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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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# **REMEDIES AGAINST VIOLATION OF** **HUMAN RIGHTS**

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## **Introduction**

In essence, human rights are the basic rights that each human being is entitled to by virtue of his birth into the human race. Human beings possess it regardless of their nationality, religion, language, sex, color, or any other factor. Human Rights are defined in the Protection of Human Rights Act, 1993 as follows: "Human rights" are those relating to life, liberty, equality and dignity of the individual, guarantees or enshrined in the Constitution or contained in international treaties enforceable by Indian courts.

Human rights protection is imperative for the development of the people of the country, which, in turn, leads to the development of the country as a whole. India's Constitution guarantees basic human rights to each and every citizen. While drafting the Constitution, the framers made every effort to include the necessary provisions. With all the constant changes taking place, the scope of human rights has also expanded. Parliamentarians are now playing an increasingly important role in recognizing the rights of people, enacting statutes, amending provisions, etc.

## **Defining 'Human Rights'**

The United Nations, founded after the Second World War, adopted the Universal Declaration of Human Rights in 1948, which outlines the fundamental rights of every individual and declares them a universal standard. Over the years, more than a dozen global treaties as well as a number of regional agreements have shaped human rights ideals. By ratifying these treaties, a government becomes legally obligated to protect human rights.

Human rights treaties include the following:<sup>1</sup>

- Under the International Covenant on Civil and Political Rights, citizens are primarily protected from the abuses of state power. These include the rights to life and liberty, fair trials, protection against torture, as well as freedom of expression, religion, association, and peaceful assembly.
- As part of the International Covenant on Economic, Social, and Cultural Rights, governments must utilize all available resources to gradually attain economic, social, and cultural rights, including rights to housing, education, and health.

### **Major types of Human Rights violations**

Discrimination based on caste:

There were more than 56,000 crimes committed against scheduled castes and scheduled tribes in 2015. Among these were denying Dalits entry to social and public spaces, the report said.<sup>2</sup>

Freedom of association:

The government cancelled the registrations of several civil society organizations, which specifically prevented them from getting foreign funding, even after the UN claimed that this was not in compliance with international law.

Freedom of expression:

A number of people were arrested under sedition laws for expressing their disagreement with government policy. Even people who posted on Facebook were arrested.

Violence against women:

The year 2021 saw more than 32700 crimes committed against women. Many of these crimes occurred within marginalized groups.

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<sup>1</sup> Laitonjam, Reena . International bill of human rights. South Asia Politics. (2008) Vol.7(3): 42-46p.

<sup>2</sup> 'Dalit Rights Are Human Rights': Caste Discrimination, International Activism, and the Construction of a New Human Rights Issue. Human Rights Quarterly. (2007 Feb.) Vol. 29:167-93p.



Children's rights:

Compared to the previous year, crimes against children increased by 5% in 2020. In response to an amendment in a child labour law by the Parliament that allowed for some exceptions, child rights activists expressed concerns that it would adversely affect marginalized groups and girl children.<sup>3</sup>

## **Role of Judiciary**

The Judiciary is considered an independent branch of government in our country. Two rules govern this independent judiciary:

1. The traditional role i.e. to interpret the laws, and
2. Activism in the Courts, i.e., going beyond the statutory requirements in providing justice. These are both important roles that should be performed properly to protect fundamental rights.<sup>4</sup>

Those who have had their fundamental rights violated can direct a motion to the Supreme Court. The Supreme Court and High court can issue writs to the government for the enforcement of rights.<sup>5</sup>

The Supreme Court ruled in *S.P. Gupta v. Union of India and others* that any member of the public can approach the court to enforce the constitutional and legal rights of those who are unable to go to court due to poverty or other disabilities. A person could even write a letter to the court to file a complaint about a violation of their rights. Public interest litigation provides an opportunity to make basic human rights meaningful to the community's most disadvantaged and vulnerable members.

In the case of *People's Union for Civil Liberties (PUCL) v. Union of India*<sup>6</sup> the Supreme Court released child laborers and also ordered for grant of compensation to them. The Supreme Court's

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<sup>3</sup> Naidu, M. Chinnaswamy and Ramaiah, K. Dasaratha. Child labour and human rights: A case study. PRP Journal of Human Rights (2005 Oct-Dec) Vol. 9(4): 8-11p

<sup>4</sup> Kaur, Harinderjit. Protection of human rights through judicial activism in India. South Asia Politics. (2008) Vol.7(8): 29-32p

<sup>5</sup> Sorabjee, Soli. Human rights jurisprudence of the Supreme Court of India. Supreme Court Cases. (2009) Vol.3: 26-31p.

<sup>6</sup> (1998) 8 SCC 485

concern for the protection of children's rights did not end there; in the case of *Bandhua Mukti Morcha v. Union of India*<sup>7</sup>, it reiterated the importance of compulsory primary education in relation to the abolition of child labour.

A landmark decision in *D.K. Basu v. State of West Bengal*<sup>8</sup> protected prisoners' rights and established various guidelines for arrest and detention to prevent custodial violence, observing that the right to life includes the right to live with human dignity. Similarly, in *Sheela Barse v. State of Maharashtra*<sup>9</sup>, the Court addressed the issue of mistreatment of women in police stations, and the Court established various guidelines for the protection of women's rights in custodial/correctional institutions.

In the *Vishakha*<sup>10</sup> case, the Supreme Court established some guidelines for dealing with sexual harassment of women at work, pending formal legislation. Some of these guidelines are as follows – It is the responsibility of the employer or other responsible persons in the workplace and other institutions with female employees to prevent sexual harassment. Courts also issued guidelines to all employers, public and private, on how to take preventative measures.

In *Smt. Selvi vs. State of Karnataka*<sup>11</sup> it was held that the DNA test does not violate Article 20(3) of the Constitution: In the amended explanation to sections 53, 53-A, and 54 of the CrPC, the DNA profiling technique has been expressly included among the various forms of medical examination. A DNA profile is distinct from a DNA sample obtained from bodily substances. The use of material samples such as finger prints for comparison and identification does not constitute a testimonial act or compulsion under Article 20(3) of the constitution. As a result, in the Indian context, taking and retaining DNA samples that are in the nature of physical evidence is not subject to constitutional challenges.

Judiciary has played a crucial role in the protection of the human rights by expanding the scope of the human rights and recognizing new rights with the need of time.

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<sup>7</sup> 1984 SCR (2) 67

<sup>8</sup> AIR 1997 SC 610

<sup>9</sup> 1983 SC 378

<sup>10</sup> (1997) 6 SCC 241

<sup>11</sup> AIR 2010 S.C. 1974

## National Human Rights Commission

The functions of the National Human Rights Commission are specified in Section 12. According to Section 12, the Commission performs the following functions: -

- a) Inquire into cases of human rights violations on his own initiative, on the basis of a petition presented to him, or on the direction of the Court.
- b) With the approval of the court, intervene in any proceeding involving any allegation of violation of human rights that is pending before it.
- c) Visit any jail or other institution under the control of the State Government where persons are detained or lodged for treatment, reformation, or protection, to study the living conditions and make recommendations to the Government;
- d) Conduct a systematic review of the government's human rights policy in order to identify gaps in human rights observance and suggest ways to improve. The National Human Rights Commission has been carrying out this task by commenting on draft laws, drawing the attention of the Government to gaps in existing legislation, and developing a human rights policy for the nation based on local needs.
- e) Examine the factors, including terrorist acts that impede the enjoyment of human rights and recommend appropriate corrective measures.
- f) Research human rights treaties and other international instruments and make recommendations for their effective implementation.
- g) Conduct and promote human rights-related research.

In *Ram Deo Chauhan vs. Bani Kant Das.Denial*<sup>12</sup> Supreme Court held that denial of legal benefits constitutes a violation of human rights: If a person is entitled to a benefit under a specific law and that benefit is denied to him, this constitutes a violation of human rights under the provisions of Sections 2(d) and 12(j) of the Protection of Human Rights Act, 1994.

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<sup>12</sup> AIR 2011 SC 615,

## **Challenges**

The act establishes a one-year time limit for filing grievances with human rights commissions. According to Section 36 clause 2<sup>13</sup>, human rights commissions cannot investigate an incident if the complaint is made more than one year after the incident. As a result, a large number of legitimate grievances go unresolved if the victim fails to approach the commission on time for whatever reason. The Human Rights Commission is only a fact-finding body with no authority to rule on disputed facts or to issue orders to any party or government that must be followed. The findings of the Commission are only advisory to the government. Because there is no provision that makes the commission's findings and recommendations binding on the government, it is up to the government to accept or reject them. The Commission lacks the authority to form special investigation teams for the purpose of investigating and prosecuting offences arising from violations of human rights.

## **Way Forward**

The judiciary has enormous powers to regulate managerial operations when they infringe on subjects' constitutional rights or go against the soul of our country, the Indian Constitution. It ensures the Rule of Law as well as proper checks and balances between three spheres of government. The logic of writs is closely aligned with our Constitutional provisions to ensure that the rights of nationals are not suffocated by authoritative decisions of the executive. Every commission established by the government exists to serve the people and maintain public law and order, and the NHRC is no exception. It has, till date, dismissed a large number of complaints concerning reported human rights abuses. Part III of the Indian Constitution is known as the "Magna Carta" of India. In India, the judiciary plays an important role in defending human rights. The Indian Courts have now become the courts of the poor and struggling masses, with their doors open to the poor, the ignorant, the illiterates, the oppressed and the have-nots.

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<sup>13</sup> Universal Declaration of Human Rights <http://www.un.org/Overview/rights.html>