

International Journal of Legal Enforcement



Volume 1 Issue 1

|February 2021|

Email: editorialboard.ijle@gmail.com

Website: www.internationaljournaloflegalenforcement-ijle.com

About Us:

International Journal of Legal Enforcement is an online peer review journal provide dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative and desire of the young students. We also provide exclusive review by our Advisory Board for the papers submitted to us. We believe humanity is basic thing to be involved in any law. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. Law can be fulfilled as Law only when there is humanity in it.

With this thought we hereby present you,
International Journal of Legal Enforcement

THE CULTURE OF IMPUNITY AS REPUDIATING THE VIOLATION OF HUMAN RIGHTS

SEEBA RAMZANI. N

INTRODUCTION

The Propensity to articulate Human dignity of all being is a mechanism of norms and standards to protect, promote the Right of every human has been at most priorities of National and International Human Right Dimension. The idea of Human dignity was the basic initiative framework dragging from the history of humankind that exists in various form of religion. Human Right empowers individual as well as community to resolve their reformatory issues by peaceful means on the basic framework of Human Right with the Rule of Law. The declaration of Human Rights is guided by the holistic vision of Human Security in form of personal guide.

A DETRIMENTAL ISSUE FROM VIOLATION OF HUMAN RIGHTS

“A Human Rights for All”

-Vienna World Conference on Human Rights in 1993

The most visible means of Human Rights' violations are mostly by the actions of police and security force tortures, abuses, rape, life threatening prison conditions, extrajudicial killings is mostly in the states of Tamil Nadu, Uttar Pradesh and Haryana.¹ A total of 91887 cases were registered in the commission to provide remedies and disposal at the end of report period i.e., 2017 total cases remaining was 32,085.²

National Human Rights Commission got intimation to the cases relating to violation of 2194 whereas, 1974 cases were custodial death 220 cases of rape-death in station. Commission recommends monetary relief and compensation for the next kin of deceased or victim. The Section 12(1) of the Protection of Human Right Act 1993, the Commission has the right to encourage the efforts of non-governmental organizations working in the field of Human Rights. Awareness is better than prevention from violations. The Commission had facilitated a greater scope of interaction with core constituted NGO's in July 2001 for giving wider range of representation of Human Rights.

The Government failed to prevent the violation arising in wide range against religious

¹ INDIA 2018 HUMAN RIGHT REPORT

² NATIONAL HUMAN RIGHTS COMMISSION INDIA, ANNUAL REPORT, 2017-2018.

minorities and other marginalized communities despite on the recommendations made by various institutions and statutory bodies.³ Whereas, a report from United Nation Commission for Human Rights intimated on the situation of abuses of Human Rights in Kashmir in June and described impunity for the violators, quite distinct the government dismissed the report naming it “fallacious, tendentious and motivated”.⁴

COMING TO THE TERM WITH ATROCITIES: IMPUNITY FROM HIGHHANDNESS

The Idea of Human Rights emerged after World War II, from then to now violation exists. According to National Crime Record Bureau between 2010-2015, 519 people died in police custody. Most of them all police blame it to be out as suicide, medical illness or natural death. Moreover, not even a single police officer is arrested as against the cases. The Reason is continuing right of impunity as officials of government. To further curb the mechanism and develop the Human Rights by initiating various statutory bodies for upholding the upcoming crisis of society.

Neither it is a apathy of government to examine nor lack of strict accountability procedure restrict them from such violation but wholly state is responsible for the actions of its state person.

UNIVERSALITY OF CONTEMPORARY HUMAN RIGHTS:

“We cannot speak of universal right if there is no universal nature to which such rights attach. In turn, we cannot speak of universal human nature if there is no single end for human being”.

Most Human Rights in declaration have become erga omnes obligations and have effect over everyone. It is important to understand that universal declaration of Human Rights cannot mandate everything and ensure to give all the rights including fundamental rights. Individual have different varieties of obligations and needs. The very nature, there should be a personal autonomy where the individual can plan their actions and realize the rights thus the validity of human nature ipso facto guarantees the acceptance of Human Rights and freedom.

The conflict exists between encounter policy and Rule of Law resulted in varying dimensions of Human Rights in contemporary world and increasing the mere illustrative examples. Today as concern, Vikas Dubey gangster in Kanpur district as of 2020 he had over

³ www.hrw.org.world

⁴ <https://nhrc.nic.in/documents/sec-3-pdf>

60 criminal cases against him and he is the 119th accused to be killed in encounter since the Adityanath became the Chief Minister of Uttar Pradesh.⁵ Certainly the life sentence for a convict is 14 years but for the convict in Rajiv Gandhi assassination case convict Nalini. She was undergoing imprisonment for more than 24 year in Vellore jail as the fundamental right to live has violated even after her life imprisonment is over, she was first awarded death sentence confirmed by Supreme Court and Tamil Nadu government commuted her sentence under Article 161 of Indian Constitution on April 24, 2000 stating that nearly 2200 life convict who had served for 10 years of sentence and had been released by Tamil Nadu but in this case she has been making repetitive representation on premature release but the government has yet not decided on it.

MOUNTING OF HUMAN RIGHT ABUSES

Human Rights Violation reveals threat to Human Right framework and security as they are viewed as indicators in highhanded early warming mechanisms for conflict prevention. Therefore, Human Rights have perplexed role in conflict management they also been essential instrument of conflict prevention, peace building for democracy, They provide a base for addressing societal, economical, global problems through active participation with increased transparency and accountability to curb the issues. The Human Rights Council had reaffirmed the obligation of all states to promote and protect all Human Rights and fundamental freedoms reaffirming also that discrimination on the basis of sex is contrary to the charter of UN, universal declaration of Human Rights, convention on elimination of all forms of or against women and other international human right ministry, in 7/24 Resolution – HUMAN RIGHT COUNCIL.⁶

COUSTODIAL DEATH:

In 2015, National Human Right Commission received intimation on custodial death. Delhi Deepak Shukla⁷ 28, had died on 12th August. He was arrested on 22.3.13 and on 11.08.15 he got some injuries by the actions of co-prisoners with sharp objects and he was admitted in hospital. Where they declared brought dead by attending doctor. The commission on detailed examination and with consultation with state commission found that accused found dead marked with 18 visible injuries on post mortem reports but turning it into a different angle. It's a duty of the officials to protect and provide safety. Their negligence caused death. The Commission has further directed the Government of Delhi to give monetary relief for the

⁵“191 fake encounter in last 5 years, NHRC tells supreme court “The Times of India,5.12.2012

⁶ Annual Report of UNHCR, 2015, 24/16 Resolution.

⁷ Annual report 2017-2018, National Human Rights Commission India, case no:4533/30/9/2015)

negligence to the deceased kin.

Supreme Court passes a landmark judgement seeking detailed reports on alleged false encounter in Manipur 2012. The matter brought up by Human Rights law network for false encounter.

FALSE ENCOUNTER:

W.P.CRL 129 OF 2012, (EXTRA JUDICIAL EXECUTION VICTIM FAMILIES ASSOCIATION &ANRS VS UNION OF INDIA &ANRS)⁸

The statement of memorandum was prepared by civil society coalition on Human Rights and UN in Manipur compiled that 1528 people allegedly killed unlawfully by state security forces and not even a single was charged for killing innocent people.⁹ NHRC further recommended to compensate for the killed victims. In 2019, Brutal rape and murder of veterinary doctor Priyanka Reddy, the scars from Nirbhaya and kathua(8years old) did not fade away, though the justice found it's pray against Human Rights.

In case of Beniks and Jayaraj, the police had their own police procedure code instead criminal procedure and detained the accused killed, our concern is on the increasing tendency of government officials for custodial death, violators' regimes of certain political and governmental background get impunity. Even in today's contemporary world the courts have been showing increasing tendency to grant immunity in excessive force cases, results difficulty in upholding the cops but certain instance they are punished.

Though the requirement to be followed in all cases of arrest or detention as stated in **D.K BASU VS STATE OF WEST BENGAL**. But the reason for the crises is out of procedures that the officials procrastinated to obey. Efforts are enormous to deteriorate the violence normally unleashed against helpless poor in society.

A DECADE OF JUSTICE:

“NO ONE CAN BE THE JUDGE OF THEIR OWN PROSECUTION”

RAPE-DEATH:

On 14 February 2013 in Ramanathapuram, Tamil Nadu convicted eight police officers for illegal detainment and torture and subsequent death of Karuppi - a Dalit housemaid who was accused of theft.¹⁰ However, this case involved various degrees of abuses of power by various officials. The major drawback for such violation is threats to the people watch-eye

⁸ “Supreme court passes landmark judgement seeking detailed reports on alleged fake encounter”, <https://indiankanoon.org>doc,13.7.2016>

⁹ Detailed report on alleged fake encounter, <https://indiankanoon.org>doc>

¹⁰ www.peopleswatch.org>legal

witness from the accused official. Hence to eradicate the lack of accountability to provide high level protection for the eyewitnesses ensure through investigation by independent officials and promote unbiased but speedy trial without any procedural delays.

LAWS AND GUIDELINES RELATED TO SUCH VIOLATIONS

There is no definite and deliberate provision in Indian Law which authorizes the violations made by the police officials. However, there are certain provisions which are interpreted to vest the police officials with certain powers to deal with criminals.

In all of our police blame it for self-defense of the police officer under Section 96 of Indian Penal Code, every person has a right of private defense and nothing is an offence which is done in exercise of right of private defense with Section 300(3) Culpable homicides not murder if the offence being done by public servant on his duty.

SUGGESTIONS TO MITIGATE THE SCATHING FROM VIOLATION:

1. The role of society is vital in controlling or producing violations of Human Rights. They assist in identifying the issues in their particular locality, monitor them, and provide Human Right educations, training and development of their knowledge.¹¹ Human right educations should be given at elementary level in all stages of schools will help the literate students to know their rights in society to be part and parcel with it. Human Right Commission has to create awareness to the people at rural.
2. Human Rights Commissions has to establish regional level or intermediate level of state Human Rights heads to reach out the people in low drained areas so that each division will take up the particular surveillance of violation arising therein, will create a guideline for the officials as there is someone who deliberately, looking into the issues and monitor them with careful insight.
3. Provisions should be provided effective remedies to the victim for that a victim centered approach is required for prevention, and pro bono services for victim of human violation by NHRIs can assist in ensuring recommendation on the remedies and compensations under section 18 of protection of human right commission.¹²
4. There need to be a subsequent and constant monitoring of police personnel in there proceedings. Regular and systematic review of existing and proposed legislation for compliance with states Human Rights obligations is an important safeguard¹³. In spite of

¹¹ Mitchell and James I. McCormick, Economic and political explanations of human rights violations, 1988, jester journal.

¹² <https://pib.gov.in>newsite>mbErel>

¹³ Recommendation made by committee of minster of the council of Europe to member states on the verifications of compatibility of law, (2004)

existing procedure under CRPC and Constitutional safeguard, additional legislative procedure with internal department and transparency in conflict resolutions will help to reduce violation.¹⁴ International Human Right norms and standards should become a part of national legal system¹⁵.

PREVENTING FROM INSIDE AS HUMAN RIGHT EDUCATION:

The development of the present Human Rights Commission has designed to protect the social, natural rights of all being with the idea of two-fold. On the one hand we have legal mechanisms in forms of national and international instruments. On the other hand, increased emphasis in awareness by means of empowering victim rights over violation. Legal mechanisms alone are insufficient to bring any further changes in behavior and attitudes towards the International Humanitarian Laws, but with a review of such Human Right education with security personnel will achieve its objectives.

CONCLUSION:

There are enormous issues where the accountability of Human Right context is tested and the baffled neither it be an apathy of government to examine nor lack of strict accountability procedure restrict them from such violation but wholly state is responsible for the actions of its state person. Though the settled principle of law with administrative principle. The culture of impunity plays a dominant role towards the indiscipline issues but in every such conduct must be dealt with sternly and nipped out in bud. Government should ensure that there should no flagrant denial of Law and Human Right violation are indeed a natural feature of contemporary government, it need to be protected.

¹⁴ Response by Togo. See human rights committee general comment 31, para.13.

¹⁵ Response for human right council, thirteen sessions,2015