

## AN ANALYTICAL RESEARCH ON HUMAN RIGHTS VIZ A VIZ FUNDAMENTAL RIGHTS IN INDIA

Written by *Dr Baloy Bhattacharjee*

*Assistant Professor (HoD), Arunachal University of Studies, Namsai, Arunachal Pradesh,  
India*

---

### ABSTRACT

Human rights are the rights relating to overall development of every individual. Every citizen as well as non-citizens carries their rights wherever they go. Simultaneously human rights are essential for the overall development of every individual. In the constitution of India various provisions are there that reflect the basic rights which are also known as fundamental rights. But the thing is that there are some specified as well as some unspecified fundamental rights. But the most important thing is that in India there is Protection of Human Rights Act, 1993 with an objective of protecting human beings from violations of Human rights to prevent and punish any gross violation on human rights. India is the largest democracy of the world. Being a democratic country we have to protect our basic rights of the people. Government of India has also given due consideration to the recognition and protection of human rights. The Constitution of India recognizes those rights of the people and yields them for every individual's concern. Then also violation of Human rights still exist by other forms like forced labour, forced prostitution, immoral trafficking, low wages, gender discrimination etc.

**Keywords:** Human rights, fundamental rights, Forced Labour, gender discrimination, immoral trafficking etc.

## INTRODUCTION

Today the dimension of Human rights is becomes vaster than the earlier day. Today we include basic rights as human rights as without those rights no one can exist in the present society. In a biggest democratic society like India the human rights are prevailed in our constitution by the term fundamental rights and in some other related articles. On the basis of those articles we enact some legislations those are included in recent days like forced labour, gender discrimination, immoral trafficking, death behind the bar, death in judicial custody, and some other attracted area. Being a signatory India enacts an Act called Protection of Human Rights Act. Thing is that the whole study is based on doctrinal analysis based on various articles, journals, books and some other related material based on human rights violation and related material. Regarding this the essentialities are depends upon basic rights enshrined in the constitution of India. The fundamental rights are become very much essential ingredient to maintain our life. It is not only specified in our constitution but also in UDHR'S, ICCPR'S and on various conventions or protocols, those are mentioned. In this light India takes various crucial steps to uplift the status of citizen in India. The UDHR's plays a significant role of its own, though in earlier time in the year 1920 ILO initiated the conventions on the rights of workers like on the basis of abolition of forced labour and forming unions and organizations to resolve disputes and most of the countries framed a legislation in this regard.

## AIMS AND OBJECTIVES OF THE STUDY

The study based on a critical analysis on various issues based on gross violation of human rights. In this regard the following objectives are taken under consideration:

1. To study the impact of establishment of protection of Human Rights in India
2. To study constitutional framework for right to education and other relevant legislation on Human Rights in India
3. To study the different government approaches to protect human rights violation against individuals in India.

## RESEARCH METHODOLOGY

The whole work is based on doctrinal research study. Where the researcher tries to find out the source of human rights in India and also tries to compare the international instruments with our present mechanisms. The researcher also goes through various journals books and magazines and various judicial pronouncements to find out the laws prevailing in India. The study is evaluated on the basis of reviewing various articles and books and no primary sources are used to find out the outcome. Descriptive analysis is the key tool used to evaluate and analyze the thought relating to Human rights in India.

## REVIEW OF LITERATURE

In a brief lecture on "Human Rights in Constitution of India"<sup>i</sup> the respected speaker tries to highlight about 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<sup>ii</sup>. According to Aristotle, State came into existence out of basic necessities of life and continues for the sake of good life simultaneously, Locke was of the view that end of state is to remove the obstacles that hinder the development of an individual. Thus, the existence of the state is recognized with the protection of rights and liberties of individual which is the main object of state<sup>iii</sup>. 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. Every 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.<sup>iv</sup> Human rights are also named as basic rights, fundamental rights, natural rights or inherent rights. The concept of human right is not a new occurrence. 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, those rights are also includes civil rights, liberties and social cultural and economic rights. The researcher also mentioned 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.

Human Rights in India: Historical Perspective<sup>v</sup>, in this article the researcher highlighted on the history of human rights is contemporary to the development and evolution of early man. The concept of human rights as it is understood today has evolved over the centuries ago. The researcher also explained that the concept of human rights from a historical perspective, it would be seen that it is neither entirely western nor so modern, rather it is the crystallization of values that are common heritage of mankind. According to him Kautilya in his famous and immortal work "Arthashastra" has defined and described the human rights of war prisoners. The human rights were reformed to as civil rights, political rights, personal rights, legal rights, natural or divine rights, economic and social rights in ancient period. Hence, there is a variety of expression, like 'inherent rights', 'natural rights', 'inalienable rights', 'basic fundamental rights', which are interchangeable terms to express the rights that a human being possess. The concept of human rights was first, reflected in ancient Greece and Rome, where it was closely tied to Pre-modern natural law doctrine of Greek stoicism. The Greek idea of divine law and freedom and the practice of Roman law are at the heart of today's ideas of human rights. According to him during the 18th Century, the so called Age of Enlightenment, a growing confidence of human reason and of course, the perfection of human affairs led it to become more comprehensive one. At the same time John Locke in England, Montesquieu Voltaire and Jean Jacques Rousseau in France and others supported tried to prove the superiority of natural law. The doctrine of natural rights influenced the English, French and American Revolutions. The researcher also mention an another live examples of England glorious revolution 1688 and resulting Bill of Rights on 1689 as well provided rationale for the wave of revolutionary agitation which influenced the West, most notably in North America and France. Certain historic texts like Pennsylvania Declaration (1776) American Declaration (1787) French Declaration (1789) reflected the intellectual milieu of the contemporary socio-political situations spawning the struggle against political absolutism. In the words of Maurice Cranston, a leading human rights scholar, it is evident that these struggles took place because the absolutism promoted men to claim their rights which were denied to them. All those revolutions

laid the foundation of human rights. In fact, Henry David Thoreau was first philosopher to have used the term "human rights" in his treatise; civil disobedience, which influenced Leo Tolstoy, Mahatma Gandhi and Martin Luther King to develop and propagate the concept of non-violent resistance to unethical governmental actions. Mahatma Gandhi said: "respect of one, equally applies to the whole universe. All mankind in essence are alike, what is therefore possible for one is possible for everybody." The horrors of the Second World War led to the birth and recognition of the modern human rights movement in the international sphere. President Roosevelt's proclamation in 1941 the four freedoms of speech and expression, of belief, freedom from fear and want- as universally acceptable set of standards, along with the works of NGO's were some of the significant developments in this directions. But it was the establishment of the United Nations in 1945, and the subsequent international concern for the commitment of human rights that widened the scope of this movement. A cornerstone of this post war human rights regime was the Universal Declaration of Human Rights (UDHR) which was adopted on 10th December, 1948, which is commonly known as "Human Rights Day". The sources of this Declaration owe much to the English<sup>vi</sup>.

V. Sharma, "Forces deploy 1 million to guard Kashmir Valley,<sup>vii</sup>" in this article the writer discuss about some incidences and highlighted near about 9.5 lakh personnel from the Army, various paramilitary units and special forces, besides the Indian Air Force, are guarding every inch of the Kashmir Valley amid heightened tensions between India and Pakistan in the aftermath of the scrapping of Article 370. He also mentioned While a majority of forces were already stationed in the Valley, the Centre, in the past month, has deployed over 1.75 lakh additional forces — which is unprecedented in the history of Jammu and Kashmir. Besides the massive troop build up, all the forces put together have flown in at least 100 doctors to cater to medical emergencies among soldiers and have stocked up on medicines and rations, which would last easily for the next three to four months. The doctors include specialists like cardiologists, neurosurgeons, general physicians and pathologists. Several dozen vehicles have been rented by the Jammu and Kashmir police to ferry soldiers, besides pressing into service more military vehicles to facilitate travel in the interior areas of the Valley, particularly in the troubled hotspots of South Kashmir.<sup>viii</sup>

During this tenure most shops are shut and locals confined within the four walls of their homes, outside on the streets it is only a sea of soldiers, covering every nook and corner of the Kashmir Valley, with officials describing preparations as “warlike”. Top security establishment sources told this newspaper that the biggest deployment, in terms of numbers, is that of the CRPF. In the Kashmir Valley alone, besides the regular deployment of 60 CRPF battalions, that roughly translates into nearly 60,000 men (each battalion has close to 1,000 personnel), the Centre had deployed an additional 40,000 personnel, which takes the deployment of CRPF personnel to about one lakh personnel. Likewise “About 10 battalions (10,000 men) had arrived a month ahead of the Amarnath Yatra to sensitise the route and guard it which continued till it abruptly came to an end, days before Centre scrapped Article 370. They have been redeployed in different parts of the Valley. Besides, 30,000 additional troops were sent to the Valley in the days leading to the Centre’s announcement on August 5,” a CRPF official said.<sup>ix</sup>

Besides the Army and the paramilitary the Jammu and Kashmir police, whose total strength is about 83,000 personnel. While they are spread across J&K, the police too have its own Special Operations Group (SOG), who assists in counter-insurgency operations in the Valley. Not only these sources said that though NSG commandos have always been made available in the Valley for operations, their strength too has been hiked in the past month in view of the announcement made by the Centre. “Wherever required, the NSG commandos and the Rashtriya Rifles are working in coordination,” a senior security official said. “It looks like the massive deployment will continue till the elections are completed here, or even beyond that. The situation now is volatile, and by the end of October the two UTs will formally come into existence. Thereafter, the Centre might go in for polls. So there is uncertainty over how long this huge deployment will remain in place,” a senior government official said. Here the existence shows that to protect the rights of every individual the government may take extreme efforts but simultaneously the efforts may go against to avail some human rights. Reason of that we can’t say that a gross human rights violation is there.

In the Human Rights Education in India<sup>x</sup> the researcher triggered on another vital point of view that is related to right to education for children under Article 21A of the Constitution by the Eighty-Sixth Constitutional Amendment Act, 2002. He also highlighted that India thus became

one of the few countries in the world where the right to education is a fundamental right. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) guarantees the right to free and compulsory education to every child between 6 and 14. The RTE Act, although progressive, is not accompanied either by a well laid-out implementation mechanism of the law or by a financial memorandum. Therefore, its implementation remains a challenge because of inadequate financial allocations and lack of effective enforcement mechanisms. While the Act does have provisions stating that the local authority may take up a complaint, it ignores the fact that this very local authority is also an implementing functionary. Till to date, only 17 states have prepared drafts of their state rules on the Act but are yet to notify them. This paper mainly focused on Human rights education in India, constitutional framework regarding human rights education in India

In the article Human Rights and Ancient India <sup>xi</sup> the researcher highlighted various innovative thought relating to Human Right as a word was not framed by ancient Indians but the content of current Human Rights was included in the ancient Indian education pattern in gurukul and ashrams. Ancient India recognized the supreme value of moral education in human life. He also highlighted about the ancient thinkers who felt that a healthy society was not possible without morally educated individuals. To ensure education they framed an educational scheme carefully and wisely aiming at the harmonious development of the mind and body even moral education is one of them that bound the students and those becoming the adult to run their life according to rules framed and provided by the gurukulas, ashramas and societies.

## **CONCEPT OF HUMAN RIGHTS AND ITS ORIGIN AND DEVELOPMENT IN INDIA**

The term human rights have been defined various times in several documents. One of most important explanations from those are as defined by OHCHR:<sup>xii</sup>

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated,

interdependent and indivisible.<sup>xiii</sup> Or in the UN Charter in 1945 affirmed faith in the fundamental human rights and appointed a Commission on Human Rights under Mrs. E. Roosevelt. This declaration was the outcome of the latter's deliberations A.A. Said aptly remarked 'The concept of Human Rights may be difficult to define but impossible to ignore. The Human Rights are concerned with the dignity of the individual—the level of self-esteem that secures personal identity and promotes human community.'<sup>xiv</sup>

The thought of Human rights are not a new thought rather an ancient thought, like Buddhist concept of non-violence in deed and humanitarian doctrine of third century B.C. Jainism too contained similar doctrines. According to the Gita, the person he who has no ill will to anyone, who is friendly and compassionate, who is free from egoism and self-sense and who is positive minded in pain and pleasure and passionate is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness- the qualities that a good human being ought to have. The historical account of ancient Bharat proves beyond doubt that human rights were as much obvious in the ancient Hindu and Islamic civilizations as well as in the European Christian civilizations. Ashoka, the prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights. The modern version of human rights jurisprudence may be said to have taken birth in India at till time of the British rule. When the British ruled India, resistance to foreign rule manifested in the form of demand for fundamental freedoms and the civil and political rights of the people; Indians were humiliated and discriminated against by the Britishers. The freedom of movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms. Lord Macaulay rejected the ancient Indian legal political system as dotages of Brahmanical superstition, and condemned ancient legal heritage and its inner core as an immense apparatus of cruel absurdities. Lord Wellesley condemned the Indians as vulgar, ignorant, rude and stupid and Lord Cornwallis described as an axiom that every native of Hindustan is corrupt. The English East India Company debarred Indians from high offices and deprived them of their political, social and economic rights. Simultaneously, the idea of human rights was deep rooted by means of basic rights and freedoms in landmark developments in



Britain by means of Magna Carta of 1215, the Habeas Corpus Act of 1679, and the Bill of Rights 1689.

Due to immense violation Mahatma Gandhi take the initiative under his leadership and introduced his non-violence struggle to achieve self-government and fundamental rights for ourselves. Lokmanya Tilak is one of them who advocated that freedom was the birth right of Indians for which we will have to fight. It was because of the rigid opposition from the people of India that the Charter Act of 1813 was enacted to promote the interest and happiness of the native inhabitants of India. Similarly, the Government of India Act, 1833 was passed to allow the Indians to enjoy some political rights. The proclamation of Queen Victoria on 1 November 1858 contained some principles of state policy, which were similar to fundamental rights in nature. The concrete demand for fundamental rights came logically in the wake of the nationalist movement, which coincided with the birth of the Indian National Congress in 1885. The Constitution of India Bill 1895 known as the Home Rule Document prepared by the Indian National Congress lined up the way for constitution guaranteeing every citizens for basic human rights like freedom of expression, right to property and equality before law and obviously the right to life. Beside those in the Government of India Act, 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in public services. Now we can see the thing in our constitution by means of fundamental rights or we can say it Natural rights or Basic human rights. The judicially enforceable fundamental rights which include all determining civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the 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 and also the right to education under Article 21A and obviously right to equality and personal liberty under Article 21.

## **HUMAN RIGHTS IN INTERNATIONAL SCENARIO**

The International Bill of Rights When a State becomes a party to an international human rights treaty; it assumes obligations and duties under international law to respect and protect human rights and to refrain from certain acts. Three of the most important international instruments

pertaining to human rights are collectively known as the International Bill of Human Rights, those are as:

1. The Universal Declaration of Human Rights (UDHR)
2. International Covenant on Civil and Political Rights (ICCPR)
3. International Covenant on Economic, Social and Cultural Rights (ICESCR)

### ***Universal Declaration of Human Rights Background***

In the aftermath of World War II, Eleanor Roosevelt spearheaded the U.S. involvement in the creation of the United Nations, as well as the drafting of the Universal Declaration of Human Rights (UDHR). Eleanor Roosevelt's diplomatic efforts with the Soviet Bloc countries in particular assisted greatly in the final acceptance of the UDHR. On December 10, 1948 the United States voted in favor of the resolution to adopt the Declaration before the United Nations General Assembly. As the cornerstone of the international human rights movement, the UDHR was drafted as 'a common standard of achievement for all peoples and nations.' It was the first time in history that one document designated the basic civil, political, economic, social and cultural rights to which all humans are entitled. It has since been widely accepted by the international community as the fundamental standard of human rights that all States should respect and protect.<sup>xv</sup> Legal Force Many scholars assert that all of the rights enumerated in the UDHR have become customary international law. Unlike other non-binding international human rights declarations, the UDHR is so broadly accepted around the world that it established common human rights norms. Virtually every international human rights instrument references the UDHR, as do many declarations adopted unanimously or by consensus by the U.N. General Assembly.<sup>xvi</sup>

Nevertheless, others have argued that, while certain of the rights identified in the UDHR may constitute customary norms, other rights, especially certain economic and cultural rights, have not achieved this same status.<sup>xvii</sup> Article 7 provides Equality before law and prohibition of discrimination, under Article 3 provides Protection of Life and personal liberty simultaneously Article 4 provides protection of slavery and forced labour then Article 9 highlighted about right against arbitrary arrest and detention whereas equality of opportunity describes about Article

21(2) in Article 20(1) peaceful assembly and Article 23(4) is about freedom to form associations or unions.

***International Covenant on Civil and Political Rights (ICCPR)<sup>xviii</sup>***

The ICCPR prescribes certain conduct to protect civil and political rights of individuals or groups. It is important to remember that civil rights and political rights are guaranteed by the welfare states. Being a welfare state India also guaranteed those rights to protect the rights of every individual. According to this Articles 6 that provides for a person's "inherent Right to life", and requires the same to be protected by the law. It states that this is the most supreme right, and no derogation of this is ever possible. It doesn't prohibit death penalty, but restricts it to the most serious crimes.<sup>xix</sup> Then Article 8 which Prohibits slavery and forced labour. In relation to Right to Liberty and security of a person Article 9 assure the people arrested recourse to courts and a fair trial for curbing their liberty and lastly Article 11 Prohibits the use of punishment for breach of contract. In relation to Procedural fairness and rights of an accused Article 14 provides for a fair trial to everyone also provides for other rights of the accused in a trial i.e. presumption of innocence, forbids double jeopardy, right of the accused to appeal in a higher court, right to be protected against self-incrimination and fair and speedy trial. Whereas, Article 15 prevents prosecutions under Ex-post facto law and imposition of retrospective criminal penalties, and requires imposition of lesser punishment where criminal sentences have changed between the time of commission of crime and the date of the judgment and Article 16– requires the state to recognize everyone as a person before the law. Relating to individual Liberties at the same time Article 12 provides for freedom of movement, including the right of persons, Article 13 Forbids arbitrary expulsion of resident aliens, Article 17 mandates the right of privacy, the article also protects people from unlawful attacks to their honor and reputation, Article 18 is about freedom of religion and belief and Article 19 is about freedom of expression whereas Article 20 Provides that any propaganda for war shall be prohibited by law. Simultaneously Article 21 & 22 provides for the right of peaceful assembly, without restrictions in a peaceful democratic society and everyone shall have the right to form associations, it also provides for restrictions in the same manner as the previous Article. It also provides that members of the International Labour Organization shall not have or pass any law that prejudices the freedom that is guaranteed to citizens in that Convention.

***International Covenant on Economic, Social and Cultural Rights (ICESCR) (Opened for signature on 16 December 1966)***

In contrast to the provisions in the ICCPR, the provisions in the ICESCR are generally viewed as goals to which the parties agree to aspire. Article 2 provides that the States party to the ICESCR should undertake steps, to the maximum of available resources, to achieve progressively the full realization of the rights recognized by the ICESCR. Article 23(1) tells us about Right to work, to just and favourable condition of work, in Article 23(2) Right to equal pay for equal work, in Article 26(1) Right to education, in Article 23(3) Right to just and favourable remuneration, Article 24 about Right to rest and leisure, Article 25(1) is about Right of everyone to a standard of living adequate for him and family and Article 28 is about Right to proper social order.

There are some other Human Rights Instruments

In addition to the International Bill of Rights, there are other human rights treaties and universal instruments, including regional treaties. Listed below are some examples of these instruments. The legal status of each instrument listed below varies as there are some which the United States has not yet ratified.

**A. UN Treaties Pertaining to Human Rights**

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (18 December 1979) was signed by the United States on July 17, 1980 but has not yet been ratified
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (21 December 1965) was signed by the United States on September 28, 1966 and was ratified on October 21, 1994
- Convention on the Prevention and Punishment of the Crime of Genocide 27 (9 December 1948) was signed by the United States on December 11, 1948 and ratified on November 25, 1988.
- Convention on the Rights of the Child (2 September 1990) was signed by the United States on February 16, 1995, but not ratified

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (10 December 1984) was signed by the United States on April 18, 1988 and ratified on October 27, 1990, but did not take effect until October 21, 1994. For more detailed information, see section below on CAT.

#### **B. Some other International Instruments**

- Convention Relating to the Status of Refugees (28 July 1951)
- Convention Relating to the Status of Stateless Persons (28 September 1954)
- Convention on the Reduction of Statelessness (30 August 1961)
- Protocol Relating to the Status of Refugees (31 January 1967)
- U.N. Declaration on Territorial Asylum (14 December 1967)

### **JUDICIAL PRONOUNCEMENTS IN THE LIGHT OF HUMAN RIGHTS**

Relating to Article 14 in National Legal Services Authority versus U.O.I<sup>xx</sup>, the Supreme Court has held that Article 14 does not restrict word 'person' and its application to only males and females and hijras/transgender those who are neither male nor female falls within the expression 'person'. They are entitled to legal protection of laws in all spheres of state activity including health care, employment, education as well as equal civil citizenship rights, as enjoyed by every other citizen of this country.

In Naz Foundation v. Govt of NCT of Delhi<sup>xxi</sup> case the Delhi High Court declared Section 377 of IPC, which criminalizes Homosexuality in India, as unconstitutional and violative of fundamental rights guaranteed under Article 14, 15 and 21 of the Constitution. Later on, in Suresh Kumar Kaushal & Anr. vs. NAZ Foundation & Others, the Supreme Court of India struck down the decision of Delhi High Court and held the Section 377 of IPC does not suffer from any constitutional infirmity and has left on the legislature to deal with the legality of the Section.

Relating to Article 19 in Romesh Thapar v/s State of Madras,<sup>xxii</sup> Patanjali Shastri,CJ, observed that Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of

the process of popular government, is possible. In this case, entry and circulation of the English journal Cross Road, printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as without liberty of circulation, publication would be of little value.

Again in another case the Hon'ble Supreme Court observed in *Union of India v/s Association for Democratic Reforms*,<sup>xxiii</sup> One-sided information, disinformation, misinformation and non information; all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.

Then in *Indian Express Newspapers v/s Union of India*,<sup>xxiv</sup> it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are: Freedom of access to all sources of information, Freedom of publication, and Freedom of circulation.

Under Article 21 there is a landmark case *Maneka Gandhi vs Union of India*,<sup>xxv</sup> the Supreme Court gave a new dimension to Art. 21 and held that the right to live the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in *Francis Coralie v. Union Territory of Delhi*,<sup>xxvi</sup> observed that:

The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.

Then in another case the Supreme Court in *Peoples Union for Democratic Rights v. Union of India*,<sup>xxvii</sup> held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and

violative of Article 21 of the Constitution. Bhagwati J. held that, rights and benefits conferred on workmen employed by a contractor under various labour laws are clearly intended to ensure basic human dignity to workmen. He held that the non-implementation by the private contractors engaged for constructing building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be violative of fundamental right of workers to live with human dignity contained in Art. 21.

In *Vishaka vs State of Rajasthan*,<sup>xxviii</sup> the Supreme Court has declared sexual harassment of a working woman at her work as amounting to violation of rights of gender equality and rights to life and liberty which is clear violation of Articles 14, 15 and 21 of the Constitution. In the landmark judgment, Supreme Court in the absence of enacted law to provide for effective enforcement of basic human rights of gender equality and guarantee against sexual harassment laid down the following guidelines:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

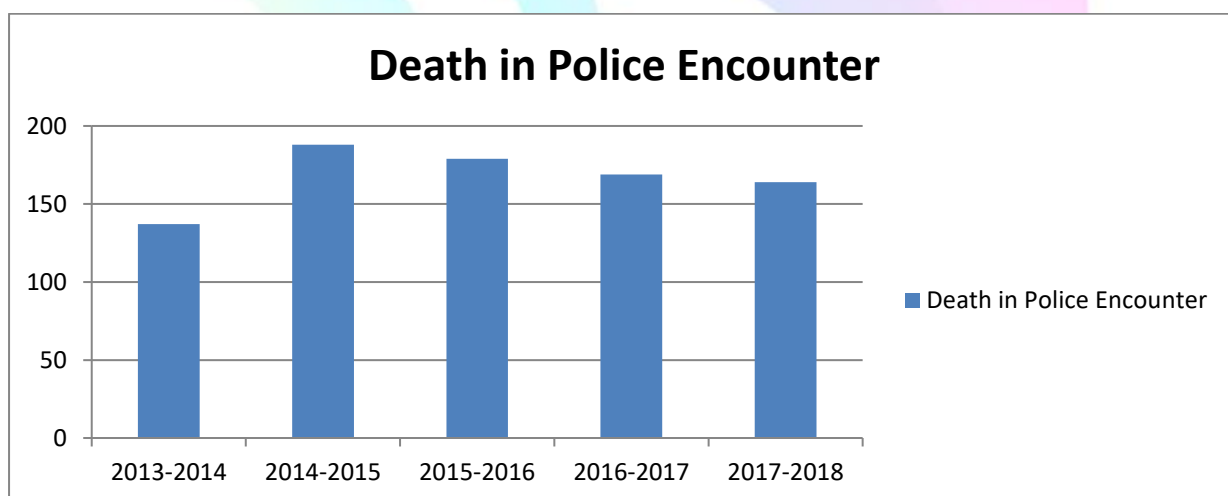
1. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
2. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
3. As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
4. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Where such conduct amounts to specific offences under IPC or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with appropriate authority.

Then in another case some other issues are highlighted in relation to the victims of Sexual harassment should have the option to seek transfer of perpetrator or their own transfer. In *Jeeja Ghosh V UOI*,<sup>xxix</sup> Supreme Court asked the Spice Jet Ltd to pay Rupees Ten Lakhs to Jeeja Ghosh, an eminent activist involved in disability rights, for forcibly de-boarding her by the flight crew, because of her disability. Apex Court bench comprising of Justices A.K. Sikri and R.K. Agarwal also issued the guidelines with regard to ‘carriage’ by persons with disabilities and/or persons with reduced mobility and observed that People with disabilities also have the Right to live with dignity.

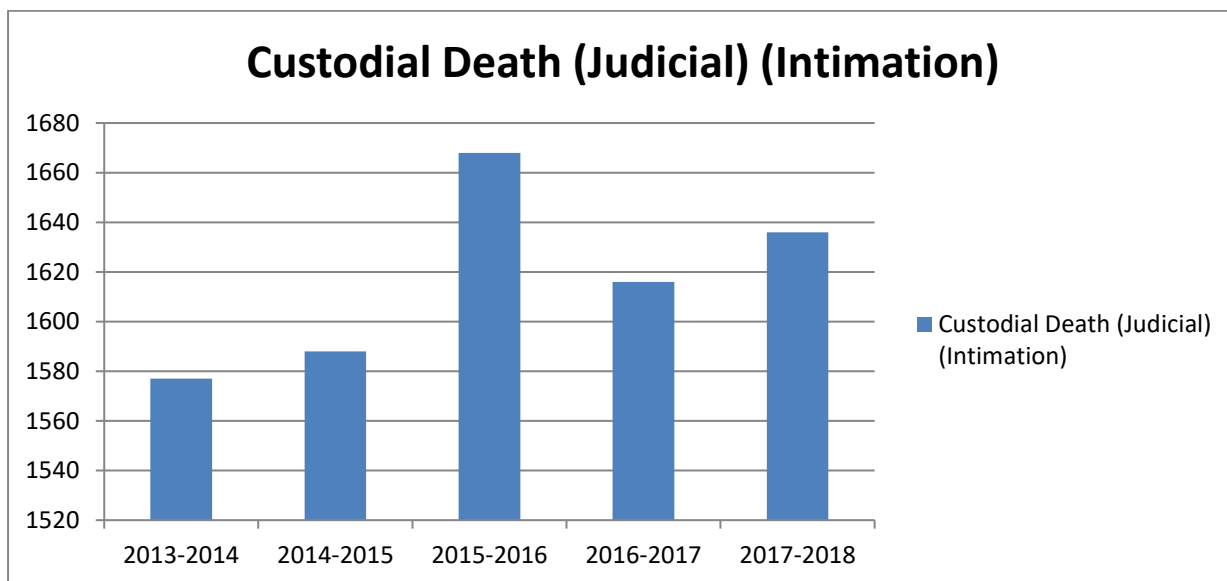
## DATA ANALYSIS ON HUMAN RIGHTS VIOLATION

According to human rights commission report 2017-18 death in police encounter is increased to 3.23% and custodial death increased to 1.12% and in other areas also it has been seen like in child labour, bonded labour, gang rape, rape, children health, violation of human rights in jail, etc.

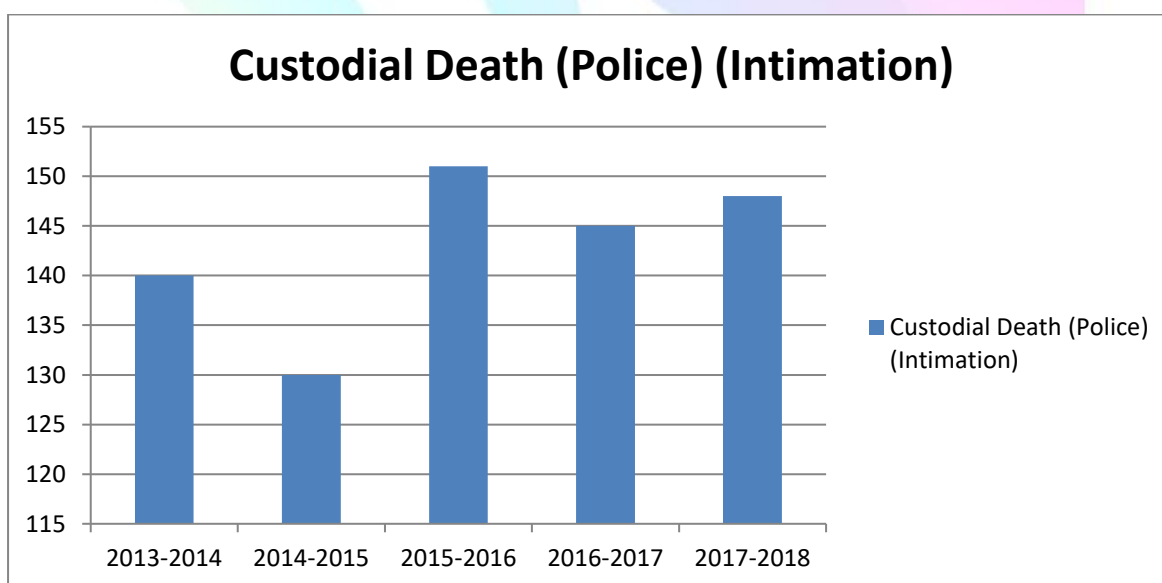


Here we can observed that though the death in police encounter is 3 percent but it is continued and increased to 180 cases that shows the gross human rights violation is continued.



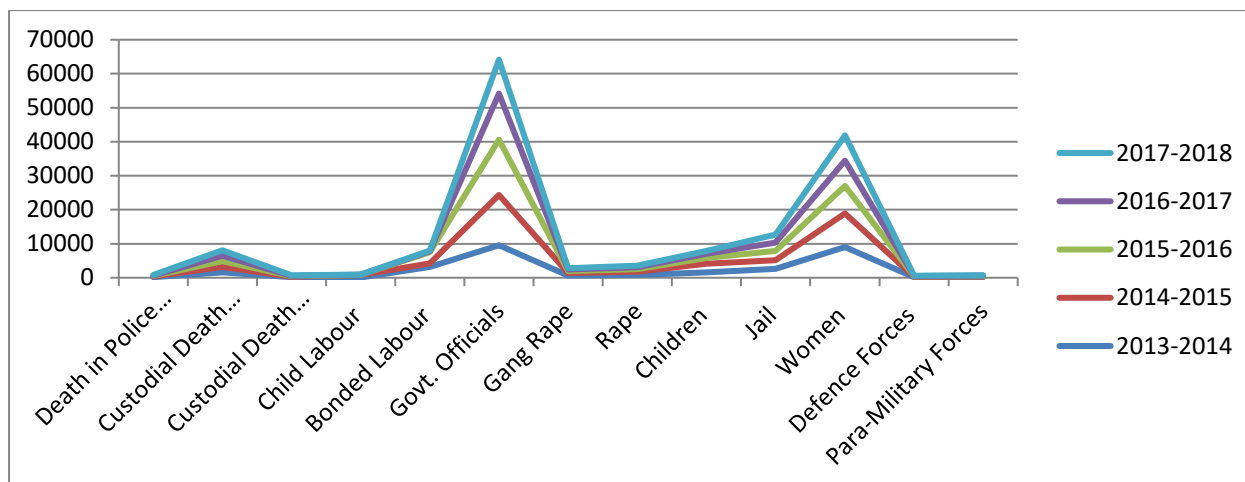


Here we can observed that though the custodial death is increased to 1 percent but it is has seen that there is a continuous growth and increased to about 1670 cases that shows the gross human rights violation in judicial custody.



Simultaneously, we can observed that though the death in police custody is near about 2% percent but it is continued and increased to about 150 cases that shows the gross human rights violation in police custody.

In below there is a complete scenario of gross violation of human rights and we can say that though there is a huge scope of improvement to decrease the gross human right violation and the government have to take necessary steps in this regard.



	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Death in Police Encounter	137	188	179	169	164
Custodial Death (Judicial) (Intimation)	1577	1588	1668	1616	1636
Custodial Death (Police) (Intimation)	140	130	151	145	148
Child Labour	63	716	66	50	46
Bonded Labour	3174	1017	3345	240	210
Gang Rape	659	759	572	455	392
Rape	827	978	707	535	498
Children	1568	2560	1657	1211	906
Health	1475	2738	2535	1832	1210
Jail	2597	2583	2670	2447	2416
Women	8991	9904	8105	7413	7460
Defence Forces	144	144	128	72	103
Para-Military Forces	141	178	160	152	95

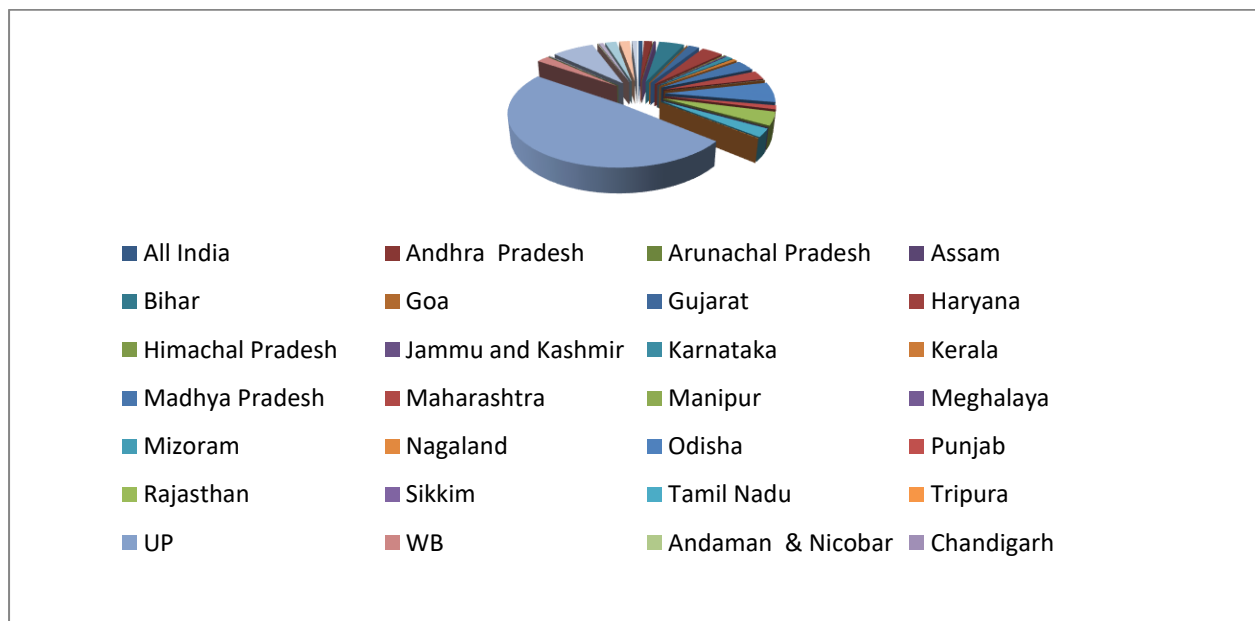
**Data Source:** National Human Rights Commission Report 2017-18.<sup>xxx</sup>

Now if we think about the gross human right violation in various state then we can observe that a total of 79,612 cases were registered in the Commission during 2017-2018. Out of these 79,612 cases, 38,659 cases related to the State of Uttar Pradesh, 5,829 cases to Delhi, 4,977 to State of Odisha, 3,522 to Bihar and 3,285 to Rajasthan. The State-wise breakup of the number of cases registered is given in the chart on next page.

Name of the State/UTs	Complaints	Suo-motu Cognizance	Intimation Received about Custodial Deaths and Rapes			Intimations Received about Encounter Deaths	Total
			Police Custodial Deaths/Rapes	Judicial Custodial Deaths/Rapes	Defence/Para-Military Custodial Deaths/Rapes		
All India	562	3	0	0	0	0	565
Andhra Pradesh	1082	0	2	36	0	1	1121
Arunachal Pradesh	32	1	3	3	0	5	44
Assam	232	1	11	29	1	18	292
Bihar	3403	3	7	109	0	0	3522
Goa	45	1	0	0	0	0	46
Gujarat	1476	0	14	50	0	0	1540
Haryana	2962	2	7	46	0	4	3021
Himachal Pradesh	159	0	2	6	0	0	167
Jammu and Kashmir	189	0	0	4	0	1	194
Karnataka	864	2	4	11	0	2	883
Kerala	578	1	3	38	0	0	620

Madhya Pradesh	2574	7	7	114	0	1	2703
Maharashtra	2069	7	19	125	0	10	2230
Manipur	35	0	1	1	0	3	40
Meghalaya	28	0	2	2	0	4	36
Mizoram	12	0	1	2	0	0	15
Nagaland	19	0	0	2	0	0	21
Odisha	4909	3	4	54	0	7	4977
Punjab	839	2	10	127	0	1	979
Rajasthan	3182	5	3	91	0	4	3285
Sikkim	5	0	0	2	0	0	7
Tamil Nadu	1976	3	11	72	0	2	2064
Tripura	45	0	1	5	0	0	51
UP	38196	17	12	390	0	44	38659
WB	1563	0	5	138	0	4	1710
Andaman & Nicobar	35	0	0	0	0	0	35
Chandigarh	117	0	0	2	0	0	119
Dadra & Nagar Haveli	15	0	0	0	0	0	15
Daman & diu	17	0	0	0	0	0	17
Delhi	5771	8	7	42	0	1	5829
Lakshadweep	4	0	0	0	0	0	4
Puducherry	102	0	0	0	0	0	102
Chhattisgarh	520	4	3	54	0	40	621
Jharkhand	1531	3	6	50	0	10	1600
Uttarakhand	1466	0	0	17	0	1	1484
Telangana	746	1	3	14	0	1	765
Foreign Countries	229	0	0	0	0	0	229

Grand Total	77589	74	148	1636	1	164	79612
-------------	-------	----	-----	------	---	-----	-------

Table 1: National Human Rights Commission Report 2017-18.<sup>xxxii</sup>

Here the researcher observed that though the constitution of India provides us the guarantee to protect our human rights as well as it is inconformity with the international instruments but the analysis shows that still there is a scope of improvement on the gross human right violation. As in many states a gross violation is observed like in Andhra Pradesh, Bihar, Gujarat, Haryana, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu, UP, WB, Delhi, Jharkhand, Uttarakhand.

## CONCLUSION

The Indian Constitution is a document rich with human rights jurisprudence. This is an elaborate charter on human rights ever framed by any country in the world. Part III of the Indian Constitution is the most essential part relating to human rights. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, and the downtrodden or for every countryman.

Social activists have also started assisting victims of human rights violations in their respective areas to approach various forums for justice. Students under the programme are also getting involved in human rights advocacy in their respective villages. But beside those initiatives the government has also some responsibility to assure the physical protection that is enshrined in our Constitution. A large number of students have come out with striking revelations of change in their perception and behavior as a result of the HRE program in their schools. Even substantial efforts are therefore crucial to eradicate the social disparities and guarantee of getting quality education on an equal basis. To closing down, there is an utmost need for realizing that provision for universal access of those facilities for ground level development and a fundamental condition in the process of creating India as a developed society.

## **BIBLIOGRAPHY**

### ***Books:***

- Dr J.N. Pandey, Constitutional Law of India; 45<sup>th</sup> Edition, Central Law Agency.
- Dr S. K. Kapoor, International law and Human Rights; 18<sup>th</sup> Edition, Central Law Agency.
- Dr H. O Agarwal, Human Rights; 6<sup>th</sup> Edition, Central Law Agency.

### ***Articles and Journals:***

- Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, 25 Ga. J. Int'l & Comp. L. 287, 290 (1995/1996). Hurst Hannum, Associate Professor of International Law,
- Dr. Anant Kalse (2016), A brief lecture on "Human Rights in the Constitution of India", available at: <http://mls.org.in/books/H-2537%20Human%20Rights%20in.pdf>.'
- Amartish Kaur (2017), "Protection of Human Rights in India – A Review", Jamia Law Journal, Vol.2.
- Rajeev Dhavan. "Law as Struggle: Public Interest Law in India," Indian Journal of International Law (Vol. 36, 1994): 307-317.

- Sunil Deshta and Ms Kiran Deshta. "Philosophy of Right to Life, a Movement from Rigidity to Flexibility." *Civil and Military Law Journal*, Vol. 31: 3. 123. (July-September. 1995)

### **Webliography:**

- <https://www.legalserviceindia.com/legal/article-1200-interpretation-of-human-rights-in-india.html>.
- V. Sharma, "Forces deploy 1 million to guard Kashmir Valley," *The Asian Age* (August 18, 2019). Available at <https://www.asianage.com/india/all-india/180819/forces-deploy-1-million-to-guard-kashmir-valley.html>

### **ENDNOTES**

<sup>i</sup> By DR. ANANT KALSE, PRINCIPAL SECRETARY, MAHARASHTRA LEGISLATURE SECRETARIAT & SECRETARY, COMMONWEALTH PARLIAMENTARY ASSOCIATION, MAHARASHTRA BRANCH <http://mls.org.in/books/H-2537%20Human%20Rights%20in.pdf>

<sup>ii</sup> <https://www.coursehero.com/file/44357852/82F6F397-6AE0-4253-940E-58C9B0BDEC32-Amartish-Kaur-Human-Rightspdf/>

<sup>iii</sup> Ibid.

<sup>iv</sup> <https://www.lawctopus.com/training-program-on-human-rights-at-shobhit-deemed-university-meerut/#:~:text=Each%20individual%20is%20entitled%20to,natural%20rights%20or%20inherent%20rights.>

<sup>v</sup> Dr. S. S. Rana, Associate Professor, Department of Political Science, Sri Aurobindo College (M), University of Delhi, New Delhi

<sup>vi</sup> VOLUME 5, ISSUE 1, JAN. – MARCH 2018; ISSN 2349-5138 pp 474 IJRAR- International Journal of Research and Analytical Reviews Research Paper Revolution, American Revolution, and French Revolution

<sup>vii</sup> V. Sharma, "Forces deploy 1 million to guard Kashmir Valley," *The Asian Age* (August 18, 2019). Available at <https://www.asianage.com/india/all-india/180819/forces-deploy-1-million-to-guard-kashmir-valley.html>

<sup>viii</sup> Ibid.

<sup>ix</sup> Ibid.

<sup>x</sup> Dr. Raj A. Soshte, Asst. Prof. Accountancy, NSS College of Comm. & Eco. Tardeo, Mumbai

<sup>xi</sup> Dr. Ramesh Baboo Assistant Professor Dept. of Chemistry, Dr B. R. A. Govt. Girls P. G. College, Fatehpur, U.P. India

<sup>xii</sup> <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>

<sup>xiii</sup> Ibid.

<sup>xiv</sup> <https://www.legalserviceindia.com/legal/article-1200-interpretation-of-human-rights-in-india.html#:~:text=The%20UN%20Charter%20in%201945,define%20but%20impossible%20to%20ignore.>

<sup>xv</sup> From the Universal Declaration of Human Rights Homepage, found at the United Nations Human Rights: Office of the High Commissioner for Human Rights website.

<sup>xvi</sup> Hannum, The Status of the Universal Declaration of Human Rights in National and International Law, 25 Ga. J. Int'l & Comp. L. 287, 290 (1995/1996). Hurst Hannum, Associate Professor of International Law, The Fletcher School of Law and Diplomacy, Tufts University, wrote this article based on a report he prepared as Rapporteur of the Committee on the Enforcement of International Human Rights Law of the International Law Association.

---

<sup>xvii</sup> 3 See, e.g., Restatement of the Foreign Relations Law of the United States (Third) § 701, Reporters' Notes 4-6 (1987).

<sup>xviii</sup> (Opened for signature 16 December 1966)

<sup>xix</sup> *Ibid.*

<sup>xx</sup> AIR 2014 SC 1863

<sup>xxi</sup> 160 Delhi Law Times 277, p. 2

<sup>xxii</sup> AIR 1950 SC 124

<sup>xxiii</sup> (2002) 5 SCC 294

<sup>xxiv</sup> 1950 S.C.R. 594

<sup>xxv</sup> AIR 1978 SC 597; (1978) 1 SCC 248

<sup>xxvi</sup> [1980] 2 SCR 557

<sup>xxvii</sup> 1982 AIR 1473 1983

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

<sup>xxix</sup> (2016) 7 SCC 761

<sup>xxx</sup> <https://nhrc.nic.in/publications/annual-reports?tid=3112>.

<sup>xxxi</sup> <https://nhrc.nic.in/publications/annual-reports?tid=3112>

