

## PROTECTION OF HUMAN RIGHTS IN INDIA: A REVIEW

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### 1. Introduction

The State maintains the framework of social order by implementation of various laws without which well ordered social life would not be possible. Various philosophers of social contract theory are of the view that object of the creation of state is to maintain and protect the rights of individuals. According to Aristotle, State came into existence out of base necessities of life and continues for the sake of good life.<sup>1</sup> Prof. Laski expressed that State is known by the rights it maintains.<sup>2</sup> Similarly Locke was of the view that end of state is to remove the obstacles that hinder the development of an individual.<sup>3</sup> Thus, the existence of the state is recognized with the protection of rights and liberties of individual which is the main object of state.

Protection of the dignity of an individual is essential for harmony in the society, as its violation can have grave impact on individual in particular and on society in general. Each individual is entitled to some rights which are inherent to human existence. Such rights should not be violated on the grounds of gender, race, caste, ethnicity, religion etc. these are called human rights. Human rights are also known as basic rights, fundamental rights, natural rights or inherent rights. The concept of human right is not a new phenomenon, 'Human Rights' is a twentieth century term but its notion is as old as humanity. It has gone through various stages of development and has taken long time to become the concept of present day. These rights had place in all ancient societies though referred by different names<sup>4</sup>, it includes civil rights, liberties and social cultural and economic rights. These rights are essential for all individual as these are consonant with the freedom and dignity and ultimately contribute to social welfare.<sup>5</sup>

Protection of human rights is a necessity for the development and growth of an individual personality, which ultimately contributes in the development of the nation as a whole. It is an internationally recognized issue and various international instruments have been established for the protection of human rights. The concept of human rights

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<sup>1</sup> J.S. Badyal, *Abc of Political Science* 73 (Raj publishers (Regd.), Jalandhar, 2005).

<sup>2</sup> *Id.* at 40.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> Dr. S. Subramanian, *Human Rights International Challenges Vol.1* 3 (Manas Publication, New Delhi, 1997).

<sup>5</sup> Available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/10/10\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/10/10_chapter%201.pdf) (Last visited on September 28, 2016).

is dynamic and adapts to the needs of the nation and its people. The ultimate purpose of the national as well as international law is to safeguard the human rights of the people.

At international level various efforts have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. International bill on human rights has been incorporated in the UN Charter. The UN Charter contains various provisions for the promotion of human rights and fundamental freedoms in the Preamble and in various Articles 1, 13(b), 55, 56, 62 (2), 68 and 76(c).<sup>6</sup> Apart from UN Charter there are four international instruments created under the auspices of the United Nations known as International Bill of Human Rights, which include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966.<sup>7</sup> The international human rights regime is continuously growing with the passage of time, it provides certain accepted legal standards which all the nations should accept and implement in their domestic laws. The Governments of all the nations must work to promote the welfare of people by eliminating all forms of discriminations and provide right to equality and justice to all.

## **2. Human Rights in India**

India is the biggest democracy in the world. Being a democratic country one of the main objectives is the protection of the basic rights of the people. Government of India has given due consideration to the recognition and protection of human rights. The Constitution of India recognizes these rights of the people and shows deep concern towards them.

The Universal Declaration of Human Rights contains civil, political, economic, social and cultural rights. Constitution guarantees most of the human rights contained in Universal Declaration of Human Rights. Part III of the constitution contains civil and political rights, whereas economic, social and cultural rights have been included in Part IV of the Constitution.<sup>8</sup> All the statutes have to be in concurrence of the provisions of the Constitution.

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<sup>6</sup> S. K. Kapoor, *International Law & Human Rights* 800(Central Law Agency, Allahabad, 17<sup>th</sup> edition 2009).

<sup>7</sup> *Id.* at 817.

<sup>8</sup> *Supra* note 6 at 886.

The philosophy and objective of the Constitution of India is enshrined in the preamble which include the protection of the dignity of an individual. For the fulfillment of this objective Part III of the constitution guarantees fundamental rights to people which are essential for the development of an individual personality, these rights include right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to constitutional remedies. It is the duty of the central as well as state Governments to provide adequate conditions to each individual to enjoy their human rights. The constitution through Directive Principles of State Policy enshrined in the Part IV of the Constitution, ascertains the duties on the government to work for the welfare of the people and protection of human rights of the people. These are guiding principles for the state to make policies regarding distributive justice, right to work, right to education, social security, just and humane conditions of work, for promotion of interest of weaker section, raise the standard of nutrition and standard of living and to improve public health, protection and improvement of environment and ecology etc. so that each individual can enjoy rights to the fullest.

### **3. Role of the Judiciary**

Only provision for the fundamental rights does not fulfill the objective of 'protection of dignity of an individual', but free enjoyment of the rights has to be ensured. Therefore, Article 32 guarantees right to constitutional remedies, i.e. right to move to Supreme Court to enforce fundamental rights.

It is constitutional mandate of judiciary to protect human rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his/her fundamental rights, redress of grievances and enjoyment of fundamental rights. In such cases Court are empowered to issue appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.

Judiciary is ultimate guardian of the human rights of the people. It not only protects the rights enumerated in Constitution but also has recognized certain un-enumerated rights by interpreting the fundamental rights and widened their scope. As a result people not only enjoy enumerated rights but also un-enumerated rights as well.

### *Protection of Human Rights in India*

Supreme Court in *Maneka Gandhi v. Union of India*,<sup>9</sup> interpreted the right to life and to widen its scope and deduced un-enumerated right such as “right to live with human dignity”. Supreme Court propounded the theory of “emanation” to make the existence of the fundamental right meaningful and active. Thereafter, in many cases court such as *People's Union for Civil Liberties and another v. State of Maharashtra and others*,<sup>10</sup> *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*<sup>11</sup> held that right to life includes right to live with human dignity. Therefore, through the judicial interpretations various rights have been recognized though they are not specifically provided in Part III of the Constitution.

The rule of locus standi, i.e. right to move to the court, whereby only aggrieved person can approach the court for redress of his grievances has been relaxed by the judiciary. Now court through public interest litigation permits public spirited persons to file a writ petition for the enforcement of rights of any other person or a class, if they are unable to invoke the jurisdiction of the Court due to poverty or any social and economic disability. In *S.P. Gupta v. Union of India and others*,<sup>12</sup> Supreme Court held that any member of the public can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of poverty or any other disabilities. Person can even write letter to the court for making complaints of violation of rights. Public interest litigation is an opportunity to make basic human rights meaningful to the deprived and vulnerable sections of the community. To assure vulnerable section social, economic and political justice, any public spirited person through public interest litigation can approach the court to protect their rights on behalf of aggrieved persons who cannot approach the court themselves due to their vulnerable conditions. Similar observations have been made by Supreme Court in various judgments such as in *Bandhua Mukti Morcha v. Union of India*,<sup>13</sup> *Ramsharan Autyanuprasi and another v. Union of India and Others*,<sup>14</sup> *Narmada Bachao Andolan v. Union of India*.<sup>15</sup> Therefore, public interest litigation has become the tool for the protection of human rights of the people in India.

The oppressed sections of the society are more prone to the violation of human rights. Most vulnerable sections of society are children, women and socially and

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<sup>9</sup> AIR 1978 SC 597.

<sup>10</sup> 2014 (10) SCC 635.

<sup>11</sup> (1981) 2 SCR 516.

<sup>12</sup> AIR 1982 SC 149

<sup>13</sup> (1984) 2 SCR 67.

<sup>14</sup> AIR 1989 SC 549.

<sup>15</sup> (2000) 4 SCJ 261.

educationally weaker sections of society. Judiciary has taken many steps to ensure protection of human rights of these sections.

Children are more prone to exploitation and abuse. The rights of the children are needed to be specially protected because of their vulnerability. For this reason United Nations Convention on the Rights of the Child was adopted in 1989<sup>16</sup>. This convention brings together children's human rights, as children require safety and protection for their development. Judiciary is playing a commendable role in protecting the rights of children from time and again.

There are various instances where judiciary intervened and the rights of children. In the case of *Labourers working on Salal project v. State of Jammu and Kashmir*<sup>17</sup>, Supreme Court held that child below the age of 14 years cannot be employed and allowed to work in construction process. Court has issued various directions related to child labour. Supreme Court in *Vishal Jeet v. Union of India*<sup>18</sup> asked governments to setup advisory committee to make suggestions for eradication of child prostitution and to evolve schemes to ensure proper care and protection to the victim girls and children. The Supreme Court further in *Gaurav Jain v. Union of India*<sup>19</sup> showed its concern about rehabilitation of minors involved in prostitution and held that juvenile homes should be used for rehabilitation of them and other neglected children.

Mumbai High Court in *Public at large v. State of Maharashtra*<sup>20</sup> rescued children from flesh trade and passed order for checking sexual slavery of children and for their rehabilitation. Children are not only prone to sexual abuse but they are also sometimes kept as bonded labourers as was in the case of *People's Union for Civil Liberties (PUCL) v. Union of India*<sup>21</sup> where the Supreme Court released child labourers and also ordered for grant of compensation to them. Concern of the Supreme Court about the protection of rights of children does not ended here it reiterated the importance of compulsory primary education vis-a-vis eradication of child labour in the case of *Bandhua Mukti Morcha v. Union of India*.<sup>22</sup>

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<sup>16</sup> Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Last visited on October 5, 2016).

<sup>17</sup> AIR 1984 SC 117.

<sup>18</sup> 1990 (3) SCC318.

<sup>19</sup> 1997 (8) SCC 114.

<sup>20</sup> (1997) 4 Bom CR 171.

<sup>21</sup> 1998(8) SCC 485.

<sup>22</sup> (1997)10 SCC549.

### *Protection of Human Rights in India*

Supreme Court in *Sakshi v. Union of India*<sup>23</sup> highlighted the need to establish procedure that would help the child victim to testify at ease in the court and held that proceedings should be held in cameras. Delhi High Court in *Sheba Abidi v. State of Delhi*<sup>24</sup> observed that child victims are entitled to get support person during trial and also established that child victims can testify outside the court environment.

Women are considered weak in our society which has resulted in the backwardness of women in every sphere. Women remains oppressed ones and are often denied basic human rights. They are subjected to violence in society whether it is within four walls of the house or at workplace. Despite the provision of right to equality enshrined under Article 14 of the Constitution, they are subjected to discrimination. Gender is considered to be the most important factor as far as Indian labour market is concerned. Discrimination against women laborer in terms of wage payments is a very common phenomenon in India. Wages earned by women are generally lesser than their male counterparts.<sup>25</sup> However, Article 39 of the Constitution guarantees the principle of equal pay for equal work for both men and women. Despite the guarantees of equal rights to women still they are not equally treated with men. Supreme Court has played remarkable role in protection of their rights such as in case of *Associate Banks officers Association v. State Bank of India*,<sup>26</sup> Supreme Court protected the rights of women workers and held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In *State of Madhya Pradesh v. Pramod Bhartiya*<sup>27</sup> Supreme Court held that under Article 39 the State shall direct its policy towards securing equal pay for equal work for both men and women.

Article 21 i.e. protection of life and personal liberty was invoked for the dignified life for the prostitutes by Supreme Court in case of *State of Maharashtra v. Madhukar Narayan Mandlikar*<sup>28</sup> held that even a woman of easy virtue is entitled to privacy and no one can evade her privacy. In *Bodhi Satwa Gautam v. Subra Chakarborty*<sup>29</sup> Supreme Court has held that rape is a crime against basic human rights. Supreme Court laid down guidelines for protection of women against sexual harassment at work place in case of

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<sup>23</sup> AIR 2004 SC 3566.

<sup>24</sup> 113(2004) DLT 125.

<sup>25</sup> Shayan Javeed and Anupam Manuhaar, "Women and Wage Discrimination in India: A Critical Analysis March 19 – 2013" 2 *IJHSSI* 7(2013)

<sup>26</sup> AIR 1998 SC 32.

<sup>27</sup> AIR 1993 SC 286.

<sup>28</sup> AIR 1991 SC 207.

<sup>29</sup> AIR 1996 SC 922.

*Vishaka v. State of Rajasthan*<sup>30</sup> and reiterated the same in *Medha Kotwal Lele v. Union of India*.<sup>31</sup> Guidelines for ensuring the safe work environment for women were given and made it mandatory for employer to take responsibility in cases of sexual harassment at work.

Supreme Court also protected the rights of workman in *BALCO Employees Union (Regd.) v. Union of India*,<sup>32</sup> *Consumer Edu. & Research Centre v. Union of India*.<sup>33</sup> In *People's Union for Democratic Rights v. Union of India*<sup>34</sup> the Supreme Court stated that releasing persons from bonded labour was connected to rehabilitation process in order to give full remedy. In *Workmen v. Rohtas Industries*<sup>35</sup> the Supreme Court observed that the right to equality became instrumental in protecting right of workers against unreasonable closures and discriminations in payment of pensions.

Judicial system protects the rights of its citizens including prisoners. The Supreme Court by interpreting Article 21 of the Constitution protected and preserved the rights of the prisoners. In case *Prem Shankar v. Delhi Administration*<sup>36</sup> Supreme Court held that practice of using handcuff and fetters on prisoners violates the guarantee of human dignity. A landmark judgment in *D.K. Basu v. State of West Bengal*,<sup>37</sup> protected the rights of the prisoners and laid down various guidelines for arrest and detention to prevent the custodial violence and observed that right to life include right to live with human dignity. Similarly Court in *Sheela Barse v. State of Maharashtra*<sup>38</sup> dealt with an issue of mistreatment of women in police station and court laid down various guidelines for the protection of rights of women in custodial/correctional institutions. Further in *Citizens for Democracy v. State of Assam and others*,<sup>39</sup> Supreme Court held that handcuffing and tying with ropes is inhuman and in utter violation of human rights guaranteed under the international laws and the laws of the land. Court directed that handcuffs or other fetters shall not be forced on prisoners- convicted or under trial while lodged in jail or even while transporting, police and jail authorities shall have no authority to direct handcuffing of any inmate of jail or during transportation without permission from the

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<sup>30</sup> 1997(6) SCC 241.

<sup>31</sup> 2013(1) SCC 297.

<sup>32</sup> 2002(2) SCC 333.

<sup>33</sup> 1995(3) SCC 42.

<sup>34</sup> 1982(3) SCC 235.

<sup>35</sup> AIR 1996 SC 467.

<sup>36</sup> (1980) 3 SCC 538.

<sup>37</sup> (1997) 1 SCC 416.

<sup>38</sup> AIR 1983 SC 378.

<sup>39</sup> (1995) 3 SCC 743.

magistrate. While executing of arrest warrant person arrested cannot be handcuffed without obtaining orders from magistrate.

Therefore, Judiciary is playing a crucial role in the protection of the human rights of the people from time and again by expanding the scope of the rights and recognizing new rights with the need of time. Judiciary has expanded the scope of right to life to include entitlements which are vital for the enjoyment of right to life with dignity. Courts have protected right of the people in numerous cases whether it is a right against violence in custody, to live in a pollution free environment, right to health, right to adequate wages of the workers, safety of the women at workplace, compensation to rape victim and rights of the child labourers and so on.

#### **4. The Protection of Human Rights Act, 1993**

The need for the protection of human rights issues both at national and international level led to the enactment of an Act which specifically deals with the protection of Human rights called 'The Protection of Human Rights Act, 1993'.

The objective of the Act is to provide organizational structure for protecting human rights. The Act provides for Human Rights Commission at national level as well as at State level in each state and further for setup of Human Rights Courts at district level for better protection of human rights and matters connected therewith.

The Act defines human rights in Section 2(d) as "*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.*" The above definition, however, limits the scope of the functioning of the National Human Rights Commission. Though India ratified the two Covenants, these are International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>40</sup> International covenants are not justifiable before the courts, so there should be laws in the country which is to be with the conformity of these conventions. Therefore, the rights guaranteed in the Constitution are in conformity with these International Conventions.

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<sup>40</sup> Justice J.S. Verma, Second Justice M. Hidayatullah Memorial Lecture "Protecting Human Rights through the Judicial Process" on 21 December 2002 at Raipur, 15, available at <http://nhrc.nic.in/Documents/JHidyaMemo-II.pdf> (Last visited on August 8, 2016).



**i) National Human Rights Commission**

It is the State's primary responsibility not only to protect the human rights of the people from any violation but also the prevention of such violations by providing the requisite means for its realization and further ensuring human development. State discharged such responsibility through its institutions. So at national level, National Human Rights Commission was established under the Protection of Human Rights Act of 1993 to fulfill this responsibility.

Section 3 of the Act provides for the composition of National Human Rights Commission. Commission is composed of a Chairperson and four other members. In order to provide representation to the backward and oppressed sections of the society, besides these members, the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs and the National Commission for Women are given ex-officio membership of the Commission.

The functions of the National Human Rights Commission are provided under Section 12, from the perusal of Section Commission performs various functions which are as follow:-

- a) Inquire into the cases of violation of human right suo motu, on petition presented to him or on the direction of the Court.
- b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
- c) Visit into any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and to make recommendations thereon to the Government;
- d) Conduct a systematic review of the Government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improvement. The National Human Rights Commission has been doing this task by commenting on the draft legislation, drawing the attention of the Government to the lacuna in the existing law and forming a human rights policy for the nation according to the local needs.
- e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- g) Undertake and promote research in the field of human rights.

- h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.

Commission is empowered to exercise the powers of civil court in respect of summoning and enforcing attendance of witnesses and their examination on oath, discovery and production of documents, receiving evidence on affidavit etc. The commission for the purpose of conducting any investigation pertaining to the inquiry can 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. National Human Rights Commission also performs an important function of making guidelines and recommendations to various authorities. It has provided many recommendations on various matters such as health, education, jails reforms, police encounters, police public relations, guidelines on arrest, food security bill, violence against women etc. from time to time. Recently, Commission has given recommendations on Prison Reforms, Human Rights Defenders, Leprosy and Mental Health.<sup>41</sup> Commission has rendered a significant role for the observation of human rights. In various instances of human rights violation it took suo motu cognizance and took cognizance on the complaints filed before it. References may be made to few cases, which are discussed below:

In *Gujarat Communal Riot's Case*,<sup>42</sup> the commission took suo motu action on communal riots, took place in Gujarat in early 2002; based on media reports.<sup>43</sup> The Commission also received an e-mail communication requesting the Commission to intervene. A team of the Commission had visited Gujarat in March, 2002 and prepared a confidential report, which was later published. The Commission observed that the State has failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all of those who constitute it.

In *Bonded Labourers Working in Chauna Stone Mines, District Gwalior Madhya Pradesh*,<sup>44</sup> Bonded Labour Liberation filed a complaint that 400 bonded labourers had

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<sup>41</sup> These recommendations were made on the basis of the National Seminar on "Prison Reforms" held on 13 - 14 November, 2014, the National workshop on "Human Rights Defenders" held on 19 February, 2015, National Conference on "Leprosy" held on 17 April, 2015 and State Mental Health Secretaries held on 5 September, 2015 "Journal of the National Human Rights Commission", vol.14 at 335 – 355(2015).

<sup>42</sup> Arun Ray, *National Human Rights Commission of India: Formation, Functioning, and Future Prospects* 518 (Khama Publisher, New Delhi, 2<sup>nd</sup> edn., 2004).

<sup>43</sup> Case No. 1150\6\2001-2002, 6 March 2002.

<sup>44</sup> Case No: 1351/12/2001-2002(FC).

been working in Chauna Stone mines in District Gwalior and they were not paid their wages; besides they were tortured and harassed. Commission asked government to direct Labour Commissioner, MP to ensure the inspection of these establishments and strict enforcement of all labour laws. 44 persons were released and sent to other districts as per their wishes. In a subsequent report, Labour Department, Government of M.P. stated about the rehabilitation of released labourers and also indicated the action taken against the guilty employers. On consideration of the report, Commission closed the case.<sup>45</sup>

In *Case No. 2432/4/39/2012*,<sup>46</sup> the Commission has taken suo motu cognizance of a press report titled "Kids thrashed for refusing insect infested school meal" The report alleged that students of a school at Mithani Milki village of Vaishali district near Patna were allegedly thrashed by their headmaster till they fainted for refusing to eat a mid-day meal of khichdi in which they found insects. The Commission issued notice to the Chief Secretary, Government of Bihar and the District Magistrate, Vaishali to submit a report in the matter and also about the steps taken by them. The SP Vaishali, Bihar submitted report that chargesheet has been filed before the Court against the Head Master of the school. District Magistrate, Vaishali, Bihar, further directed to send a report along with proof of payment within six weeks, regarding payment of interim monetary relief to the victim students of SC community under the provision of Rule 12 (4) of SC/ST (PA) Rules 1995. Response received in the matter is under consideration of the Commission.

In *Case No.1155/35/5/2014*<sup>47</sup> commission took the suo motu cognizance of the matter on report published in Hindi Newspaper titled 'Is school main bachche helmet pehan kar karte hain padhai'. According to the newspaper report, in a school in village Doodhli, 25 kms from Dehradun, children wear helmet while studying in the class room. It has been mentioned that building of the school in which they study is in dilapidated condition and plaster from the roof continuously falls. This fall of plaster from the roof has resulted in injuries to many students. Therefore, for protecting the heads of children from injuries, the parents have provided helmets to the children for use in the school. The contents of the press report raised a serious issue of violation of human rights of school children. Commission issued notice to the Secretary, Department of Education, and directed to submit a report in respect of the various school buildings in a dilapidated condition in the State and the corrective measures

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<sup>45</sup> Available at <http://nhrc.nic.in/LabourCases.htm> (Last visited on October 4, 2016).

<sup>46</sup> Available at <http://nhrc.nic.in/> (Last visited on January 4, 2015).

<sup>47</sup> Available at <http://nhrc.nic.in/> (Last visited on October 10, 2016).

taken/ proposed to be taken by the State Government. District Magistrate, Dehradun was also directed to submit a report in respect of the number of children who have suffered injuries in the school, details of medical treatment provided to them as well as any ex gratia relief granted by the State Government. The matter is pending under consideration of the commission.

On 5 October, 2016 the National Human Rights Commission has taken suo motu cognizance of a media report that a prisoner of the Greater Noida Jail, an accused in the lynching of Mohammed Ikhlaq of Dadri, has died in a Delhi hospital during treatment. Observing that the contents of the news report raised a serious issue of violation of human rights of the prisoner, the Commission issued notices to the Director General, Prisons and the Director General of Police, Uttar Pradesh calling for a report in the matter within four weeks. The allegations regarding beating of the prisoner by some police personnel in judicial custody are serious in nature. Even in the judicial custody, a prisoner cannot be deprived of his Right to Life ensured by the Constitution of India. The family members have all the rights to know about ill health of the prisoner. Someone, who is suffering from illness in judicial custody can not avail the medical treatment of his own. Therefore, the Commission observed, it is the duty of the authority under whose guardianship he is being detained, to protect his Right to life, which cannot be exercised, if proper medical treatment is not provided to him in time. The family members have alleged that Ravi, the deceased was being kept in a separate cell by the jail authorities and mercilessly beaten up by some police officials inside jail on the 30th September, 2016, due to which his condition deteriorated. According to the media report, the authorities did not inform the family about the deteriorating condition of the prisoner. It was only after his death on the 4th October, 2016, that his family was informed.<sup>48</sup> The matter is pending before the Commission.

## **ii) State Human Rights Commission**

Power to constitute commission at state level is conferred on the state government under Section 21 (1) of the Act. The Commission is composed of chairperson and four other members. The State Commission is empowered to perform similar functions, which have been entrusted to the National Human Rights Commission. State Commission inquires into violations of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seventh Schedule of the Constitution. The study of treaties and other international instruments on human rights have been excluded from the purview of State Human Rights Commission.

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<sup>48</sup> Available at <http://nhrc.nic.in/dispArchive.asp?fno=24120> (Last visited on 10 October, 2016).

As regards the mechanism for the redress of human rights grievances in Union Territories, the Minister of Human Affairs had taken the position that the best way of proceeding may be through the extension of the jurisdiction of the State Commissions of neighbouring States into the adjoining Union Territories, as has been done in respect of High Courts.<sup>49</sup>

### iii) Human Rights Courts

State government set up these courts with concurrence of the Chief Justice of the High Court, by notification specifying for each district a Court of Session to be a Human Rights Court under Section 30. State Government appoints Special Public Prosecutor to conduct cases in human rights court under Section 31 of the Act.

Human Rights Courts have been set up in the States of Assam, Andhra Pradesh, Sikkim, Tamil Nadu and Uttar Pradesh.<sup>50</sup> Commission stays in touch with the concerned High Courts with a view to making clear the precise nature of the offences to be tried in such courts and other details regarding the conduct of their business.<sup>51</sup>

The National Human Rights Commission has made an inquiry into thousands of complaints it has submitted reports to the government on various matters wherein it has made a number of recommendations suggesting measures to be taken to curb the human rights violations. In August 2016 it has received 7822 fresh complaints and has disposed of 7772 fresh as well as old cases.<sup>52</sup>

### iv) Role of NGOs

Besides the government there are non-government entities which play an important role in protection of human rights. NGOs are playing remarkable role in the society. These organizations pickups the government's deficits in service and help in protecting rights of the people. NGOs are non profit making organisations ranging from small groups to international organizations having branches all over the world. NGO is independent organization of state and managed by group of private individuals and they draw strength from the people who offer voluntary support to their causes. NGOs

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<sup>49</sup> *Supra* note 42 at 511.

<sup>50</sup> Shashi Motilal and Bijayalaxmi Nanda, *Human Rights, Gender and Environment* 113 (Allied Publishers Pvt. Ltd., Mumbai, 2010).

<sup>51</sup> *Supra* note 42 at 510.

<sup>52</sup> Available at <http://nhrc.nic.in/> (Last visited on October 10, 2016).

raise awareness among people about their rights by imparting education and uplifting them.

NGOs have key role to play in planning, monitoring and evaluation of the process of the protection of human rights. B.R.P. Bhasker<sup>53</sup> points out that “in the field of human rights, the role of NGO is particularly important as Government or their agencies often become violators of the very rights they are committed to protect and promote vast sections of the people who are illiterate and ill- informed, and that makes it easy for rights violators to act with impunity. Against this background human rights education assumes importance and this task is primarily performed by NGOs”.

Even the Government has also recognised the crucial role played by the NGOs in various fields. They are playing a remarkable role in various fields such as education, health, environment protection and protection of the rights of the various classes of people. Some of the NGOs working in this field are - Saheli for women’s rights, Youth of Voluntary Action for eradication of child labour, Bandhua Mukti Morcha for eradicating bonded labour, People’s Union for Civil Liberties and citizens for democratic rights have also playing a crucial role as they have taken up various instances of human rights violation before the Supreme Court of India.

There are several instances where NGOs were the first to report the violation of human rights to the concerned authorities. The National Human Rights Commission has taken action on several complaints, mainly reports by local NGOs from different parts of the country.<sup>54</sup>

NGOs are also having effective role in enforcing the policies of the Government. The exceptional role of NGOs in furthering human rights is given recognition in the Protection of Human Rights Act, 1993 not only this Act alone but also Vienna Declaration and Programme of Action 1993 also recognized the role of NGOs in promotion of human rights. This declaration insisted upon the cooperation of nations with the NGOs in creating favourable conditions for enjoyment of human rights.

The Protection of Human Rights Act under Section 12 (i) expressly provided the Commission to “encourage the efforts of non-governmental organisations and institutions working in the field of human rights”. This is a responsibility which

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<sup>53</sup> P. Sukumar Nair, *Human Rights in a Changing World* 35(Gyan Publishing House, New Delhi, 2011).

<sup>54</sup> S.N. Chaudhary, *Human Rights and Poverty in India: Theoretical Issues and Empirical Evidences*, Vol. 5, 216 (Concept Publishing Company, New Delhi, 1<sup>st</sup> edn., 2005).

Commission readily assumes, for the cause has much to gain both from practical help and from the constructive criticism that NGOs and the Commission can bring to bear in their mutual interaction and growing relationship.<sup>55</sup> To this end the Commission has, from time to time, invited leading human rights activists and NGO representatives for discussions and advice and sought their help in practical ways. In addition, in every visit to a State, the Commission has made it a point to benefit from experience and knowledge of NGOs, whose contacts at the “grass-roots” level give strength and meaning to the human rights movement where it matters most.<sup>56</sup>

## 6. Critical Evaluation

Constitution of India provides safeguards for the protection of human rights, however, for the effective implementation of the human rights Government of India has enacted the ‘Protection of Human Rights Act, 1993’, which provides for the establishment of the National Human Rights Commission, State Human Rights Commission in various states and also the Human Rights Courts at the district level and Indian judiciary is also working to protect the human rights of the people of India as well as to provide speedy remedy to the victim of human rights violation. Despite such efforts by the Government sought objectives have not yet been achieved due to the following reasons:-

- i. Though Constitution of India has enumerated various rights but there are large number of people who are not even aware of these rights guaranteed by the Constitution due to their vulnerable conditions and struggle of every day survival. These are the people who are mostly victims of human rights violation but they cannot think to approach court as they are more worried about their daily wages instead of protecting their basic human rights.
- ii. Though Constitution enshrined duties of the State under Part IV i.e. Directive Principles of State Policy to enacts laws and to work for the welfare of the people of India in various spheres whereas these directive principles are not enforceable in the Courts and one cannot approach court if the Government does not enforce these principles.
- iii. The Human Rights Commission is expected to be completely independent in its functioning. But there is no provision for the independence of the Commission. In fact, there are provisions in the Act which draw attention to the dependence of the Commission on the Government these are discussed as follow:-

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<sup>55</sup> *Supra* note 42.

<sup>56</sup> *Ibid.*

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- a) Commission is dependent upon the Government for its human resources for its functions as per Section 11 of the Act.
  - b) Finance is considered as the blood of an organization. Section 32 of the Act makes the commission dependent on central government for its finances as the section stated that “the Central Government shall pay to the Commission by way of grants such sums of money as it may consider fit”.
  - c) Human Rights commission is only fact finding body and it has got no power to adjudicate upon the disputed facts and also to issue any order to any party or government so as to be complied with.<sup>57</sup>The Commission’s findings are only advisory to the government. It is on the discretion of the government whether to accept or reject the findings and recommendations of the commission as there is no provision which makes the recommendations binding on the government.
  - d) Commission does not have power to constitute special investigation teams for purposes of investigation and prosecution of offences arising out of violations of human rights.
- iv. Unlike Supreme Court and High Courts Commission cannot inquire into any matter which is pending before state human rights commission or before human rights courts despite the gravity of matter concern as provided under Section 36(1) of the Act.
- v. Act has puts 1 year limitation period for seeking redressal of grievances before the human rights commissions. Human rights commissions cannot investigate an incident if the complaint was made more than one year after the incident as provided under Section 36 clause 2. Therefore, a large number of genuine grievances go unaddressed if victim fails to approach the commission on time due to whatsoever reasons.
- vi. It is not mandatory on the State government to established state human rights commission and human rights courts. Sections 21 provide “A State Government may constitute a body to be known as the..... (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, State Commission under this chapter”. Section 30 provide that “For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the 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.”

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<sup>57</sup> State of Karnataka v. Union of India and another, (1977) 4 SCC 608.



## 7. Conclusion and Suggestions

Human rights are basic fundamental rights which are integral part for the development of human being in the absence of which person cannot live life with dignity. Constitution of India protects the fundamental rights or human rights of the people, provisions for the same have been made not only in the Articles of the Constitution but in fact Preamble also talks about the fundamental freedoms and protection of the dignity of the individual. The Indian Judiciary had even relaxed the rule of *locus standi* for the protection of human rights which paved the way for the development of the concept of Public Interest Litigation. Through public interest litigation various incidents of violation of human rights had been put before the Courts. Courts protected the rights of women, workers, children, prisoners and so on. Thus judiciary is playing a role of savior of the human rights of the people so that each individual can live with dignity. Protection of human rights is important issue of concern throughout the world various international instruments have been incorporated for the protection of human rights and on the basis of the provisions of the international instruments, national endeavors have been made such as enacting the Protection of Human Rights Act 1993. Provisions have been made under the Act for the establishment of the National Human Rights Commission as well as State Human Rights Commission in various States and it also provides for the constitution of Human Rights Courts at the district level so that the justice can be provided to the victims of human rights violation at every level. Since the establishment of the National Human Rights Commission it has been playing a commendable task in protecting the human rights of the people and it also gave monetary relief to the victims and to their families. Although some amendments are necessary to be made in the Act and for the same some following suggestions have been made if such changes may be made then it can strengthen the position of the human rights commission and it would be possible to achieve the objectives of the Act easily.

- i. With regard to personnel and financial matters the National Human Rights Commission must be made independent body, as it has to look towards the Government. It should be provided with its own staff for investigation of cases instead of keep it dependent on police department and such other officials, as may be necessary for the efficient working of the Commission.
- ii. The National Human Rights Commission may be empowered to observe the decisions of the Supreme Court for protecting Human Rights and if there is any delay or failure in the implementation of such decisions, it can brought it before the Supreme Court of India for taking further adequate actions.

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- iii. Section 21(1) and Section 30 of the Protection of Human Rights Act, 1993 should be amended so to make it mandatory for the State Governments to constitute Human Rights Commissions at the state level as well to constitute Human Rights Courts at district level and further the jurisdiction of these courts as well as the procedural requirements should also be specified for the smooth and effective functioning.
- iv. Section 36(1) should be amended and to empower National Commission to take up or investigate any matter pending before any state human rights commission or human rights courts to provide speedy justice.
- v. The provision of 1 year limitation within which person can approach commission for redress of his grievances should be relaxed so as to enable such cases where complaint could not be filed before commission within period of 1 year due to unavoidable reasons or circumstances.
- vi. There should be a provision in the Act which specifically provide the time period with in which the decisions of the commission should be implemented by the concerned Government.
- vii. Provision can be made for the conduct of seminars in every district each month for educating people about their human rights and the protections granted by Constitution as well as under the Act of 1993.
- viii. The provision can be made for conducting of periodical survey. The periodical survey should be conducted for checking the progress in the field of the implementation of the provisions as well as in achieving the objectives of the Act.
- ix. The special cell can be established in every human rights court at district level where free legal aid should be provided to victims of human rights violation who due to their poverty and vulnerable conditions enable to approach court for the redressal of their grievances.
- x. The provisions for the grants to NGOs can also be made in the Act. Where in Government can promote the NGOs by giving funds to them who are working in the field of protection of human rights and duty should be confer on such NGOs for conducting seminars for educating people about the human rights and their protections.
- xi. In schools as well in colleges one compulsory subject can be introduce in which students may study about human rights.
- xii. The local offices in each state can also be established for the National Human Rights Commission for the convenience of the general public for speedy disposal of cases and to provide justice in time as it might not be possible for every person to approach the national human rights commission at New Delhi for seeking redressal of their grievances.