

Revisiting Human Rights in Contemporary India: *Status of Institutions and Trends in Cases*

Ashish Jha

Research Associate, Rajiv Gandhi National Institute of Youth Development, Tamil Nadu -602105, India

*Corresponding author: write2ashishjha@gmail.com

Received: 18-01-2020

Revised: 10-04-2020

Accepted: 25-05-2020

ABSTRACT

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination^[2]. The concept of human rights is not a very new thing for Indian civilization. At the same time, Indian society would have probably been one of the worst societies in the world practicing number of social evils degrading the life and value of human beings – like caste discrimination, *sati praththa* etc. Human rights in India underwent lot of ups and downs. Post-independence, most of the human rights as declared by UDHR were reflected as Fundamental Rights in Indian Constitution, which was adopted on 26 January 1950. Since then we have been seeing number of cases of human rights violations by the authorities. We also witnessed a number of historical judgements which further strengthened Human Rights in India. The last four years remained in news for various new trends in both – violations as well as strengthening of Human Rights in India. The paper attempts to outline such recent trends in last four years under the governance of right wing political party – Bhartiya Janta Party^[3] in India.

Keywords: Human Rights, Recent Trends, India, Violations

The values of visualizing “human” as core have been existing in Indian culture and civilization since ancient period. When we closely study the religious texts of Hinduism, Buddhism, Jainism, Islam etc., we could sense the essence of values and principles which are now called as Human Rights. For an example – non-violence, rule of warfare, *dharmshastra*, concept of existence of god in every human being, independent justice system and lot more. In spite of these ever existing values of human rights, we saw a number of social evil being practiced in our society which were degrading the value of human being. With passage of time from Ancient to Medieval period and then after the arrival of the British, India experienced lot of trends in human rights. As an

example, during the British colonial era, social evils like *Sati Pratha*, *Child Marriage*, *Prevention of Widow remarriage* etc were being ended, and thus safeguarding the human rights. And at the same time, freedom of expression, unlawful detentions, freedom of movements and lot of other things were being curtailed, and thus snatching the basic human rights. So, we can say that the status of human rights in India was always has two facets.

Post-independence, we became citizens of an independent republic. Our Indian constitution guaranteed some basic fundamental rights to us, which certainly has reflection of Human Rights as declared by UN General Assembly on 10th December, 1948. With adoption of Indian constitution 26th January, 1950, we

entered into a new era, where our basic human rights were guaranteed by the constitution and protected by the judiciary. In this era, we have witnessed many violations of Human Rights by authorities. At the same time, we also saw the judicial activism which always stood for people for their basic human rights.

In 1993, a major shift occurred in the way the Human Rights were being seen, with the constitution of National Human Rights Commission. Till now, the Supreme Court or High Courts were examining the cases of Human Rights violations on the basis of Fundamental Rights. Although It cannot be said that they were only limited to Fundamental Rights as mentioned in the Constitution. But now, we got an exclusive quasi-judicial body for or the protection and promotion of human rights, defined by the Act as “rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants.”^[4] It was followed by constitution of State Human Rights Commissions at state level. Since their constitution, these commissions, especially NHRC have been part of some landmark cases of Human Rights. But at the same time they remained under controversy and criticism for being pro-government bodies.

In recent times, under the ruling right wing political party, Bhartiya Janta Party government, right wing fundamentalist vigilantes have committed violence against religious minorities, marginalized communities, and critics of the government. The failure of authorities to investigate attacks, while promoting Hindu supremacy and ultra-nationalism, has further encouraged violence.^[5] On other side, Supreme Court rulings on some landmark cases strengthened fundamental rights, equal rights for women, and accountability for security force violations.

Objectives

- ❖ To study and analyze major cases of Human Rights violation in India since 2014.
- ❖ To examine various recent judicial pronouncements strengthening human rights in India.
- ❖ To study the current status of NHRC and State Human Rights Commissions.

Emerging Trends of Human Rights Violations

Cow Protection and Mob Lynching: “Calls for cow protection may have started out as a way to attract Hindu votes, but it has transformed into a free pass for mobs to violently attack and kill minority group members,” says Meenakshi Ganguly, South Asia director at Human Rights Watch.^[6] Between May 2015 and December 2018, at least 44 people – including 36 Muslims – were killed in such attacks. In most of the cases of such mob lynching, Police often stalled prosecutions of the attackers and blamed the victim only for his fate, while several BJP politicians publicly justified the attacks. In an incident, Jayant Sinha, BJP leader and Minister of State for Civil Aviation in the Central Government had welcomed seven cow vigilantes, convicted for lynching a Muslim meat trader in Ramgarh with garlands. In almost all of the cases documented, the police initially stalled investigations, ignored procedures, or were even complicit in the killings and cover-ups. “Police face political pressure to sympathize with cow protectors and do a weak investigation and let them go free,” said a retired senior police officer in Rajasthan. “These vigilantes get political shelter and help.”^[7]

Silencing Dissent: This is another rising trend of human right violation. Any voices which are critical to the government or the government policies, are being silenced by the authorities as well as fringe groups through various means. Students, activists, lawyers, lawyers, journalists, teachers, actors – anyone who criticises the government – is being targeted. The voices of dissent are suppressed by right wing fringe-groups through violence, threats, abuses, assassinations etc. We have seen the fate of prominent Kannada Journalist Gauri Lankesh, who was shot dead in Bengaluru. Rana Ayyub, Ravish Kumar, Barkha Dutt and other journalists invite lot of threats and abuses by criticizing and questioning the government. Even United Nations has expressed its concern by saying, “Governments also have a responsibility to build a safe environment for independent voices, including those of journalists critical of the authorities. We have previously urged the authorities in India to take active steps to reverse a political climate that, in recent years, has become increasingly polarised and hostile, especially to the

media and those exercising the freedom of expression.^[8] There is a massive surge in usage of sedition law (Section 124 A of IPC) by authorities to target the voices critical to the government. Supreme court guidelines on filing of sedition charges are being blatantly ignored by the police. India Today, a leading magazine in India, in one of its reports claims that as many as 179 people were arrested on the charge of sedition but only two were convicted during 2014 to 2016.^[9] Defamation cases have also been used by the authorities against journalists and media houses to suppress the words of criticism.

Crackdown on Activists: Recent years have witnessed the major crackdown by the government on Human Rights Activists and many rights groups through various means. The new trend has emerged as labeling the rights activists as Maoists or maoist sympathisers or Urban Naxals. On 28th August, 2018, Maharashtra state police had arrested Chhattisgarh-based human rights lawyer Sudha Bharadwaj, Maharashtra-based social activist Vernon Gonsalves, former secretary of People's Union for Democratic Rights (PUDR) Gautam Navlakha, Maharashtra-based activist Arun Ferreira, and Telangana journalist Varavara Rao for allegedly inciting violence in Bhima-Koregaon incident and their alleged nexus with Naxalites.

Fake News, Media Trial and Character Assassination: This has been evolved as one of the greatest threats for Human Rights in recent years. And the most striking features of these practices are that in most of the cases, people don't even realize that these are threats to their human rights. The instances of fake news have been increased drastically in recent years. Fake news can negatively impact the dignity of people concerned, as well as it can also cause threats to their lives. On June 8, 2018, two young men Nilotpal Das, 29, and his friend Abhijeet Nath, 30, were lynched by a mob in Panjuri Kachari village in Karbi Anglong district of Assam due to misjudgment or malicious information spread by fake news. This is not the single case of lynching on the basis of fake news. On July 1, five persons were beaten to death by a mob in Dhule, Maharashtra due to fake news only. The next modern way of human rights violation can be seen in TV debates or media trials. Even before police files a charge-sheet related to any case,

TV channels become desperate to declare the accused as guilty and start his/her character assassination and debate about what punishment he/she should be given. These media trials seriously deprive the accused person of Right to Fair Trial and even Right to Privacy. We have seen an example of Kanhaiya Kumar (Former President, JNUSU), when most of the pro-government news channels declared him as "Anti-National" and ran a lot of audio-visuals showing and calling him as "Deshdrohi". This created a narrative among the society, and he was attacked by fringe elements at many times. Such media trials seriously hamper the dignity of a human being. Unfortunately, such kinds of practices are going unnoticed as violations of Human Rights.

Extra-Judicial Killings: Fake encounters, arbitrary arrests, torture, and extrajudicial killings by Police and Security Forces continue to rise. On 22nd May 2018, Tamil Nadu Police opened fire against protestors, who were demanding for closure of Vedanta's Sterlite Copper plant in Tutcorin. At least 12 people including two women died of bullet wounds sponsored by the state government. Further, rampant incidents of encounters under the rule of Yogi Adityanath led BJP government in Uttar Pradesh raise the possibility of extra-judicial killings in fake encounters. In 2017, the UP police said that in six months of chief minister Yogi Adityanath's government, 420 encounters were conducted and 15 people killed. By 2018, UP police had conducted 1,038 encounters in which 32 were killed. The situation in Uttar Pradesh is so horrible that even United Nations officials have written to the Indian government with information about 15 cases of what could be extra-judicial killings by the Uttar Pradesh police. They have also taken note of 59 cases of possible fake encounters. "We are extremely concerned about the pattern of events: individuals allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture," said the UN experts.^[10] The saga of butchering of Human Rights by police forces does not stop here only. There is also a surge in custodial deaths in recent years. As per a report published by Asian Centre for Human Rights (ACHR)^[11], a total of 1,674 custodial deaths took place from 1 April 2017 to 28 February 2018, out of which, 1,530 deaths were in judicial custody and 144 deaths in police

custody. So on an average there were about 5 custodial deaths per day in the aforementioned time period. In many cases, NCHR took *suo motu* cognizance based on media reports, but those were not enough. Further, 184 people were killed in over 42 attacks in Jammu and Kashmir in 2017 by Armed forces with impunity. In a shocking move, the army gave a commendation to an officer who used a bystander as a “human shield” in order to evacuate security personnel and election staff from a mob in Jammu and Kashmir’s Budgam district in April 2017. These are not just few incidents, there is a long list of crushing of human rights by authorities.

Apart from the above five major types of Human Rights Violations, violence against women, harassment at workplace, communal and ethnical violence, and others were also seen on rise during current NDA government.

Recent Developments Strengthening Human Rights in India

Recognition the Rights of Transgender: On 15 April 2014, in a landmark decision in the case of NALSA vs. Union of India, the Supreme Court of India declared transgender people to be a ‘third gender’. The judgement affirmed that the fundamental rights granted under the Indian Constitution, will be equally applicable to transgender people. The court also asserted that transgender shall have the right to self-identification of their gender as male, female or third-gender.

Watershed moment for online free speech in India: The Supreme Court of India, in a famous Shreya Singhal vs. Union of India ^[12] gave judgement of immense significance in protecting online free speech against arbitrary restrictions. This case was related to online speech and intermediary liability in India, in which the SC struck down Section 66A of the Information Technology Act, 2000, which allowed arrests for objectionable content posted on the internet. The court declared the restrictions on online speech as unconstitutional on grounds of violating the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India. Unfortunately, still this section has continued to be used as a punitive measure against online speech in several cases especially for the voices critical of the government.

Right to Privacy as Fundamental Right: The supreme Court passed a historic unanimous judgment in Justice K.S. Puttaswamy (Retd) vs Union of India Case ^[13] on 24th August, 2017, by upholding Right to Privacy as Fundamental Rights. The Court said, “*The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.*”.^[14] This judgement would have a far reaching impact on human rights of Indians.

Gender Identity and Sexual Orientation: After the decades of struggle by activists, lawyers, and members of LGBT communities, Supreme Court struck down British-era section 377 of the penal code that penalises people for their sexual orientation. “Any discrimination on the basis of sexual orientation violates fundamental rights,” said Justice Dipak Misra (CJI), He further added “Social morality cannot be used to violate the fundamental rights of even a single individual... Constitutional morality cannot be martyred at the altar of social morality,”

Disability Rights: In the case of Disabled Rights Group vs. Union of India, Supreme Court passed a set of directions to ensure that universities and colleges have disabled-friendly campus and learning facilities. The court further directed to provide 5% reservation quota for persons with disability, which is mandated by Rights of Persons with Disabilities Act, 2016 ^[14]. This judgement will ensure ease of accessibility for disabled students in educational institutions.

Status of Justice System for Human Rights Violations

In the contemporary world, Human Rights violations are not uncommon. We have been seeing constant increase in Human Rights violation in recent years. Although Supreme Court of India as the ultimate protector of Fundamental Rights of Indian Citizen, has been doing commendable job. But it is not a hidden truth that formal judicial system India is overburdened which makes the judicial process very slower. That’s why there has always been a grave need for Human Rights courts in India. Although this aspiration of having a separate judicial body to hear the cases related to the violation of

Human Rights, have been fulfilled to a great extent by the Protection of Human Rights Act, 1993, which provides for constitution of National Human Rights Commission at central level and State Human Rights Commission at State level. But how far these quasi-judicial systems are effective and what are their current status can be understood better through following points:

National Human Rights Commission: In June 2016, the chairman of the NHRC and former chief justice of India, HL Dattu, described this institution as “a toothless tiger.” Further, in 2017, the Supreme Court of India while dealing with the alleged extra-judicial killings of 1,528 persons in Manipur by police and armed forces, held a similar view. The SC Bench comprising Justice MB Lokur and Justice UU Lalit, had observed, “Considering that such a high powered body has brought out its difficulties through affidavits and written submissions filed in this Court, we have no doubt that it has been most unfortunately reduced to a toothless tiger. We are of the clear opinion that any request made by the NHRC in this regard must be expeditiously and favourably respected and considered by the Union of India otherwise it would become impossible for the NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights in our country,”

As on 08th February, 2019, two out of four members to be appointed by the President of India is vacant. It shows government apathy towards NHRC. When we look on the NHRC performance in hearing and adjudicating on the cases of human rights violation, during last 12 months (Feb 2018 to Jan 2019), there were an average of 7415 cases registered per month. The NHRC disposed the cases at the average of 7788 cases (including previous backlog) per month and had an average pendency of 22899 cases per month. Following table shows the monthly data for the aforesaid period:

Table 1

Month and Year	New Cases Registered	Total Cases Disposed	Pendency Till Date
February, 2018	6239	6775	24437
March, 2019	6045	6280	25526
April, 2018	6323	6337	23783
May, 2018	7700	8770	24354

June, 2018	9537	8578	24712
July, 2018	9911	10419	24106
August, 2018	8437	9684	22282
September, 2018	6200	6210	22213
October, 2018	6294	7479	21158
November, 2018	6832	5980	20886
December, 2018	6636	6398	20920
January, 2019	8823	10541	20421

At the same time, one must appreciate the presence of NHRC in media for various interventions in the incidents of human rights violation. During these period the accessibility and effectiveness of NHRC have been on increase, thanks to its web portal which allows to lodge and track cases online.

State Human Rights Commissions: The situation of SHRCs are not healthy. During the study, it was found that SHRC of 11 states out of 25 are running without a regular Chairman. Also the posts of around 10 judicial members and one non-judicial member are lying vacant. This shows the clear apathy of state governments towards SHRC.

Table 2

SHRC	Post of Chairperson
Bihar	Acting Chairperson
Goa	Acting Chairperson
Jharkhand	Acting Chairperson
Kerala	Acting Chairperson
Madhya Pradesh	Acting Chairperson
Odisha	Acting Chairperson
Assam	Vacant
Andhra Pradesh	Vacant
Himachal Pradesh	Vacant
Karnatka	Vacant
Manipur	Vacant

Further, the case disposal ratio of SHRC is also pathetic. For an instance, from April 2018 to Dec 2018, Uttar Pradesh SHRC has received 22240 new complaints. The total disposal of cases during the same period were just 2839, leaving 19401 cases as pendency. This is not only with UPSHRC. Most of the SHRC websites do not even publish the statistics of the cases received and disposed, nor they give option for online complaint lodging.

CONCLUSION

The study shows that during recent times, the frequency of the incidents of human rights violations has increased in multifold. It cannot be denied that right wing fringe elements and ultranationalist have evolved as one of the major threats for human rights during these years. Lynching of unarmed people on the name of cow protection and lethargic action taken by the police against the culprits raises serious question on the intention of the government. Further, basic human rights like right to freedom of thought and freedom of expression have been under constant threat during recent times. Most of the media houses have been playing a draconian role in depriving Indians of their human rights like right to fair trial and right to privacy. The universal concept of “we’re always innocent till proven guilty” was seriously disregarded by the major media houses. Apart from some new patterns of human rights violations, tradition cases like extra-judicial killings by Army, Fake encounters, child abuse, crime against women etc were kept coming as earlier. But lot of good things also happened during this period, thanks to the Supreme Court of India. Landmark judgements related to transgender identity, decriminalization of same sex (LGBTQ) and right to privacy further strengthen the core values of human rights in India. This period also saw some historical judgements regarding women- like declaration of the practice of triple talaq as unconstitutional and allowing entry of women in religious places where their entrance was prohibited earlier. These judgements uplifted the dignity of women and ensured the gender equality. To check the increasing number and changing nature of human rights violation cases, India needs a robust Human rights courts. The current arrangement of quasi-judicial bodies, NHRC at central level and SHRC at state level, does not seem as effective as it should be. The government, both central as well as state, attitude towards these statutory bodies is not appreciable. Most of the SHRC are working without a chairperson. Although NHRC has been doing commendable job in all odd circumstances, but the situation of SHRC is horrible. There is a greater need of awareness as well as sensitization among the society on human rights. NHRC and SHRC should not act only as a judicial body to hear

cases of violations, but they should work on pro-active measures to check the increasing numbers. They can engage civil societies at various stages for this purpose.

REFERENCES

1. Human Rights. (n.d.). Retrieved February 16, 2019, from <http://www.un.org/en/sections/issues-depth/human-rights/>
2. P. (2017, May 12). Left, Right and Centre of Indian politics. Retrieved from <https://www.oneindia.com/india/left-right-and-centre-of-indian-politics-2433728.html>
3. Section 2(1)(d), The Protection of Human Rights Act, 1993, As Ammended by the Protection of Human Rights (Ammendment) Act, 2006- No.43 of 2006.
4. India. (n.d.). Retrieved January 12, 2019, from <https://www.hrw.org/india>
5. Meenakshi Ganguly, Human Rights Watch, World Reports 2019
6. India: Vigilante ‘Cow Protection’ Groups Attack Minorities. (2019, February 19). Retrieved from <https://www.hrw.org/news/2019/02/18/india-vigilante-cow-protection-groups-attack-minorities>
7. GENEVA (24 May 2018) UN experts call on India to protect journalist Rana Ayyub from online hate campaign | <https://www.ohchr.org>
8. Sandhu, K.K. (2018, July 18). Exclusive: MHA data shows only 2 convicted under sedition law in 3 years. Retrieved from <https://www.indiatoday.in>
9. India: UN experts alarmed by alleged police killings in Uttar Pradesh. (2019, January 11). Retrieved from <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24066&LangID=E>
10. A. (2018). Torture Update: India - A publication of Asian Centre for Human Rights (p. 4, Publication). doi:<http://www.achrweb.org/wp-content/uploads/2018/06/TortureUpdateIndia.pdf>
11. Shreya Singhal v. Union of India” (PDF). <http://supremecourtfindia.nic.in>. Retrieved 16 January 2019. AIR 2015 SC 1523, Supreme Court of India.
12. Justice K.S. Puttaswamy (Retd) vs Union of India (August 24, 2017) WRIT PETITION (CIVIL) NO. 494 OF 2012. Retrieved 16 January 2019. (https://www.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf).
13. <http://disabilityaffairs.gov.in/upload/uploadfiles/files/RPWD%20ACT%202016.pdf>