the erring Police officials which

it felt was not at all commensurate with the gravity of the misconduct of unlawful confinement and torture of the victim as well as extortion of money for his release by the delinquent Police officials under the color of their office.

The victim in case was a 70 years old man named Hoshyara Singh, who had been picked up by the UP Police on 11 July 2001 taken to the Police station where he was allegedly severely beaten and torture. The incident was reported in an English fortnightly which had alleged that the victim was released after he paid Rs.1,500/-.

The Commission stated that award of minor punishment of “censure” for such grave misconduct is not only an eyewash but it gives an impression of tolerance for corruption and violation of Human Rights, that is not at all acceptable. If such type of grave misconduct committed by the Police officials is dealt with in such a casual and routine manner, it would encourage the Policemen not only to commit violations of Human Rights of the citizens but also indulge in corruption without fear of any punishment.

**(H) Bonded labour and child labour situation In UP**

A review of the bonded labour and child labour situation in UP with focus on the Districts of the Carpet Belt during the period 1 April 2004 to 30 June 2005 was carried out by the special Reporter, Mr.Chaman Lal. This included visits to Varanasi, Mirzapur Bhadoi, Allahabad and Kanpur from 2-7 September 2005 and holding of meeting with the district officials and NGOs. The salient features of the review are –

## **Bonded Labour**

Detection of bonded labour is found to be very low but not NIL

Rehabilitation of bonded labourers identified and carried out with exemplary interest and efficiency.

Vigilance committees have been set up at all the 70 District Headquarters and 292 out of a total of 297 Sub Divisional Headquarters.

Funds received from the Union Labour Ministry for survey of bonded labourers in 5 Districts released to the Labour Department through NHRC's intervention have been utilized with remarkable sincerity.

India for evaluation studies and awareness generation measures has been utilized carefully and with good results.

Prosecution of accused employers has now started receiving proper attention.

### **(I) Schoolboy kept chained ; NHRC's asks for AP Govt.'s Comments**

Taking suo motto cognization of a distressing report that appeared in the Hindu daily dated 19 December 2005. The news story under the caption "Residential school keeps boy, Daniel, at Veldurthy to prevent him from running away from school. He freed the boy along with the boy's father Giddaiah and lodged a complaint with the Police on the charges of illegal confinement under section 314 of IPC."

**(J) Two Kidnapped girls recovered by the NHRC's Investigation Team**

Due to swift and timely action of the Commission, two kidnapped minor girls have been recovered from Mumbai and Pratapgarh, Uttar Pradesh.

The Commission took cognizance of a complaint dated 7 October 2005 from a serving Head Constable of Border Security Force alleging that his two minor daughters namely Radha (17 years) and Neetu (13 years) were kidnapped from the market of Kishan Ganj town (Bihar) on 19 September 2005 and the Police despite a formal report, was not taking the required action.

**(K) The National Human Rights Commission has taken suo-motto cognizance of news reports of an under trial spending nearly 44 years in Jail without trial. The news story was reported in the Chief Secretary and DGP, UP for their comments within two weeks. The media reported started that Shankar Dayal an under trial prisoners had spent 44 years in jail (including 43 years in an asylum) and his family believed him to be dead.**

The Commission has observed that if the contents of the news reports are true then it constitutes gross violation of Human Rights of under trial prisoners.

**(L) NHRC sends notice to Bihar Chief Secretary**

The National Human Rights Commission has sent notice to the Chief Secretary, Bihar on report which said that one farm worker had been repaying 40Kgs of rice with

27years of bonded labour in village about 60 Km from Patna.

The report which appeared in the “Times of India” on March 27, 2007, said at least couple of farm worker at Paipura Barki Village, have not been able to throw off bondage even though they have worked for nearly three decades for their “masters”. The report said that one Jawahar Manjhi now 45years old ad taken rice as loan from the local moneylender for a wedding 27 years back, when he was a teenager. At that time, it was decided that Minjhi would work in the lender’s field and repay with his labour. He would be given one Kg of rice, which is one-third of the normal payment of three Kgs for a day’s work. Since then, he has been working six days a week, eight hours a day but the loan remains to be paid. However, he does not know how much he has repaid. However, he does not know how much he has repaid and how much he owes to the lender.

The report, further, said that Mnjhi cannot get away and his wife fears that her sons would also become bonded labourers as there is no money in the house.

After going through the distressing news, the Commission said if raises serious issue of violation of Human Rights of the bonded labourers. The Commission has given two weeks time for comments from the State Chief Secretary.

**(M) NHRC has issued notice to Deputy Commissioner, Sonipat on bonded labour**

The National Human Rights Commission has asked the Deputy Commissioner(DC), Sonipet for submitting

comments along with explanation as to why release certificates were not issued to the bonded labourers. Taking suo motto cognizance in a distressing news item that appeared in the Hindustan Times dated 4<sup>th</sup> April 2007 titled “freed labourers fights for justice” which said that 65 men, women and children were allegedly held captive at a brick kiln in Sonipet, Haryana for months and they were released a fortnights ago. These labourers are mostly Dailits from Jharjgir district in Chhatisgarh. It is reported that these rescued bonded labourers are mostly Daitails from Jhanjgir district in Chhatisgarh. It is reported that these rescued bonded labourers are now fighting to get the district administration to act on their complaints.

- (N) The group has been protesting at Jantar Mantar in Delhi since March 15.

It is reported that Swami Agnivesh, who is leading the protest, has said that after he came to know about the problem, he contacted the DC and apprised him. The DC instead following procedures under the laws dealing with bonded labourers overnight on March 14 loaded them on to a train to Delhi.

Meanwhile a complaint has also been received in the Commission on the same incident. The complainant alleged that despite repeated pleas made to DC on the need to take immediate steps he did not visit the spot to record the Statements or delegate the SDM to check the fact as per the Bonded Labour System (Abolition) Act, 1976. The Deputy District Food Supply Officer who instead of recording the



Statements of the labourers got their thumb impression on a blank paper and then got them released. It is further alleged that the DC showed utter dereliction and indifference towards his duty under Bonded Labour System (Abolition Act) 1976.

The Commission has given two weeks time to the DC, Sonipet for Submitting his comments along with explanation in this regard.

## 7.8 CONCLUSION :

Now, after studying cases related to Right to Personal Liberty the Present Research Student finds some eye catcher things. So, they can be described as follower : -

- At first, the National Human Rights Commission has solved not regional also; but also took cognizance of Pakistan Advocate I.e. a petition from Ms. Asma Jahangir, Lahor was also appreciated. The petition was about one Pakistani in Indian jail.
- Most of suo motto cognizance have been taken by the Commission from press- report.
- Generally, it is found that most of complaints for violation of Rights are from “Hindi Belt”
- Let Present Researcher mention State wise figures about complaints.
- Arunachal Pradesh - 3
- Kerala - 1
- Karnataka - 1
- Orissa - 1
- Assam - 1

- Punjab	-	5
- Rajasthan	-	3
- Uttar Pradesh	-	10
- Haryana	-	1
- Delhi	-	1
- Madhya Pradesh	-	1
- Maharashtra	-	2
- Bihar	-	2

- But it is notable that complaints arrived at Commission from various ways. i.e.
- Maximum number of 'suo motto' cognizance by the Commission.
- Then private complaints
- There are complaints by N.G.Os
- Some complaints by Advocates or by politicians also.
- Complaints Amnesty International has approached the Commission.

Generally the Commission send all these complaints for investigation. After investigation if any fact relies on complain, than Commission proceed further.

As the result of these complaints, the Commission also grants monetary relief in proper cases. They may be in compensation form or in the from of immediate interim relief under Sec. 18 (3) of Protection of Human Rights Act.

## CHAPTER 8

### Right to Dignity

#### 8.1 Dignity – Explained :-

<sup>1</sup>The term “Dignity” has been derived from the Latin Word “Dignitas” which denotes a quality of being worthy or honorable. It suggests a high rank or a position of distinction in the community. Dignity means “Honour and authority : reputation. The Human Dignity consists in man’s ability to experience Self – awareness and to think rationally. Rationality is not only the distinctive defining characteristic of Human beings but also the mark of his highest and most noble achievements. When one loses the ability to exercise his rational function, he has lost his Humanness i.e. his essential Dignity. Dignity means “Maryada” and “Maryada” means behaving in a Rightful manner. The epic Mahabharata defines “Maryada” as under :-

“Maryadam Sthito Dharma Samsvay Vasya Laxnam”.

It means Dignity lies in conduct and its characteristic is to control or to limit or to restrain. Bhavabhuti<sup>1</sup> in his creation “Uttar Ram Charitam” has used the word. “ Bhinnamaryada” that signified unrestrained action and “Durmaryada” which means wicked. In famous panchan tantra stories the word “Maryada” has been one’s action within the Right way.<sup>2</sup>

In the same way the morality of Islam is based on concept of “Haya”. This concept aims at inculcating a feeling of shyness in Human nature and tries to develop it as a part of mental make up so that it may serve as a strong mental deterrent against all evil meditations.

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1 Bhavbhuti – A well know Sanskrit Poet.

2 Basu P.J. “**The Law Relating to Human Rights Under the Indian Constitution & Allied Laws**”. (2002) Modern Law Publications, Allahabad. p.202.

Dignity is a social thing it involves one's ability to participate in a social arrangement of some sort and to hold some kind of rank of some sort and to hold some kind of rank there in. It is the society which confers Dignity on the individual and it is the society that can take it away. In its ordinary and most prevalent forms. Social Dignity refers to one's reputation or good name, holding one's head up in the community. The Dignity involves an attitude of concern on the part of others for each individual. As far as there are people who are concerned for you, you've a Dignity.

In Board of Trustees of the port of Bombay v/s Dilip Kumar Raghavendranath Nadkarni,<sup>3</sup> a two judge Bench of the Supreme Court held that in a Departmental proceeding in which the employer is represented by Well trained officers. A refusal to the employee to be represented by lawyer would amount to denial of a reasonable opportunity of being heard and the proceeding would stand vitiated. But even though this was sufficient for the effective disposal of the case. The bench after quoting the verse from "Shrimad Bhagwad Geeta"<sup>4</sup> namely as, "Smbhavita a Saya Chakeertiro maenad atirichyate". That is Dishonour is more than death to one who is counted as honorable.<sup>5</sup>

Further proceeded to observe that "where the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of person it would affect Life within the meaning of Article.21 of the Constitution as some of the finer graces of Human civilization which makes Life worth living, would be jeopardized.

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3 AIR 983 SC 109

4 Shrimad Bhagvat Geeta "The Most Authorized Text Of Hindu Religion. It 's a collection of preaches delivered by Lord Krishna him self.

5 Chapter – II Verse 34 – Shrimad Bhagvat Geeta

It may be as Lassie said in shakespeare's Othello, reputation is something priceless. That is much more valuable than any other possession and who steals purse, steals trash.

So, International Covenants and our Constitutional Law of India –have recognized this Right as important as Right to Life. The Present Research Scholar wants to discuss them one by one.

## **8.2 Right to Dignity : In International Covenants**

Specifically ,Universal Declaration of Human Rights decrease , the Dignity as an essential thing to live person in this world with all Rights. It says “whereas recognition of the inherent Dignity and of the equal and inalienable Rights of all members of the Human family that is the foundation of freedom, justice and peace in the world.

UDHR'S Preamble more says “where as the people of the United Nations have in the charter reaffirmed their faith in fundamental Human Rights, in the Dignity and the worth of the Human person.

Alson Article – 1 of the UDHR says, “All Human beings are born free and equal in Dignity and Rights”.

Then two different Covenants came into implementation for the purpose of reaffirmation of Right to Dignity, they are: -

International convents on civil & political Rights and International Covenants on Social, Economical & Cultural Rights :

There Rights are confirmed to maintain the Dignity of Human being.<sup>6</sup>

## **8.3 Right to Dignity : In Constitutional Law of India.**

The aim of any civilized society should be to secure Dignity to every individual. Life in its expanded horizons today includes all that give meaning to a man's Life. Including its tradition culture & heritage

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6. Naikar L.D. "the Law Relating to Human Rights" -(2004) – Puliani & Puliani publishers private Limited. Bangalore P.

in its full measure would come within the encompass certainly would come within the encompass of an expanded concept of Article – 21 of the Constitution it may also be that our culture and heritage are also priceless and are our most proved achievements. But since millions do live without any recognizable reputation or with out any awareness about their cultural heritage. These cannot be part of “Life” within the meaning of Article-11 of the Constitution for they alone do not make it possible to live but one’s Right to protect his reputation or the Right to share in preserve and protect his cultural heritage would obviously be a part of his personal freedom or Liberty and would in terms of Article-21. it enjoys the same Constitutional protection as the Right to Life.

A man’s wealth is his position in the society social status, proprietary and personal Rights constitutes his status, proprietary and a personal Right constitutes his status. The question which needs attention here is. Whether the Right to status is included into the Right to Life and personal Liberty under Articleicle 21 of the Constitution. In Sent Ram case,<sup>7</sup> the petitioner whose name was included in list of toast in accordance with rule (4) order N-A of the Supreme Court Rules. The petitioner claimed protection under Article – 21 of the Constitution. He interlaid claimed that under Article 21 Right to Life included status in Life.

The Defense of Human Rights is, in essence the defense of Human Dignity. This is the high purpose that the National Human Rights Commission (Now, only Commission) is serving. It is a purpose that derives not only from the statute of the Commission of the Constitution as interrelated by the Supreme Court means that all who live in India have a Right to a Life with Human Dignity.

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7 Ramsharam Autyanprasi V/s. Union of India AIR 1989 SCS49  
AIR 1960 SC932

This Majestic and expansive vision of the Constitution is more easily acclaimed than attained. And certainly the Commission whose duty it is to strive for the fulfillment of that vision cannot but be acutely aware of the great distances that must be traverse to come near to it.

The defense of Human Rights and Dignity is an imperative of the Constitution and there should be no doubt or ambivalence n this matter. The greater the power the greater the responsibility to recognize and to act upon this imperative. Mahatma Gandhi, who had unrivaled capacity to express the truth with simplicity & directness, put is this way.

“It has always been a mystery to me how man can fee themselves honored by the humiliation of their fellow beings.”

Every citizen of India and specially every function are of the State, should bear Gandhiji’s observation and truth constantly in mind, that would see us move closer to a Life with Dignity for all.<sup>8</sup>

So, from the year of 1994, the Commission has solved cases related to Right to Dignity.

The Present Research Scholar wants to describe them one by one:

#### **8.4 Cases solved by the Commissoion :**

##### **1. Alleged Rape In Custody By An Assistant Sub-Inspector Of Delhi Police**

In July 1994, Pursuant to its circular of 14 December 1993, the Commission received a report from the Dy Commissioner of Police, South District. New Delhi, in regard to a custodial rape by an ASI of the Delhi Police Force. The victim had been brought to the Police Station by another ASI , as she had got lost other way to her parent’s home . no report was made in the daily diary of the Police station of the victim

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<sup>8</sup> Annual Report – 2000-2001 published by National Human Rights Commission, New Delhi. pp . 1-2.

having been taken to the Police station, nor was due care taken to ensure the return of the victim to their family. The ASI who took her to the Police station was accordingly placed and a under suspension. The victim was raped by another ASI who took her to his house in the residential quarters of Maharani Police Station. The ASI who committed the rape was arrested and the case was sent to Court for trial. The Commission also received a complaint and a report on this incident from the peoples Union for Democratic Rights (PUDR), Delhi. makes Life worth living, would be jeopardized.

So, International Covenants and our Constitutional Law of India have recognized this Right as important as Right to Life. The Present Research Scholar wants to discuss them one by on.

## **2 An Alleged rape of jain Sadhvis: Madhya Pradesh Police asked to follow the spirit of law**

The Commission has asked the Madhya Pradesh Government to take cognizance of and to start investigating allegations relating to the rape of two Jain Sadhvis. A matter which was the subject of widespread media coverage. Interpreting the relevant provisions of the Indian Penal Code (IPC), the Commission held that it was not necessary for the State Government to wait for a formal report the victims or anyone their behalf.

Sakshi a Delhi-based non-governmental organization, had earlier drawn the attention of the Commission to this incident and requested it to conduct an enquiry into it.

The Commission, however, decided to enquire from the Director General of Police, Madhya Pradesh whether prosecution had been launched in this case or not. The Director General of Police indicated that a criminal case had not been registered, as



the Sadhvis in question were not willing to report the matter to the Police.

As the offence of rape punishable under Section 376 of the Indian Penal Code is a Cognizable one, the Commission took the view that “ the Police would be free under their own information to take cognizance and to start investigation”

Upon the intervention of Commission, a case has now been registered by the Madhya Pradesh Police in this matter Investigation is in progress

### **3. Rape in Police Custody of T. Uma in Tamil Nadu**

On receipt of a report the Collector, Kamarajar District, Tamil Nadu about the custodial rape of T. Uma by the Head Constable of Alangulam Police station. The Commission called for a report. The Government of Tamil Nadu, through their letter dated 2 may 1995 Stated that the accused was placed under suspension and that a case under section 354 and 376 IPC was registered against him on 30 September 1994. it was also Stated that the inquiry report on the alleged rape was under examination and that action would be taken against the delinquents, if necessary, and that a report would be sent due course.

Subsequently the State Government reported to the Commission that it had accepted the findings of the enquiry officer and had come to the conclusion that, Uma was indeed raped by the Head Constable and that there was reasonable ground for launching criminal persecution and simultaneous departmental action against him and other Policemen who were involved in this incident. Further, considering the indigent circumstances of the

family of Uma, the State Government also sanctioned Rs. 100,000 as compensation to Uma.

#### **4. Torture And Sexual Assault Of A Minor Tribal from Bihar In Maharashtra**

The People's Union for Civil Liberties, Singbhum unit (east and west), Bihar brought to the attention of the Commission six cases of serious violation of Human Rights which included among others, an incident of torture and sexual abuse of a minor tribal girl "Baby" by the relatives of an influential officer of the Bihar Police. The girl was working as domestic help in Bombay at the house of the sister and brother-in Law of the Police officer where she was allegedly tortured by the couple and also sexually assaulted . There were reports in the press on the hushing up of this matter by the Adityapar Police (Bihar) in connivance with the alleged Police officer The Commission initially issued notice to the Bihar Government calling for a report subsequently

The Commission noted down that Baby an orphan, who is now living with her grandmother in Jamshedpur, would not be in a position to go to Raigadh the place of trial. It is future noted that Jamshedpur, would also be inappropriate to serve as the venue for a trial as the brother-in Law of the accused was senior Police officer in Bihar; Under these circumstances, the Commission felt that the trial should be transferred to a venue such as Delhi and it moved the Supreme Court in this respect, the Supreme Court has entertained the petition and stayed future proceedings of the trial pending disposal of the transfer petition. Having regard to the trauma of the minor adivasi girl, the Commission has also provided interim financial assistance throught an NGO.

## **5. Alleged Rape of Smt. Bhawari Devi in Rajasthan**

Bhanwari Devi 'Sathin' working in the rural areas of Rajasthan under the State Government's Women Development Programme, was allegedly raped by certain villagers for her campaign against child marriage. Later the District and Sessions Judge Jaipur, whose Court heard this case acquired the persons accused of rape. The Commission took suo motto action on the basis of these reports and called for a report from the Government of Rajasthan.

The Additional Solicitor General of India informed the Commission that a women's organization, "Vishakha" had filed a writ petition in the Supreme Court in the nature of a Public Interest Litigation, inter-alia, praying that the State of Rajasthan be directed to ensure that free and fair investigation/inquiry was conducted in respect of Bhanwari Devi 's case and that suitable guidelines be formed to deal with sensitive issues like the present one, Where working women and more ,particularly engaged in the work of social upliftment and advancement could freely carry out their duties without fear of sexual harassments/abuse.

The Commission received a letter from the National Commission for Women (NCW) indicating that it had taken up this case with State Government as also the Government of India and ten thousand rupees as relief to the victim and also entrusting of the investigation to the Central Bureau of Investigation (CBI). The NCW also informed the Commission that it had provided financial support to the women's organization which took up the litigation on behalf of the victim.

Having pursued the relevant judgment of the District and Sessions Judge, Jaipur and having noted the efforts of other, the Commission recommended to the Rajasthan Government to file an appeal before the High Court of Rajasthan, Jaipur against the acquittal of the accused in the case. The was of the view that acquittal was wrong and was against the facts and the settled position of law.

**6. Interventions in Court proceedings under Section 12 (b) of the Protection of Human Rights Act.1993: Cruel InHuman and degrading punishment of woman.**

The Commission took cognizance of a press report dated 12 January 1994 concerning the alleged tattooing of the words “Jeb Katri” on the forehead of four women by Amritsar Police personnel, the victims had also filed a writ petition before the respondents, viz. Government of Punjab, Superintendent of Police, Amritsar and others to arrange for plastic surgery for removal of the objectionable tattoo, giving adequate compensation for inhuman torture and humiliation and for punishing the guilty Police officials.

As the matter was pending before the High Court the Commission decided to intervene under section 12 (b) of the Protection of Human Rights Act and upon intervention being allowed, filed an Affidavit through a Counsel asking for

- (i) Investigation to be handed over the CBI as the accused belonged to the State Police and investigation by a sister wing may not Inspire confidence.
- (ii) Allow the victims to have their foreheads operated by competent plastic surgeons of their choice at State cost, and
- (iii) Allow interim compensation.

**7. Alleged Beating Of A Harijan Girl Nirmala By Her Employer In Sarita Vihar. Delhi**

The Commission took cognizance of press reports appearing on 8 March 1994 indicating that a 13 year old girl had been branded and beaten with iron rods.

A report has been called for from the Government of National Capital Territory of Delhi and it is awaited.

**8. Atrocities Against Women-Harijan Women Paraded Naked On The Streets Of Dauna Village, Allahabad District In Uttar Pradesh**

The Commission took cognizance of press reports dated 24 January 1994 indicating that Harijan women had been paraded naked in Dauna village in Allahabad District. It was reported that the son of a Harijan woman, Shivpati, had stolen peas from the field of people belonging to the Kurmi community and that the son had abused the land owner on being reprimanded. This had occurred on 16 January 1994. On 18 January the SHO of Ghoorpur Police station was informed of tension in the village but he did not take any action. On 21 January 1994 some kurmi youths waylaid Shivpati, stripped her, beat her and forced her to walk the streets of the village.

**9. Failure in taking action by Police : Jammu & Kashmir**

A complaint was received from Shri Balraj Puri alleging that personnel of the Border Security Force had misbehaved with and manhandled his teenaged son without any provocation.

The SHO of the concerned Police station refused to register a FIR about the incident.

As regards the alleged misbehaviour by the BSF personnel. The authorities in the BSF had taken suitable action against the concerned personnel and had also communicated their regret to Shri Puri over the incident.

The Government of Jammu & Kashmir was asked to the second aspect of the complaint, viz, the conduct of the SHO in refusing to register a F.I.R. As there was no response to a notice issued to the Government and subsequent reminders, the addition chief secretary appeared on behalf of the Government of Jammu & Kashmir when Shri Puri was also present, and regretted that there had been lapse on the part of the Police in the not entertaining the complain of Shri Balraj Puri's son.

#### **10. In Human Treatment Of Arrested People In The Absence Of Lock - Ups: Bihar**

In the wake of a complaint that persons arrested by the Police in Bihar were being treated on in Human manner surprise visit by senior Superintended of the Police of the Commission to Gaurichak Police Station near Patna revealed that one Shri Rajdev Singh, aged 65 years, arrested in connection with an armed clash, was tied to a pillar with a rope. The Police post, 15Kms away from the city, was located in a ramshackle – building belonging to the Irrigation Department ; it had no lock up facilities. The Commission further learnt that, in the Police stations in Bihar which did not have proper lock ups, it was frequently the practice to handcuff the accused and then lay them with a rope to a pillar, a tree or a window sill.

Earlier, on notice being issued by the Commission calling for a report on the condition of lock ups in the State, the

Government of Bihar had Stated that 263 Police stations did not have any lock – ups. These Police stations were located in the godowns and make – shift sheds/structure.

The Government of the Bihar has since informed the Commission that Rs.20 crore has been earmarked for the construction of new Police stations with lock – up facilities and that this task had been assigned to the Bihar Police Housing Board.

## **11. Mistreatment Of Shri Robin Paul Of Calcutta**

### **West Bengal**

The Commission took cognizance of a complain dated 26 May 1995 from Robin Paul, Managing Director, New Read Bank Tea Company Private L.T.D. Calcutta ,alleging that ,on 30 April 1995, members of the Jadavpur Police Station, led by an inspector came to his house and misbehaved with him and his family members, The complain also alleged that Police personnel used “filthy” language and threw away some of the his belongings. They dragged him to Jadavpur Police Station, where the complainant was informed that he had been brought there there for interrogation in connection with a case of alleged assault on Dr.Biswajit Biswas.

Though the petitioner Stated that he was not even remotely connected with that incident, the Police insisted that he must sign a Statement admitting his involvement in that case. Shri Paul said that he suspected the hands of a business rival in organizing the Police arrest and misbehaviour with his family members. He also Stated that he suffered physical and mental strain because he was

produced in Court in custody and that he lost consciousness and vomited blood. He was later granted bail by the Court,

Upon notice, the west Bengal Police Director forwarded the report of the Superintendent of Police of 24 Paraganas, which completely denied the allegations.

There upon the State Government got the matter inquired into by the State CID and sent its report to the Commission according to that report the Police had acted illegally and maliciously and the arrest of Robin Paul, a respectable citizen, was not justified as there was no evidence to proceed against. The Commission felt that the whole exercise had been undertaken to humiliate Shri Paul and that the action smelt of a revengeful approach amounting to a violation of his Human Rights.

## **12 Illegal changing of the patient at hospital in Orissa**

The Commission received a complaint from the Kalahandi Consumers Welfare Organization alleging that in a misuse of power by public servants a social worker Shri Radhanath Pradhan, had been chained to his hospital bed. The complaint was accompanied by photographs of the incident. The Commission accordingly called for a report from the collector and District Magistrate, Kalahandi.

On perusing that report the Commission noted that Shri Radhanath Pradhan had been prosecuted for offences committed under sections 448/294/353 of the IPC in regard to incidents which were mentioned in the complaint. The Chief Judicial Magistrate had found him guilty and had sentenced him to imprisonment of one year and a fine of Rs .1000/- It was also noted that Shri Pradhan had filed an appeal in the Court of the Session Judge. The Commission added that unless there are social reasons and a Judicial



Order in support of such action patients under treatment in hospitals must not be chained.

### **13. Conditions Of Chakma & Hajong Refugees Settled**

#### **In A.P.**

The Commission received representation from the Peoples Union for Civil Liberties (PUCL) and Amnesty International regarding the plight of chakma and hajong refugees living in Arunachal Pradesh, It was Stated that these groups, comprising respectively Buddhists and hindus fed for fear of persecution on grounds of their religion from the chittagong hill tracts, in what was formally East Pakistan, between the year 1964-1971. Originally welcomed to India and to pArticles of NEFA, which today form Arunachal Pradesh, they were now increasingly being harassed and threatened in that State. When some of them tried to flee to Assam, It was regarding threats to the Life and property of Chakmas and Hajongs were also conveyed directly to the chairperson of the Commission through representatives of their communities who had traveled to Delhi from Arunachal Pradesh.

The Commission, in a communication to the State Government on 29 September 1994 Stated that it was the obligation of that Government to accord protection to the Rights and ensure they were not violated.

The “Committee for citizenship” of the chakmas in Arunachal Pradesh also sent a representation to the Commission asserting that while the Chakmas and Halong communities settled in other North-Eastern States of India were not enjoying the full fledged Rights of Indian citizenship. Those settled in Arunachal Pradesh were not being granted such citizenship this respect in consequence,

The committee stated Human Rights abuses were being constantly perpetrated against the Chakmas in Arunachal Pradesh, in respect of this complain too, the Commission called for reports from the State Government and the home ministry.

The home ministry reported that the State Government had been advised to ensure normalcy in the Law and order situation as also to supply needed essential commodities and medical facilities to the Chakmas and halong refugees, as regards the granting of consultation with the State Government.

#### **14. Medical Ethics : Rights Of The Disabled**

The Full Commission, in its meeting held on 15 February 1994, considered reports appearing in newspapers on the removal of uterus of the mentally retarded women in Maharashtra, to stop further operations being carried out.

Following discussion on the matter, the Commission felt that the issue raised serious questions of medical ethics and the Rights of persons suffering from disabilities and decided that, in the first instant, the views of the Medical Council of India should be obtained.

#### **15. Atrocity In The Police Custody :- Alleged Amputation Of Male Organ Of Shri Jugtaram In Police Custody In Barmer, Rajasthan**

On the basis of a press report that appeared in a newspaper dated 10 February 1994 and captioned “cops cut of man’s penis,” the Commission took cognizance of the incident suo motto and called for a report from the Government of Rajasthan. The State Government sent preliminary report stating that one A.S.I. and one constable had been arrested in connection with the incident.

It was further indicated that investigation of the matter had been taken over by CBI on 19 February 1994 and that, for better medical care the victim had been sent to SMS Hospital, Jaipur where he was undergoing medical treatment in a plastic surgery ward.

On perusing the report, the Commission on 15 March 1994 directed CBI to complete the investigation within 3 Months and submit its report.

**16. Alleged Torture Of Prisoners Of Naini Central Jail, Allahabad By The Jail Authorities**

Certain inmates of the Naini Central Jail, Allahabad in a written complaint to the Commission had alleged that atrocities had been committed against them by the jail authorities mainly were as follow :

- i) They were not given enough food to eat.
- ii) They were not provided clean clothing.
- iii) They were beaten without any justification.
- iv) They were forced to work even on weekly holidays and festivals.
- v) They were put on manual labour into the late hours of night.
- vi) Young inmates were sexually abused.
- vii) Intoxicants were sold to the prisoners.
- viii) Medical facilities were not available.
- ix) The CJM and inspector General visiting the jail for routine inspection did not meet the prisoners.
- x) Some of the Life convicts have been in jail for nearly 30 years whereas ordinarily the maximum sentence prescribed under the Law was 14 years.

The Commission on 28 March 1994 took cognizance of the complain and called for a report from the Superintendent, Central Jail, Naini with regard to the specific allegations made in the complaint. As on 13 March 1994 ,the report was awaited. The Commission proposes to pursue this matter.

**17. Atrocities Inflicted On A Family In Maharashtra Case**

Shri A.R. Antulay Member of Parilament (MP) filed a petition dated 12 September 1994 before the Commission highlighting the case of the I.Patel family of village Walwati, Shrivardhan Taluk, Raigad District, Mahrashtra, who were allegedly subjected to serious atrocities by the Police during the communal riots that took place in Maharashtra in December 1992- January 1993. The complainant Stated that the act of the Police against an innocent family had the distinct tinge of communal base.

On consideration of the matter, the Commission noted from the Report of the State Government that departmental action had been ordered Against the Police officials involved in the matter.

The matter was again considered again by the Commission on 17 January 2000. The Commission observed that from the conclusions reached and the findings recorded by the State CID, it was evident that Shri Iqbal Ismail Haspatel, his wife, three sons and a daughter-in-law, i.e. in all six members of that family, were not only humiliated to illegal arrest, all these persons were subjected to several indignities wholly inconsistent with norms of decency. It was also noted that allegations had Been made to the effect that valuable property estimated at Rs.1.87 Lakh, owned by the victims of the incident, had also been taken away or destroyed by the Police officials; this required further verification. The Commission

directed the Government of Maharashtra to pay an amount of Rs.5 lakhs as compensation by way of ‘immediate interim relief’ to Shri Ismail and his family members. Recommendations on the payment of Compensation of Rs.5 lakhs to the victims.

**18. Police Harassment, Inaction And Negligence**

**(a) Police Harassment Of Shri Shakuni Choudhary,  
Mla,Bihar**

The Commission received a complaint from Shri Shakuni Choudhary and Shri George Fernandes of the Samata Party alleging harassment by Police of Shri Shakuni Choudhary and members of his family. The Commission called for Reports from the DGP Bihar as well as from its own investigation team.

On considering the investigation reports, the Commission recommended that Immediate departmental action be taken against the erring Police Officers. The Commission directed the DGP Bihar to report within four months on the results of the departmental inquiry. The Commission, convinced that Shri Shakuni Choudhary and members of his family had been tortured and their Dignity lowered, recommended a consolidated sum of Rs.25,000/- by way of compensation and directed the Government of Bihar to make the payment to the complainant.

**(b) Combating trafficking in women and children**

Trafficking in women and children is a violation of several Human Rights and everything that makes for a Life with Dignity. It is today one of the fastest growing areas of national and International criminal activity. As the NHRC is engaged in the task of better protection and promotion of Human Rights, it initiated an Action Research on Trafficking in Women and Children

in India, which was conducted jointly by the Commission, UNIFEM and the Institute of Social Sciences, an NGO based in New Delhi.

The above Action Research has been instrumental in creating a network of Nodal Officers throughout the country where by two Nodal Officers, one from the Police Department (dealing with investigation, detection, prosecution and prevention of the trafficking) and the other representing the welfare agencies dealing with rescue, rehabilitation, reintegration and economic /social empowerment of the victims and prospective victims, have been appointed in each State/union territory to monitor the problem of trafficking.

The Commission also organized a two-day National Workshop to Review the implementation of laws and policies related to “Tafficking: Towards an Effective Rescue and Post Rescue and Strategy on 27 and 28 February 2004 in Mumbai and an another seminar on the same subject was held at the Institute of Social Science, New Delhi on 3 December 2004.

## **19. Mass Cremation Of Unidentified Dead Bodies By Punjab Police**

A Refrence to this case was made in the annual reports of the Commission since 1996-97. Having considered the objects and issue raised by various pArticleies in detail, particularly in regard to the legal provisions as well as the facts and circumstances, the Commission passed an Order on 4 August, 199, deposing of the preliminary issues.

The Commission further Stated that it would need to augment greatly its logistical capability; it would have to induct officers

with judicial experience to record and process the evidence and conduct inquiries.

On receipt of the above Order of the Commission, Ministry of Home Affairs filed a petition seeking clarification of the Supreme Court's Order of 12 December 1996, in the Government of India and laying down modalities which it intended to follow in pursuing the inquiry in to this case. On 10 September 1998, the Supreme Court disposed of the said petition, the Supreme Court criticized the Union Home Ministry for the various objections raised by it before the Commission, the approaching the Court for clarification which had led to delay in providing relief to the affected families.

Thereafter, the Commission proceeded to examine the scope of the enquiry which it was required to undertake under the remit of the Supreme Court's order dated 12 December 1996. While it was contended on behalf of the petitioners that the Commission was required to inquire into all incidents of what were referred to as extra-judicial elimination', or "involuntary disappearances", 'fake encounters', 'abductions and killings' etc., alleged against the Punjab Police during the decade 1984-1994, the union Government and the State of Punjab contended that the inquiry should be restricted only to the 2097 case of cremation of bodies – 585 fully identified, 274 partially identified and 1238 unidentified-in the Police districts of Amritsar, Tarn Taran and Majitha.

The Commission directed that a public notice be published in the news papers having circulation in and around the District of Amritsar for inviting applications/claims, by 10 March 1999. The Commission clarified that an initial burden was on the State Government to establish that the cremations, undertaken by the

Police were in accordance with the procedure prescribed by law. The Commission directed the State Government to file on or before 10 March 1999 a list of all the cremations done by the Police in respect of un-claimed / non identified bodies in the crematoria of the Police districts of Amritsar/Majitha/Tarn Taran “between” June 1994 – December 1994. The order also provided for the setting up of a separate cell for dealing with this inquiry, and directed the Government of Punjab to deposit initially a sum of Rs.25 lakhs with the Commission before 15 February 1999.

The petitioners moved a petition for a review of Commission’s order dated 13 January 1999 seeking enlargement of the scope of the inquiry so as to cover the extra judicial killings and disappearance in whole of the State of Punjab.

Pursuant to the public notice issued by the Commission, 88 claims were received which have been processed. Out of these 88 applications, the comments of State Punjab were invited. In 23 applications, had stated that their relatives were not cremated in three Police districts of Malitha, Tarn Taran and Amritsar. These 23 applications were straight –away rejected by the Supreme Court of India. As regards 18 applications, the Government of Punjab agreed to pay compensation as per its policy. For the remaining 47 claim applications, the Commission directed Shri R. Venkataramani, sr. Advocated as Amicus Curiae to have discussion with the counsels of the State of Punjab as well as with the Punjab Police officers. In the meanwhile, the Punjab Police officers approached the Commission with a request that CBI officers had not been supplying the relevant information about the cases which were being investigated by that agency. On 30th November 2000, the



Commission directed the CBI authorities to make available all the information which was required by the State of Punjab so that they might be in a position to process the remaining 47 claim applications.

## **20. Rape Of Minors And Death: Rajasthan**

“SAKSHI” a Delhi – based NGO, submitted a communication to the Commission in April 1997 alleging the exploitation of school girls by a teacher in a Government Secondary School in Chittorgadh District, Rajasthan. It was alleged that the teacher had raped 9 minor girls between the ages of 14 to 16 years. The accused committed the crime in secrecy and none of the girls lodged any complain against him. Three girls became pregnant and two of them had to undergo abortion. The third girl tried to hide her pregnancy, but when her parents came to know of it, the father of the girl went to the Police Station and filed an FIR. When the accused came to know about lodging of the FIR, he absconded. “SAKSHI” requested the Commission to undertake a detailed investigation to ensure that the accused was arrested and action taken in accordance with the law. The NGO also offered its assistance in investigation by the Commission.

The report submitted on behalf of the Government of Rajasthan revealed that a case had been registered against the accused for the offence of rape under 376 of IPC and he was arrested on 22 May 1997. The investigation team of the Commission also conducted a thorough investigation in the matter and submitted its report to the Commission.

Taking note of all the facts and circumstances, the Commission recommended that the prosecution of the accused be

pursued diligently and expeditiously and that an interim compensation of Rs.1 Lakh be paid to the victim who had made the complaint to the Police. The Commission further recorded its appreciation of the work done by the office bearers of the Non-Governmental organizations, “SAKSHI”, “Prayas” and “Karni Nagar Vikas Samiti Home”, and also its appreciation of the work by Shri Sanjay Malhotra, Collector and Shri Srinivas Rao, Superintendent of Police, for their timely and effective intervention in assisting the victim and booking the culprit.

#### **21. Sexual Exploitation Of Woman : Rajasthan**

The Commission received an anonymous complaint alleging that a 24 year old woman had been forcibly detained and was being sexually abused by certain persons at Jaipur for the 2-3 years. According to the complaint, the woman had a young child and was in a pitiable condition and the culprits were planning to force her into prostitution. The Commission took cognizance of the anonymous complaint. A report submitted by S.P. (Rural) Jaipur on notice from the Commission Stated that both the suspected persons had been contacted and that, as they belonged to a respected family. So, their involvement was ruled out. The report also Stated that no such woman as mentioned in the complaint could be located. Not satisfied with the report, the Commission deputed its investigation team for an on-the-spot inquiry. The Commission’s team, along with local Police, rescued the woman on 13 April 1998. According to the report of the investigation team; she was recovered from the house of one Manoharlal Sharma, a criminal, and as found to be undernourished, in ill health and in traumatized condition. She was sent for medical examination and was found to

be pregnant. According to the report, a case under relevant provisions of the IPC was registered and 6 persons, including a Police constable, were identified as being responsible for her desperate condition. Two of them had already been arrested. The Commission considered the report of its investigation team and noted that the Law had been set in motion. Further, taking note of the travails of the victimized woman as well as the trauma that she had undergone, the Commission recommended that the Government of Rajasthan accord her appropriate assistance, inter alia by providing her suitable employment.

## **22. Attempt To Rape By A Policeman : Andhra Pradesh**

The Commission took suo-motto cognizance of a news item published in the Pioneer on 30 April 1997. According to the news item, a Policeman (security guard) posted at the residence of the residence of the Inspector General of Police (Co-ordination) attempted to rape a woman labourer. When her husband tried to rescue her, severe injuries were inflicted on him by the Policeman and two of his colleagues.

The Commission directed the Director General of Police, Andhra Pradesh, to submit a report on the incident. The report disclosed that the woman labourer was caught hold of by the Police constable, Srinivas, and was threatened by him with a gun. On hearing her scream, her husband intervened to rescue her. At this, PC Srinivas called three of his colleagues who were on duty with him. PC Srinivas and tow other Policemen administered a beating to the husband, using their hands, lathis and belts. The woman got an FIR registered against the Policemen under Section 354 IPC (outraging the modesty of a woman) and 324 IPC

(voluntarily causing hurt by dangerous weapons or means). All the three Policemen were arrested and suspended from service. Later, they were released on bail and PC Srinivas was removed from service as per Rule 25 (II) of APCS Classification, Control and Appeal Rules, 1991.

The Commission remarked that it was a matter of deep regret that the personnel of Law enforcing agencies whose duty was to protect the Rights of the citizens, themselves became perpetrators of such heinous acts. Considering the inDignity and humiliation suffered by the woman and the injuries received by her husband, the Commission recommended to the Government of Andhra Pradesh to pay immediate interim relief of Rs. 5,000/- to the victim within one month from the receipt of the proceedings.

### **23. Girl Rescued From Captivity : Rajasthan**

The Commission received an anonymous petition stating that a young girl had been kept in captivity in a house in Dholpur, Rajasthan for about 5 years and, as a result of that, she had become mentally ill and her condition was serious. The Commission, taking cognizance of the matter, directed its investigation team to submit a report after making an on-the-spot inquiry. It also directed the investigation team to take up the matter with the members of the family in case the facts alleged were found to be true. The investigation team, on finding that allegations made in the petition were true, undertook a rescue operation. The team reported to the Commission that, after the Commission's intervention, the victim had been given appropriate care and had been receiving proper medical attention. The Commission also directed the SMS hospital

to continue to provide medical assistance to the victim and report to the Commission.

**24. Rape Of Minor Dalit Girl By Protectors  
Of Law – Uttar Pradesh**

Shri Chandradhas Maurya, a member of Samta Sainik Dal and a resident of District Bulandshahar, Uttar Pradesh, in a complaint to the Commission alleged the kidnapping, rape and suicide of a 15 year old dalit girl ABC (name withheld to protect identity). He stated that two firemen, along with a Police constable, enticed ABC away on 14 August 1998 and took her to their rented premises in front of the Police station where they raped her repeatedly. She was allowed to go away next morning with the threat that she would be killed if she reported the incident to anyone. The girl disclosed the incident to her family members and she along with her family members went to the Police Station, Dibaï and met the Sub-Inspector and the Fire Station Officer both of whom, instead of taking cognizance of the case, abused the girl, passed derogatory remarks and also threatened them with implication in false cases. Upon returning home, ABC committed suicide by setting herself on fire and later succumbed to her burn injuries at 9 AM on 15 August 1998.

As the complaint related to a grave violation of Human Rights of a dalit girl, the Commission took cognizance of this matter on a priority basis and issued notice to SSP Bulandshahar calling for a report. The report dated 6 October 1998 received from SSP Bulandshahar stated that the complainant had denied having sent the complaint in question with regard to the suicide by ABC after she was raped by the two firemen. It was also reported

that, upon a complaint of the grandfather of the victim, a case FIR No. 221/98 under Section 363/366/376/306 IPC and under Section 3 (1)/12 of SC/ST Act had been registered and efforts were on to arrest the accused persons.

A case was registered on 17 August 1998 only after a protest and road blockade by the residents of the village. The report of the investigation team also indicated that the station diary for 16 August 1998 was tampered with. It was also observed that while the SHO had visited the scene of the crime, he did not record the dying declaration of ABC, though she was capable of giving one at that time.

Upon perusing the report, the Commission held that SHO Dibai and in-charge, Fire Station, Dibai had not conducted themselves in a manner befitting their office and responsibilities and that they had not only shown a lack of sensitivity in a matter of grave importance, namely the protection of a Dalit girl subjected to sexual assault, but had been thoroughly negligent in not taking cognizance of the complaint lodged by ABC. Instead, the Commission noted, they had allegedly made derogatory and uncharitable remarks about the girl. The Commission observed that the attitude of these two officers had driven ABC to take the extreme step of ending her Life by setting herself on fire, having been left with the impression that she would not get justice. The Commission further observed that the remarks and inaction on the part of the officials might, perhaps, make them liable for the offence of abetment of suicide by ABC, which was punishable under Section 306 IPC and which aspect needed to be investigated.

On consideration of all facts and circumstances of the case, the Commission recommended to the Government of Uttar Pradesh that :

- (i) While initiating disciplinary proceedings for major penalty against the concerned SHO and Fire Station Officer, they may be placed under suspension with immediate effect;
- (ii) It entrust the investigation of the case to the State CID in order to ascertain further the role of these two officers as also that of another Constable who was alleged to have aided and abetted in the kidnapping and rape of ABC;
- (iii) Pay, by way of immediate interim relief, a sum of Rs. 1,00,000/- to Shri Narain Singh, grandfather of ABC within a period of one month. Out of the awarded sum of Rs. 1,00,000/- a sum of Rs. 25,000/- be paid by way of cash/ demand draft and the balance amount of Rs. 75,000/- be put in a fixed deposit in a Nationalized Bank for a period of 5 Years, periodic interest accruing thereon being payable to him.

## **25. A College Lecturer Becomes A Victim Of Police**

### **Brutality : Kerala**

The Commission took suo-motto cognizance of an instance of Police brutality, published in the Hindustan Times on 3 September 1998, under the heading “Police brutality again in Kerala”. The report Stated that a college lecturer was beaten mercilessly by the Police as he had dared to question the fare demanded by the driver of an auto rickshaw he had taken while visiting Kozhikode. When the lecturer became unconscious, his legs and hands were tied and he was shifted to a mental hospital,

and a case was made out that he was a violent mental patient. The mental hospital did not admit him because of his serious condition and he was taken to the Medical College. The reporters and photographers, who tried to obtain a first hand account of the torture inflicted upon the victim, were also assaulted by the Police.

Convinced that appropriate steps were being taken against the culprits, the case was closed by the Commission. The Govt. was directed to report the result of the disciplinary action taken against the delinquent officials with utmost expedition.

## **26. Protection Of Rights Of Children / Women**

The Commission took suo-motto cognizance of a report appearing in Nav Bharat Times of 3 July 1998 in which it was Stated that two drunken Police constables allegedly tortured a young boy, working in a road side Dhaba. The news item further alleged that the two constables ordered him to fetch his mother to entertain them and when the boy refused. They stripped him and branded him with a hot iron rod used for making “tandoori roti”.

On instructions of the Commission, the case was investigated by the Commission’s own investigating team and it was found that the boy was beaten with footwear and, later, with a walking stick, by the Police constables.

The two constables involved in the incident had been placed under suspension and a criminal case started against them.

In view of the sufferings of the boy, the Commission recommended to the Chief Secretary, Government of Uttar Pradesh, the payment of a sum of Rs. 5,000/- to the parents by way of immediate interim relief to be spent on the welfare and education of the boy.



**27. Jawan Rapes Mentally Disturbed Girl In Public – Assam**

The Commission took suo-motto cognizance of a news item published in “The Statesman” dated 20 April 1999 entitled “Jawan rapes mentally disturbed girl in public” and directed that a report be had from the Secretary, Ministry of Defence in the matter.

The report from the Ministry of Defence confirmed the allegation that one Ajit Singh had raped ABC (name withheld to protect identity), a 15 year old mentally deranged girl and that an FIR was lodged by a civilian. The girl was examined medically and the Medical officer had confirmed the offence. Ajit Singh was arrested and placed in military custody. Summary General Court Martial tried Ajit Singh and awarded him 8 years rigorous imprisonment and dismissal from service.

The Commission while taking note of the action taken by the Military authorities against the accused, expressed the view that the victim, ABC, a mentally disturbed girl also needed to be compensated. It accordingly directed the District Magistrate, Kokrajhar to pay a sum of Rs.25,000/- to the parents of ABC by way of immediate interim relief. The Commission has received a compliance report with regard to the payment of compensation.

**28. Harrassment Of On Karunanidhi And Others By Police : Tamil Nadu : Jurisdiction Of NHRC**

An NGO based in Tamil Nadu, people watch, brought a complaint to the Commission. Alleging that the arrest of M.Karunanidhi, Murasoli Maran and T.R. Balu along with others by the Tamil Nadu Police in Chennai on 30 June 2001. That arrest was made without following the guidelines of the Supreme

Court of India as laid down in the case of D.K.Basu v/s State of West Bengal 1997 (1) SCC 416. This amounted to a gross violation of Human Rights of those who had been arrested. The intervention of the Commission was brought in the matter and a parser made for an inquiry in to the violation of the Human Rights of the arrestees and further consequential action based on the findings of the inquiry

**29. Trafficking Of Poor Girls Under The Garb Of Marriage; Reports Sought From West Bengal, Maharashtra Dgps**

The National Human Rights Commission has taken suo-motto cognizance based on a newspaper report of trafficking of innocent girls from economically backward sections of the society in to flesh trade under the garb of marriage.

Observing that the news report raises a serious issue of violation of women's Right, Dr.Justice A.S Anand, Chairperson of the Commission has directed that a copy of the news item be sent to the Commission has directed that a copy of the news item be sent to the Director General of Police West Bengal as well as the Director General of the Police, Maharashtra to look in to the allegations and submit their comments within two weeks.

**30. Reports sought from Haryana Government on Sonia-Rapal's status.**

Ms.Brinda Karat had alleged that in Asandha village, Jhajjar District, Haryana a couple, Rampal and a pregnant Sonia married for two years are being forced to declare themselves as brother and sister in the name of protection of Gotra. She further alleged that in spite if repeated representations to the authorities there

have been no arrests of those guilty, no cases have been registered and the couple is unable to return to the village to reside.

### **31. Police Raids On Aligarh's Cyber Cafes ; NARC Asks UP Government For Comments**

Taking suo-motto cognizance of reports in the print and electronic media of alleged highhandedness of the Police during a recent raid on a cyber café in Aligarh, the National Human Rights Commission has asked the Chief Secretary and Director General of Police, Government of Uttar Pradesh to look into the allegations and send their comments within two weeks.

The print media had published a news story on 23 December 2004 wherein it was reported that porn-seeking Uttar Pradesh Police humiliated youngsters in Aligarh's Cyber cafes.

In the visuals shown by the said TV channel, there seemed to be no women Police in uniform present during the raid, which involved a number of girl students, the background commentary of the constables seemed to be inappropriate and some of the remarks made by the Police to the girl students were taunting and suggestive, in one of the shots, a girl was seen being pulled out by the Policeman holding her hair and forcing her in front of the T.V. camera and the anchor in the studio wrapped up the news story with the observation that the SSP, Aligarh was asked on whether the raid had yielded any result but he had declined to comment.

The Commission has observed that the contents of the report if true, raise serious issues of violation of Human Rights of the students and particular an affront to the honour and Supreme Dignity of the concerned females.

**32. Abuse Of Legal System In Trafficking Of Girls; NHRC Calls For Report From Delhi Police Commissioner**

The National Human Rights Commission has taken suo-motto cognizance of the complaint filed on behalf of the NGO, International Law Affiliates on the plight of poor girls in Nepal and India being trafficked and forced into prostitution in various red light areas. The complainant, while requesting the Commission to consider taking action, had forwarded a copy of his petition addressed to the Hon'ble Chief Justice of India dated 27 December 2004.

**33. Rape Of A Visually Impaired Girl At Nadia; NHRC Asks For Comments From The West Bengal Government**

Taking suo-motto cognizance of a news item captioned "Disabled Girl raped at home" which appeared in a daily dated 17 December 2004. The National Human Right Commission has asked the Director General of Police, Kolkata, West Bengal to look in to the allegation contained in the news story and submit comments within two weeks.

**34. NHRC Calls For Report On Sexual Exploitation Of Lady Prisoner In Haridwar Jail**

The National Human Rights Commission has called for a factual report from the DG (prisons), Uttaranchal based on reports that appeared in the media of a lady prisoner being sexually violated in the Haridwar district jail.

The Commission, in its orders dated 2 February 2005 observed that if the contents of the report are true, it raises serious issue of violation of Human Rights of female prisoners lodged in the jail.

### **35. Tripura Government Pays Compensation To Gang Rape Victim**

Acting on the recommendation of the National Human Rights Commission, the Government of Tripura has paid Rs.50,000/- as immediate relief to a gang rape victim.

The Commission took cognizance of a complaint from an NGO received on 4 June 2003 alleging that a 16- year Reang girl was tortured and gang raped by 3 Special Police Officers (SPOs) on the night of 26 May 2003 near Manoranjan Das Para Camp, Dalai District, Tripura.

In response, the Home Department, Government of Tripura reported that an amount of Rs. 15,000/- has been paid to the rape victim by way of compensation.

The Government of Tripura informed the Commission that an amount of Rs. 35,000/- has also been paid to the victim in addition to the earlier amount of Rs. 15,000/- bringing the total amount paid to Rs. 50,000/- as directed by the Commission.

### **36. NHRC Secures Relief For Kin Of Militant Attack In J&K**

The National Human Rights Commission has been able to secure relief by way of ex-gratia compensation to the next of Kin of a victim of the militant attack at Kaluchek in Jammu & Kashmir on 14 May 2002.

A complaint was filed on 20 October 2003 by Shri J.N. Yadav who Stated that he has served in the Army since last 30 years. He said that on 14 May 2002, three unidentified armed terrorist attacked an army camp at Kaluchak, J&K which caused heavy casualties. During the said attack, the terrorists killed/injured

three of his sons Krantivir Singh and Virat Singh who were left with disabilities. He further Stated that the incident has left him totally shaken, as his small family had been broken. He prayed for grant of financial assistance.

**37. IG (Prisons) Delhi Directed To Take Steps To Segregate Prisoners With Communicable Diseases From Healthy Ones**

The NHRC has directed the IG (Prisons), Delhi to instruct the jail staff to take appropriate steps to identify those under trial prisoners suffering from communicable diseases and ensure that they are segregated and not sent to the Court along with other under trial prisoners with a view to avoid spread of communicable diseases in the jail.

The Commission had in the year 2000 received an anonymous complaint from prisoners at the Tihar Jail in Delhi alleging that prisoners more than the permissible capacity were being taken to Court in the Court van. They also feared that since some of the prisoners are ailing with communicable diseases, it would affect other prisoners.

The report however suggested that it would be worthwhile if such under trial prisoners suffering from communicable diseases are transported to the Court in the ambulance available in jail.

**38. Commission Seeks Comments On Meerut Police Crackdown In Connection With ‘Operation Majnu’**

The Commission has taken suo-motto cognizance based on media reports of the campaign ‘Majnu’ undertaken by the Police officials of Meerut district in Uttar Pradesh against young boys and girls found together at public places like parks etc. for allegedly

improper behaviour. The television pictures aired on 20 December 2005 showed boys and girls being beaten/slapped by the Police and being given a dressing down in front of the camera.

The Commission observed that this is an affront to the Dignity of the women and has asked for comments of the Chief Secretary, Government of UP and SSP, Meerut within two weeks.

### **39. NHRC Takes Suo-Motto Cognizance Of Report Of Mass Grave In Gujarat**

New Delhi, 28 December 2005 The National Human Rights Commission has taken suo-motto cognizance of media reports about the unearthing of a mass grave in Lunawada village of Panchmahal District of Gujarat. The Commission has sought report from State Government and CBI in the matter.

According to reports eight skulls believed to be those of victims of post-Godhra riots of 2002, have been recovered, The bodies were reportedly discovered by the relatives of riot victims who claim there are at least 21 bodies in the grave. The State Government connection with the probe into the issue of missing persons in the Bilkis Bano gang rape cum murder case. The Commission observed that if the report is true, it raises serious issue. It has asked the Director, CBI and DGP, Gujarat for their comments within two weeks.

### **40. Eradication Of Manual Scavenging Painfully Slow: NHRC Chairman**

Dr Justice A.S. Anand Chairperson National Human Rights Commission has Stated that the eradication of manual scavenging has been painfully slow and that there is a need for total commitment and absolute dedication in order to tackle this

degrading practice. Speaking at the review meeting on the eradication of manual scavenging held with representatives of the Central and State government in New Delhi on 25th February 2006, he called on the States to have six monthly targets for conversion of dry latrines to wet latrines, construction of new latrines and for rehabilitation of liberated manual scavengers. He said that at present it seems we are no way near achieving the goal of eradication of manual scavenging by 2007 envisaged in the National Plan Action.

**41. NHRC Issues Notice To District Collector, Ghaziabad On Beating Of A Student By His Teacher And The Administrator.**

The Nation Human Right Commission has sent a notice to the District Collector, Gaziabad on a news report which said that a teacher of a Junior High School at Nahal, had beaten up a student of class- III and injured his Right eye. The news report published in the “Time of India” on December 22, 2006 said the teacher, Mr. Rashid had beaten the student for non-completion of homework. The report also said that the child underwent an emergency surgery at All India Institute of Medical Science where his father was told that normal vision in the Right eye can never be restored. The report further highlighted that the teacher always carried a stick and often used it in the class.

After going through the press report, the Commission said if the contents are true, they raise serious issue of violation of Human Rights of the students. The Commission has directed that the press report be forwarded to the District Collector, Ghaziabad for a factual report within two weeks.



**42. NHRC Issues Notice To The DGP, Rajasthan And Administrator,**

The Commission took suo-motto cognizance of a news report which said that 7 dacoits kidnapped 5 persons including a lady of Banjara Community from village Nangala in Bharatpur District of Rajasthan and paraded them half naked in the village. The report which appeared in “Dainik Bhaskar” on December 27, 2006 said 3 persons, however ran away from dacoits’ captivity and narrated the story to the Police. The report also said that the remaining 2 have not been released by the dacoits and the Police is investigation the matter. The Commission expressing concern over the incident said it is a serious issue of violation of Human Rights of the citizens and asked DGP, Rajasthan for a factual report within four weeks.

**43. NHRC Issues Notices To Chief Secretary, West Bengal And State Chief Secretary And DGP, (Bihar)**

The National Human Rights Commission has sent notice to the Chief Secretary, West Bengal on a report which said that a girl with boyish ways was paraded nude in a Nadia Village. The report which appeared in “the Telegraph” on December 25, 2006 said that the 19 year old girl dressed like a boy, rode a cycle and had short hair. Following her boyish ways, she was tortured, stripped and paraded in the village. She was dragged to the village square and humiliated. Scores of onlookers who were witness to the whole happening did not come to her aid. The report also said that the victim was tied to a post and was released after two hours when one Ramkrishna Maitra and his family felt that she had suffered enough.

After going through the contents of the report, the Commission said it raises a serious issue of violation of Human Rights of a woman. The Commission has asked for a factual report from the Chief Secretary within four weeks.

**39** The Commission also took note of another report which appeared in “the Hindustan Times” on the same day and said that a dalit girl’s fingers were chopped off for pinching a few spinach leaves. The report said that 10 years old Khushboo was looking for edible herbs when she strayed into Pankay Rai’s plot in Phuwaria Village in Bhagalpur, Bihar and pinched spinach leaves. The owner first assaulted her and then seized the sickle from her hand and chopped off all the fingers on her Right hand. The report further added that a villager, who found the girl almost dead from excessive bleeding, rushed her to a doctor. The newspaper report also said that fearing for their lives, the girl’s entire family fled the village but her father managed to lodge a complaint with the Akbapur Police.

After seeing the report, the Commission felt if the contents of the report are true, they raise serious issue of violation of Human Rights of a dalit girl. The Commission has asked the State Chief Secretary and the DGP to look into the matter and send a factual report within four weeks.

**44. NHRC Sends Notices To Chief Secretary & DGP, Andhra Pradesh On Selling Of Girls By Their Parents**

The National Human Rights Commission has sent notices to Chief Secretary and DGP, Andhra Pradesh on media reports which said that parents were selling their daughters in the State. Taking suo-motto cognizance of the report telecast by CNN-IBN and also

published by the Hindustan Times, the Commission said the reports, if true, raise a serious issue of violation of Human Rights of girls.

The CNN-IBN report telecast on January 27, 2007 had said that young girls are being sold for as little as Rs. 12,000/- in Rajamundry District of the State and turned into sex slaves. The report also highlighted that the people selling and forcing them into flesh trade are their own parents. A special investigation by the channel uncovered the racket and the Police was able to arrest the culprits.

The Hindustan Times report on January 28, 2007 had said that the Rajamundry Police went after the brokers who were indulging in trafficking after being tipped off by the Maharashtra Police. At least 41 girls were rescued from various places in Maharashtra and 37 of them were from Andhra Pradesh. Twelve brokers and 2 parents were arrested by the Police.

#### **45. NHRC Has Issued Notice To The Commissioner, MCD**

The National Human Rights Commission has sent notice to the Commissioner, MCD for asking the factual report on distressing news, which said that children below three years cannot be cremated but at the same time the ghats for children were badly managed.

The report which was telecast in the electronic media by IBN Live. com on 11.4.2007 said that the family of Shantanu Sharma went to eight crematoriums across the city to perform the last rites of their fifteen months old nephew. The authorities of the crematoriums told them that children below the age of three cannot be cremated and it was against the Hindu Law.

The news item depicts a serious malady of the system which denies proper cremation of children who may die “too young”. It

also highlights the poor and shabby management of Bacche wala ghat- “a land where children are laid to uneasy rest.” Taking suo-motto cognizance to news telecast through electronic media, the Commission said if the contents are true there is a serious issue of violation Human Rights.

## **8.5 Conclusion :-**

So; Present Research Scholar wants to discuss in briefly the observations about complaints.

At first; the Commission received the complaint from various ways. I.e. Some Government official has sanded a complain. Two complaints are from People’s Union of Democratic Right. About ten cognizances have been taken by Commission itself. Some cognizance has been taken by press reporters. At least four complaints have been taken by Commission from electronic media report. Even Commission has granted interim relief by way of monetary compensation. The Commission has taken twelve cognizances from press report. The Commission has so many complaints from NGOs. Many private complaints received by Commission As for example one MP has sanded a complain. The Commission is very much alert in attending to complaints. The Commission has received complain from prisoners also.

Now if we see State wise figures one by one. We could find out that States from North India has maximum problems.I.e.

Hariyana	-	1
Madhya	-	1
Pradesh	-	1
Tamil Nadu	-	1
Bihar	-	1
Maharashtra	-	3

Rajasthan	-	5
Chandigadh	-	3
Uttar Pradesh	-	7
Tripura	-	1
Bihar	-	3
West Bengal	-	3
Jammu & Kashmir	-	1
Uttaranchal	-	1
Andra Pradesh	-	2
Kerala	-	1
Gujarat	-	1

It is notable that all Indian States have cases of violation of Right to Dignity.

## Chapter 9

### STATICAL REPORTS

#### 9.1 Introduction :-

About 15 years have passed since the National Human Rights Commission was established on 12<sup>th</sup> Oct' 1993. The Commission's efforts to carry forward the objects of "Better Protection" of Human Rights in the country. The objective assessment of the Commission's endeavors must come from the people of India. Whom it seeks to serve in all of their rich diversity and varying circumstances. Not unexpected, given the seriousness of the issues that the Commission has faced and the variety of expectations concerning it. Diverse views have been expressed on the worth of the Commission's efforts.

This is as it should be particularly in democracy as vibrant as that of our Republic. But one that does emerge clearly. An institution that was unknown 15 years ago is now very much part of the Life of the nation and increasingly of consequences to the quality of its governance.

Each day, hundreds of our contry people compatriots seek the intervention of the Commission for the redressel of their grievances. They belong to parts of India and to all of its communities. Within past 15 years there can be no doubt that the awareness of the Rights guaranteed by the Constitution. Also about the International instruments to which India is a State party has increased efforts of the Commission. The Commission's efforts are towards in spreading a promotion culture of Human Rights because its' violations that occurred long before it was even established.<sup>1</sup>

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<sup>1</sup> From Preface, Annual Report 2002-2003  
Published by National Human Rights Commission New Delhi. P. I.

Such critics are entitled to their views. But they appear to be misinformed about the provisions of Human Rights Act, 1993, which expressly preclude the Commission from inquiring into some matters. As for example matters are pending before any State Commission or established by any law”.

Be that as it may the 3, 75,758 cases that the Commission has registered in between 1993 to 2003. it indicates emphatically that the people of India are increasingly aware of their Rights. They want the Commission to in terrene to have their Rights respected and protected.

In that sense, it can be with reason be asserted that the Commission has contributed to a deepening of the meaning of the democracy in the country. Democracy exists on ensuring the Rights of the people of the country in all of their diversity and varying aspirations. Those Rights are guaranteed by independent institutions, functioning without fear or favour.

The same concern for justice has driven the Commission consistently to insist that those responsible for Human Rights violations any where in the country must be held accountable individually for their Acts.

Individual accountability is essential for another reason only when it is clear that no one is above the law will those who may be inclined to commit serious crime and Human Rights violations be deterred from doing so.

Thus, peace within a pluralistic society, like peace within the global community rests on the pillars of justice and individual accountability.

In such a society a central purpose of good governance must be the defense of Human Rights. Also fundamentalism of every hue and colour must be guarded against as inimical to Human Rights and to the true interests of civil society.

The protection of Human Rights Act, 1993 is premised on the mutually reinforcing character of the efforts that are to be made by the Commission and by the government, both at the centre and the states.

At the announcement of the creation of the Commission and the adoption of the Protection of Human Rights Act, 1993 which contains the provisions on which it is based was initially received with mixed views. Many opined that the State was fatally flawed. In the final analysis invariable choose to provide the seal of goods – house keeping to governmental wrong – doing rather than ensure the “better Protection of Human Rights” in the country. As the Commission would distract activists from the real fight for Rights, while offering them instead a place a spacious care concocted for political and psychological reasons with no real capacity to heal or remedy.<sup>2</sup>

The Commission therefore had a great deal of “friendly fire” to deal with and much to disprove to the critics and skeptics and to the people of India many of whom choose to repose their trust in it.

By way of illustration in the first months of the Commission’s existence, Oct-1993 to 31 march, 1994, the Commission received 486 complaints seeking its assistance for the redressed of grievances.

This number grow to 6, 987 in 1994-95.

- 10,195 in 1995-96.
- 20,514 in 1996-97.
- 36,800 in 1997-98.
- 40,723 in 1998-99.
- 50,634 in 1999-2000.
- 71,555 in 2000-01.

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<sup>2</sup> From the journals published by National Human Rights Commission. New Delhi. P. 40.



But Present Research Scholar wants to discuss every detail of Reports from the year of 1993.

## **9.2 DETAILS OF ANNUAL REPORTS :-**

### **9.2.1. Report of 1993 :**

Since its inception in 1993 the Commission has functioned in a very efficient way. In the very first year of its inception the Commission had registered 496 cases. From them 174 were admitted for further investigation/inquiry/report. While 274 were dismissed.<sup>3</sup>

### **9.2.2 Report of 1994 – 95 :**

Similarly for the year 1994-95 6987 cases were brought before it. 5710 cases were considered and 1277 were pending as on March 1995 2483 cases were dismissed in limine. 1567 cases were disposed with directions.

### **9.2.3 Report of 1995- 1996:-**

In the same way in the year of 1995-1996, the Commission received 7, 843 complaints. These complaints are covering the entire range of Human Rights problems. Turned its attention as a matter of priority to custodial violence and given the firm instructions regarding in which instances of custodial death and rape were to be reported to the Commission within 24 hours of occurrence and action taken to prove such occurrence and bring the guilty to justice.

### **9.2.4 NHRC Report 1997-98:-**

The total number of cases registered for year 1997-98 was 31299. of them 8619 were considered, the number of cases

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**3** Naikar L.D. “The Law Relating to Human Rights” –(2004)- Puliani & Puliani Publishers Private Limited. Bangalore- p.683

dismissed in limine were 12,870. The number of cases disposed of with directions were 5800.

#### **9.2.5 NHRC Report 1998-1999:-**

The number of cases registered during 1998-99 were 54,326. The number of cases dismissed 'inlimine' were 32,172. Also the number of cases disposed with directions were 10,718.

#### **9.2.6 Report of 1999-2000:-**

The total number of complaints registered in the Commission in 1999-2000 was 50,634. It is 12.43% increase provides evidence of the growing determination of India. That is to defend their Rights and their faith in the instrumentality of the Commission to do so. Once again, the State of Uttar Pradesh accounted for 56.5% of the total complaints received by the Commission. Bihar followed Uttar Pradesh with 4,409 complaints and Delhi was third with 3,077 complaints.

Duration the year under review the Commission had total o 51,159 over cases to consider of which 525 were carry over cases of 1998-99. During the year the Commission considered 47,819 cases. At the end of this period, 3,340 cases that were considered 20,934 were dismissed "in limini". Also 5,941 were disposed of with directions to the appropriate authorities. The Commission took cognizance of 20,944 cases for further action. All of them 1,406 were concluded and 19,538 were pending. Thus during this period the Commission disposed of total of 28,281 cases.

As for as custodial deaths reported to the Commission are concerned, they showed a decline. It was 1,286 in 1998-99 to 1,093 in 1999-2000 of the latter, 177 deaths occurred in Police custody and 916 in judicial custody. Maharashtra reported the

highest number [ 30 ] of deaths in Police custody. This was followed by [ 19 ] from West Bengal and [ 18 ] from Madhya Pradesh.

In the year 1999-2000, the maximum number of deaths in judicial custody occurred in Bihar – 155.

This was followed by 141 in Maharashtra. In total, however the number of deaths in judicial custody came down from 1,106 in 1998-99 to 916 in 1999-2000. the guidelines issued by the Commission requiring regular medical check-up and reporting to the Commission, thus appear to be having some effect.<sup>4</sup>

Of the total number of cases admitted for disposal during 1999-00, 54 cases pertained to disappearances. Among them 1,157 cases were about illegal detention illegal arrest. 1,647 cases were about false implications and 5,783 complaints against the Police pertained to other issues. During this period, the Commission received 59 cases pertaining to indignity to women. Then 511 complaints about jail conditions and 341 cases of atrocities against SC/STs. Also the Commission has 5,443 complaints pertained to failure in taking action.

From its inception up to 31 March, 2000, the Commission has ordered compensation in 598 cases. The total amount of Rs. 7,67,83,634/-.

The Investigation Division was directed to look into 1,747 cases by the Commission during the period 1999-2000 of these cases, 1,586 cases were related to collection of were conducted in 161 cases.

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<sup>4</sup> Annual Report, 1999-2000, published by National Human Right Commission, New Delhi. p-89.

On the basis of the reports given by the Investigation Division, criminal prosecution had been launched against 55 officials. They were civilian & Police officials. Bases on the reports of the Investigation, the Commission has awarded monetary compensation in 14 cases. There has been compensation amount ranged between Rs.10,000/- and Rs.10 lakhs.

#### **9.2.7. NHRC Report – 2000 – 2001 :-**

The total number of complaints registered in the Commission in 2000-2001 was 71,555. It is an increase of 41.32% over the cases registered in 1999-2000. It poses a constantly increasing challenge to the Commission and the duty to discharge its responsibility effectively. Since its establishment the Commission has been getting nearly 50% of the total number of complaints from Uttar Pradesh. In this concern year 40,444 cases registered from the U.P. Bihar followed the U.P. with 4,273 complaints. Both these states lack State level Human Right Commission. Delhi was third, with 4,085 complaints.

During the year under review, the Commission had a total of 74,889 cases to consider of which 3,340 were carry over cases of 1999-2000. in this year the Commission considered 60,287 cases. At the end of the period under review 14,612 cases were pending consideration of the Commission of the cases that were considered, 23,886 were dismissed in limini and 19,248 were disposed of with direction to the appropriate authorities. A total of 17,153 cases were taken cognizance by the Commission for further action of these 1,249 had been concluded and 15,904 were pending. The Commission during this period disposed of a total of 44,388 cases.

As far as custodial deaths reported to the Commission are in number of 1037. of those 127 deaths occurred in Police custody and 910 in judicial custody. Two deaths were also reported to have occurred in the custody of the army in Jammu and Kashmir. Maharashtra continued to report the highest number of deaths in Police custody. Nineteen such cases were reported this year, followed by 13 from Punjab and each from Madhya Pradesh, Assam and Gujarat.

In the year 2000-01 the maximum cases of deaths in judicial custody occurred in Bihar. 137. Cases were recorded in different jails, in that state. That is followed by 121 Utter Pradesh and 104 in Maharashtra. This year much decline in number of custodial deaths.

Of the total cases admitted for disposal during 2000-01, 54 cases pertained to disappearances. Then 1,257 cases related to illegal detention / illegal arrest and 821 cases alleged false implication. Also 3,947 complaints related to other excesses. During this period, the Commission received 56 cases specifically alleging that the Dignity of women had been violated. Then 73 cases of sexual harassment. Also 89 complaints about jail conditions. The Commission also registered 206 cases alleging atrocities against members of the Schedule castes / Scheduled Tribes. They are with 2,983 complaints alleging that public servants had failed to take appropriate action expected to them.

It is worst nothing that, since its establishment in October 1993, the Commission has ordered compensation in 499 cases. The total amount of compensation that has been ordered till now amount Rs. 13,26,66,934.

The Investigation Division was directed to look into 1,957 cases by the Commission during the period 2000-01. of these cases, 1,469 cases related to the collection of facts and monitoring of the action being taken on complaints. Such steps were required from various parts of the country. Especially, from Utter Pradesh ,Rajashthan, Delhi, Haryana, Bihar, Punjab and Madhya Pradesh.

On the basis of the reports and recommendations of the Investigation Division, criminal prosecutions were launched in all cases. Also departmental actions were initiated in 47 cases against errant Police officials and other public servants. In addition based on the advice of the Investigation, monetary compensation was awarded in 88 cases. The amounts ranging from Rs. 5,000 to 3 lakhs.<sup>5</sup>

#### **9.2.8 NHRC REPORTS – 2001 – 2002 :**

The total number of complaints registered in the Commission in 2001-2002 was 69,083, which the corresponding figure for the year 2000-2001 was 71,555. now the number of complaints this year has been stabilized. Again, Utter Pradesh is leading the score of complaints with number of 39,558. Bihar & Delhi again on second & third rank. Bihar with 4,149 complaints & Delhi with 3,849 complaints.

This year Commission felt regrets that Government of Utter Pradesh, has not established a State level Human Rights Commission.

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<sup>5</sup> Annual Report 2000-2001, published by National Human Rights Report Commission, New Delhi.p-108.

During the year under review the Commission had a total of 83,695 cases to consider of which 14,612 were carry over cases of 2000-2001. During the year, the Commission considered 72,106 cases. At the end of the period under review 11,589 cases were pending consideration of the Commission of the cases that were considered 30,350 were dismissed “in limini” and 16,439 were disposed of with directions to appropriate authority. A total of 25,317 cases were taken cognizance of by the Commission for further action. Of these 3,319 had been concluded and 21,998 were pending. In most of such cases the reports that were asked for by the Commission from varying authorities. Thus, during the year 2001-02, the Commission disposed of a total of 50,108 cases in comparison with a disposal of 44,373 cases in the year 2000-2001.

As far as custodial deaths reports to the Commission were concerned, they showed a marginal increase from 1,039 in 2000-01 to 1,307 in 2001-02 of these, 165 deaths occurred in Police custody and 1,140 in judicial custody. Two deaths were also reported by the Para-military forces to have occurred in their custody. The State of Maharashtra continued to reports the highest number of deaths in Police custody. 27 such cases were reported this year. This followed by 17 from West Bengal and 16 from Andhra Pradesh.

In the year 2001-02, the maximum cases of deaths in judicial custody occurred in Utter Pradesh 194 cases were recorded in the different jails. In that state. That is followed by 144 in Bihar and 125 in Maharashtra. In total number of deaths in judicial custody increased from 910 in 2000-2001 to 1,140 in 2001-2002 so, in this

year Commission find necessary to draw attention for guidelines issue by it.

Of the total number of cases admitted for disposal during 2001-01, 80 cases pertained to disappearances. Then 1,975 cases related illegal arrest. Also there has been 1,768 cases alleged false implication and 4,638 complaints related to other Police excesses. During this period , the Commission received 122 cases for violation of women dignity. Then there are 176 cases of sexual harassment. Also 169 complaints about jail condition and 462 cases alleging atrocities against members of Scheduled casts / Scheduled tribes. These complaints are together with 6,143 complaints alleging that public servants had failed to take the appropriate action expected of them.

It is worth nothing that, since its establishment in October 1993, the Commission has ordered compensation in 528 cases. The total amount of compensation that has been ordered till now amount to Rs. 13,45,31,934.

During the year 2001-02, the Commission directed its Investigation Division to look 2,688 cases of these cases 1,808 complaints related to “collection of facts” from different parts of the country. The majority of such complaints were from states which did not have State Human Rights Commission. They are Utter Pradesh (1,493), Bihar (56), Uttaranchal (52), Delhi (45 and Haryana (25).

The complaints sent to the Investigation Division alleged a wide range of Human Rights violation i.e. from bonded labour to inhuman condition in jails. So, the Commission availed the assistance of NGOS in examining the victims and witnesses.



In the year 2001-02 the Commission endorsed 32 such cases to the Investigation Division for monitoring the action taken and the progress made in respect of the complaints.

The Investigation Division was also asked to assist the Commission in the task to process on complaints of custodial deaths out of a total of 7,184 custodial deaths cases reported to 2001, 5431 cases reported to the Commission between 1993 to 2001 5431 cases were examined and then disposed of by the Commission. The Commission in addition referred 733 cases for analysis and advice to the investigation division. Such cases related primarily to allegation of fake encounters false implication, illegal detention and custodial death due to torture.

In the year under review the investigation division finalized the investigation of 2,279 cases in addition to scrutinizing 5,431 cases of custodial deaths.

In continuous increase of work load the Commission also proposed requirement for more staff.<sup>6</sup>

### **9.2.9 NHRC REPORTS 2002 – 2003**

At the beginning of the reporting period i.e. as on 1<sup>st</sup> April, 2002, the total number of cases pending before the Commission was 56,462. These included 31,923 pending cases which inadvertently, had not been reflected in the pendency of cases in earlier reports. There were also 11,589 cases awaiting preliminary consideration as on 1<sup>st</sup> April, 2002. Also 12,950 cases in respect of which reports had been received.

During the year under review the Commission registered 68,779 new cases and thus it had a total of 1,25,241 cases to

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<sup>6</sup> Annual Reports, 2000 – 2002 published by National Human Rights Commission, New Delhi, p.138

consider of which 56,462 were cases from earlier years. During the period 1<sup>st</sup> April, 2002 – 31<sup>st</sup> March, 2003, the Commission is posed of 82,231 cases.

At the end of reporting i.e. as on 31<sup>st</sup> March , 2003, the total number of case pending before the Commission was 43,010. which included 9763 cases awaiting preliminary consideration and 33,247 cases in respect of which reports were either awaited from the authorities concerned.

Now, among all of the cases that were registered 67,354 were complaints of Human Rights violations. Among then 1340 related to custodial deaths. Two concerns custodial rapes and 83 related to Police encounters. Of the custodial deaths 183 deaths occurred in Police custody and 1157 in judicial custody. Most of the later resulting from illness, old age or similar factors.

It will be interesting to see whether the establishment of a State Human Rights Commission in Utter Pradesh in the course of the year 2002-03 will lead to decline in number of complaints.

Of the total number of 82,231 cases disposed of in 2002-03, 26,128 were dismissed 'in limini' 17,262 cases were disposed of with directions to the appropriate authorities for remedial measures. About 38,438 cases were disposed of after calling for reports from the concerned authorities of the latter group 263 cases pertained to disappearances. 3595 cases related illegal detention/illegal arrest. Also 2783 cases alleged false implications 706 cases alleged custodial violence 183 deaths occurred in Police custody and 1157 in judicial custody. Most of the latter resulting from illness, old age or similar factors.

It will be interesting to see whether the establishment of a State Human Rights Commission in Uttar Pradesh in the year 2002-03 will lead to decline in number of complaints.

118 cases alleged “fake encounters “and 9978 instances related to failure to take appropriate action and 9622 complaints related to other Police excesses. During this period, the Commission also disposed of 118 cases. Specially alleging that the Dignity of women had been violated. Also 159 cases alleging sexual harassment, 289 cases alleging abduction rape and murder. 845 cases relating to dowry deaths, 448 cases of dowry demand, 200 cases alleging the exploitation of women and 400 cases alleging the report women. The Commission also disposed of 50 cases concerning child labour and 26 cases relating to child marriages, 161 cases alleging bonded labour. In respect of conditions in prisons, 434 cases relating to harassment of prisoners, 44 cases of lack of medical facilities in jails and 229 cases relating other aspects of jail conditions were disposed of by the Commission. In addition to above 542 cases alleging atrocities against members of scheduled casts/scheduled tribes were disposed by the Commission as were 21 cases of communal violence and 7407 cases of various other categories.

Since its establishment in October 1993, the Commission has directed that compensation in the amount of Rs. 9,76,68,6341/- be paid in 559 cases. During the year 2002-03, the Commission recommended that compensation amounting to Rs. 31,40,000/- be paid in 39 cases. Further, the Commission directed be undertaken in 5 cases.

The Investigation Division of the Commission is headed by an officer of the rank of Director General (Investigation) is assisted by a D/G, three senior superintendents of Police and 20 other investigators of various ranks.

The prime responsibility of the Investigation Division (Now I.D) acting under the directives of the Commission. The I.D. collects the facts in respect of complaints received by the Commission.

During the year 2002-03 the Commission directed its Investigation Division to look into 3,005 cases of these 2,092 related to the “collection of facts” from different parts of the countries. In 130 instances, however, the Commission directed that sports. These inquiries were conducted mainly in Utter Pradesh, Delhi, Haryana, Bihar, Punjab, Rajashthan and Madhya Pradesh.

Given the nature and workload of the I.D. the Commission also made some recommendations specially, working in that Division.<sup>7</sup>

#### **9.2.10 NHRC REPORTS 2003-2004**

In the year of 2004-05 49548, 2288cases are awaiting for preliminary consideration. Also 43070 complaints are pending. Among all these cases where reports have either been received or awaited from State Authorities.

In them 26 cases related to custodial deaths. Two are encounters. in the concerning year Utter Pradesh is leading with 1218 cases. Second one is Bihar with 182 cases and third one is Delhi with 217 cases.

In this year, the Commission received complaints about custodial deaths in maximum number. (136) Most of death occurred

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<sup>7</sup> Annual Report, 2002 -2003, published by National Human Rights Commission, New Delhi.p.168

in Police custody. Four complaints received by the Commission about custodial rapes. About 122 numbers of complaints receives about encounter deaths.

Now, in the year of 2004-05, the Commission disposed complaints in various ways. About 38,448 complaints disposed “inlimini”. Among all complaints 21,465 disposed with direction. Some of them are receipt of reports. Specially, these case related to custodial death/Encounter death cases.

The Commission got various kind of complaints from different cases i.e. in this concerning year, 24 cases are registered about disappearance. About 1213 complaints received by the Commission about false implications. 16 complaints were for custodial violence 210 complaints received for illegal arrest more than 876 complaints about illegal detention. But in this concerning year, maximum complaints about failure in taking action. They are in numbers of 6833. the Commission received 84 complaints about alleged false implications. Sixteen complaints were for custodial violence. Then 210 complaints received for illegal arrest more than arrest 876 complaints about illegal detention. But in this concerning year, maximum complaints about failure in taking action. They are in number of 6833. the Commission received 84 complaints about alleged fake encounters and 6488 complaints about other Police excesses. The Commission received 196 reports cases about indignity to women.

The Commission also received 3720 complaints about sexual harassment. Approximately, 634 complaints was about abduction; rape & murder. Than 1115 complaints about dowry death or its attempt and 708 complaints about dowry demand. Now, the Commission has 279 complaints exploitation of women. Also 392 complaints about rape.

The Commission considers women, children, prisoner and Schedule Caste / Schedule Tribe people as weaker sections of the society. So, it pays more attention on complaints about this class. So, the Commission received 30 complaints about child labour and 19 about child marriage. The Commission got 102 complaints about bonded labour. The complaints about atrocities in concerning year was about in numbers was 539.

The complaints about jail or prisoners can be categorized in various ways. i.e. 179 complaints about harassment of prisoners. The Commission also received complaints about lack of medical facilities in jails. They are in number of 51. then 164 cases of jail condition about communal violence. They are total 9 and 4401 are other complaints.

### **9.3. Conclusion :**

No other nation or any country having a statutory basis, has function of the diversity or order of magnitude of the National Human Rights Commission in the world, has a remotely comparable case – load.

It has required a major effect by the Commission and contact innovation, organization and management to deal responsibility with such a case load and dealing with complaints is only one of ten major functions assigned in Human Rights Act, 1993.

The Commission would like to reiterate that it is of almost importance that both the central and State Government response promptly to request for reports made by the Commission. Further, they need to act without delay on its varied recommendations in respect of individual cases. The Protection of Human Rights Act, 1993 is based on the premise that the fullest co-operation will be extended to the Commission by both the central and State Government. It is therefore, incumbent on them to assist the efficiently. It the order to ensure that the better Protection of Human Rights, as envisaged under the Act, is archived.

In such a context the rule of law is not a luxury nor are justice and justice and protection of Human Rights incidental issues. They are the heart and soul of the democratic enterprise.

They are also essential to the creation of a State at peace with itself and at peace with the world for without justice and respect for Human Rights, there can be no lasting peace, nor can democracy be true to its intrinsic principles.

The Present Research Scholar wants to quote words of former President of India, Mr. A.P.J. Abdul Kalam here. In the year 2002, he spoke at Chandigadh on the then “Justice and Human Rights for National Development”.

He stated “Our individual and localized interest have to be harmonized without the larger pluralistic order so as to give primary to Human Rights .... For a peaceful human life, law and Justice have to assist. If Justice fails to protect Human Rights, the nation fails”.

It is precisely this concern, that justice and respect for Human Rights must march hand in hand for the greater good of the country. That has illuminated the path of the Commission over the last 15 years.<sup>8</sup>

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8 From Website . [www.nhrc.in](http://www.nhrc.in).

## CHAPTER 10

### CONCLUSIONS AND SUGGESTIONS

Question always arises its functional ability because its constitution and officials selected by Union Government's Institutions or its heads : No one from this is, a human rights activists or personality.

It's autonomy is also some scholars find doubtful because there is no one impartial, independent, public personality, press reporter or human right activist is not appointed as an officer.

Actually, it is successful in some ways or partially. Commission has paid attention on police force, Military forces and prison modification area.

Now : Present research scholar wants to submit some positive views.

This Constation of human Rights Commission is a step forward towards Human Rights activities. It is a clarification of our fundamental rights quaranteed in our Constitution. By establishing this commission it practillizes article 51's basic requirements, According to 'Directive Priciples to State Policy' the Commission will foster an international peace.

It is completely autonomous and independent organisation. It relies on transparency and independency. So, it's recommendations are very important for Goverment of India. It is primary condition for any welfare state to pay attention more on Human Rights.

National Human Rights Commission is not only a 'big post office' or a 'toothless tiger'. But it is also an institution for future generations make them conscious about Human Rights. Now, another opinion of this research student is that Commission should consider complaints related to social and cultural facts.



The execution should not interfere in daily workout of the Commission, because, the Commission is a statutory body to choose members of the Commission scope should widen. Specially members should be elected from Non-Governmental organisations or Human Rights Activists like...

- Scholars and experienced persons.
- Experts on Constitution law of India.
- Well known Press Reporters.
- Leaders of Trade Unions.

In addition, National Human Rights Commissions has started a National Human Rights University which will concentrate on Human Rights study, education and research. It will act like the National Law University.

- National Human Rights Commission should make sensitive judiciary, executive and bureaucracy.
- National Human Rights Commission should arrange for District Human Right Committee also. The National Human Rights Commission should ask suggestions and advices of Non-Governmental organization.
- The National Human Rights Commission should grab Technical experts as their members.
- The Commission should open regional level branches in all over India. So, remote areas would be covered.
- In matter of Human rights situation is all South Asian Countries is very much similar. So, one common reaty must be signed by all countries for protection and promotion of Human Rights. The Human Rights Commission of all South Asian Countries must

have internal relationship with each other. All these countries should establish a final authoritative body among all.

- The Commission should organize survey & search programmes on the spot. Specially sensitive places like jail, mentally reitared home etc. so, information could be collected more acutely.
- The National Human Rights Commission published in all recognized languages of Union of India. So, spreading of news would reach in corner of Society.
- The Commission should establish co-operation and co-ordination with International Human Rights Commission.
- The National Human Rights Commission should publish a monthly report "Human Rights Cronical".
- In addition, Commission should product telefilms on child labour, bonded labour, women related violence, child prostitution, etc. The main purpose of these telefilms to grow more interest in Human Rights by common man.
- But, Commission's 'Budget' and number of complaints are increasing every year after its establishment. This shows as that importance & weitage or Commission is also raising. Now, in our country only one 'Commission' is insufficient. Because it is impossible for 'Commission' to create a 'national culture' towards Human Right, by lonely hands.
- The attempts by commossion are not inadequate. But, we have to cultivate in ideology if 'live and let another live' जीयो और जीने दो  
- सर्वे भवन्तु सुखिनः
- The founding organisations of our Goverment - legisliature, executive and judiciary should progress in this direction.

- The Human Rights activists, independent organizations Human Rights Groups and Non-Government organizations should be utilized by National Human Rights Commission. So, this noble goal would be achieved.
- In its short-term of working period the Commission has seen many ups and downs. Because this vast country has many layered problems. Some of them are caste - system, half - ruling state administration, child - labour, bonded labour, economic inequality, tremendous poverty, terrorism, communalism, corruption etc. So, the way of National Human Rights Commission is really risky. Amongst all this, it has to fulfill its responsibility.

So, the National Human Rights Commission is working in this direction very sincerely. So, everyone can hope that 'The whole Human Face is glittering by a divine life of eternal smile'.