

**Review Article**

**HUMAN RIGHTS ISSUES IN INDIA - A MAPPING OF DIFFERENT GROUPS**

**ROSHNI DUHAN\*, VIMAL JOSHI**

**Department of Law B.P. S. Mahila Vishwavidyalaya Khanpur Kalan, Sonipat . Email: roshni\_0507@yahoo.com**

*Received: 7 October 2014, Revised and Accepted: 15 December 2014*

**ABSTRACT**

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. Human rights are moral principles that set out certain standards of human behaviour and are regularly protected as legal rights in national and international law. They are "commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being." The doctrine of human rights has been highly influential within international law, global and regional institutions. In India, too, these rights along with Fundamental Rights have been provided to citizens. The concept of 'human rights' is not of recent origin. Many of the basic ideas that animated the human rights movement developed in the aftermath of the Second World War and the atrocities of The Holocaust, culminating in the adoption of the Universal Declaration of Human Rights in Paris by the United Nations General Assembly in 1948. The ancient world did not possess the concept of universal human rights. So, the expression was first employed in the Declaration of United Nations signed by the Allied Powers on January 1, 1942. India, the world's most populous democracy, continues to have significant human rights problems despite making commitments to tackle some of the most prevalent abuses. The country has a thriving civil society, free media, and an independent judiciary. But longstanding abusive practices, corruption, and lack of accountability for perpetrators foster human rights violations. The rights of the citizens are the pillar of Democracy. Without rights, the citizens cannot develop their full potential. Laski has rightly remarked that the rights are those conditions of life without which no man can develop his best self. That is why all democratic countries make provisions for the enjoyment of certain fundamental rights by citizens. But the scope of Human Rights is much broader than Fundamental Rights. In this article we are going to study the various vulnerable groups of India which require their human rights because these rights are not available to them being vulnerable sections of society.

**Keywords:** Human rights, UN's Human Rights Council, Universal Declaration of Human Rights, custodial violence, gender sensitization

**INTRODUCTION**

Human rights are those rights, which people ideally should enjoy because they are human beings. In other words, human rights are those rights of the people, which they get automatically on being born as humans. Yet today, there are numerous issues that need to be addressed, owing to the global instances of human rights violations. In India, the last quarter of the 20th century has been witness to a growing recognition of the place and relevance of human rights. It is axiomatic that this interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency (1975-77). The mass arrests of the leaders of the opposition, and the targeted apprehension of those who could present a challenge to an authoritarian state, are one of the dominant images that have survived.[1] Forced evictions carried out in Delhi in what is known as 'Turkman Gate' conjures up visions of large scale razing of dwellings of those without economic clout, and of their displacement into what were the outlying areas of the city. The catastrophic programme of mass sterilisation is an indelible part of emergency memory. The civil liberties movement was a product of the emergency. Arbitrary detention, custodial violence, prisons and the use of the judicial process were on the agenda of the civil liberties movement. The same period also saw the emergence of a nascent women's movement. In December 1974, the Committee on the Status of Women in India submitted its report to the Government of India preceding the heralding in of the International Women's Year in 1975. The Status Report, in defiance of standard expectations set out almost the entire range of issues and contexts as they affected women. Basing their findings and revising their assumptions about how women live, on the experiences of women and communities that they met, the Committee redrew the contours of women's position, problems and priorities. The women's movement has been among the most articulate, and heard, in the public arena. The woman as a victim of dowry, domestic violence,

liquor, rape and custodial violence has constituted one discourse. Located partly in the women's rights movement, and partly in the campaign against AIDS; women in prostitution have acquired visibility. Let's have a look of infringement of the human rights of some vulnerable sections of society.

**Custodial Violence**

Custody death, torture in custody and custodial rape has been subjects of much concern. Custodial violence has been on the agenda of civil rights groups for over two decades, and reports documenting instances of violence and its systemic occurrence, have been instrumental in the campaigns against custodial violence. Although custody deaths have found an acknowledgment from the state, and the NHRC has issued directions to the states to report of the NHRC any death in custody within 24 hours of the occurrence and to videotape the post-mortem proceedings, it is difficult to assess if this has resulted in any reduction in the incidence of custody deaths. NHRC reports show a marked increase in the reported cases of custody deaths each year. This is attributed, by the NHRC, to increased reporting and not to increased incidence of the crime; this, however, needs to be further investigated. The incidence of custody deaths demonstrates more undeniably the brutalisation of the processes of law enforcement by the police and armed forces. However, custodial torture (not resulting in death) is not at the focus of campaigns to reduce custodial violence. There are few places which have taken up the treatment of the victims of torture as victims of torture. The Indian state, in the meantime, has resisted attempts to have it ratify the Torture Convention. In recent reported cases from the Gauhati High Court, it is 15 and 16-year olds who are found to have been victims of state violence, and the defence of the state has been that they were hardened militants.[2]

**Custodial rape**

Custodial rape has found an expanded definition in terms of power rape in the Penal Code, 1860.[3] However, these provisions have hardly been invoked. In the meantime, most often, judicial perceptions of the victim of custodial rape have in significant measure, discredited the victim's version, and blamed the victim resulting in reduction of sentence for policemen convicted of rape to less than the minimum prescribed in law. From Mathura to Rameeza Bi to Maya Tyagi to Suman Rani - these women have become symbols of patriarchal prejudices. Campaigns in the matter of custodial rape have invoked their name, and they are now names that are etched into the history and legend of the women's movement. In the meantime, the legal dictum that the identity of a victim of rape be not disclosed to protect her privacy has been set in place. While following Tukaram and Ganpat's case,[4] 'power' rape was partially introduced into the law. The definition of rape, has however not been altered until the Delhi Gang Rape happened. After the Delhi Gang Rape case the things have changed. The Criminal Law has been amended and law has been made strict. For the first time the provision of imposition of Death Penalty in rape cases is introduced.

### Sexual Harassment at the Workplace

This issue acquired visibility with the decision of the Supreme Court in Vishaka.[5] Earlier efforts at having the problem addressed, as, for instance, in the Delhi University, has drawn strength from the guidelines set out in the judgment. It was widely reported, however, that it was still proving difficult to get institutions to adopt the guidelines and act upon it. The Madras High Court, for instance, was reportedly averring that the guidelines did not apply to the court; and allegations of sexual harassment by a senior member of the Registry were given short shrift. The process of setting up a credible grievance redressal mechanism was reportedly being watered down in the recommendation of a committee to the Delhi University. In Kerala, a Commission of Inquiry was set up after Nalini Netto, a senior official of the Indian Administrative Service, pursued her complaint of sexual harassment against a serving minister of the state cabinet - which is seen as a diversion from a representative investigative and redressal forum. P E Usha, in Kerala, faced hostility in her university when she followed up on her complaint of sexual harassment. There have been allegations of sexual harassment of women employees by senior persons within institutions working on human rights, and in progressive publications, which too have shown up the inadequacy of the redressal mechanisms. Hence many programmes like translating the guidelines into norms in different institutions and workplaces; finding support systems for women who are sexually harassed and breaking through thick walls of disbelief are reckoned to be the priorities. The programme on gender sensitisation has also been introduced.

Sexual harassment accompanied by violence has become a common feature with cases of acid throwing where there is unrequited love[6] and harassment which has culminated in the murder of a hounded girl.[7]

### Rape

In India Rape is the fourth most common crime against women. According to the National Crime Records Bureau 2013 annual report, 24,923 rape cases were reported across India in 2012.[8] Out of these, 24,470 were committed by relative or neighbor; in other words, the victim knew the alleged rapist in 98 per cent of the cases. According to 2012 statistics, New Delhi has the highest number of rape-reports among Indian cities, while Jabalpur has the per capita incidence of reported rapes.[9] Several rape cases in India received widespread media attention and triggered protests since 2012. This led the Government of India to reform its penal code for crimes of rape and sexual assault. Compared to other developed and developing countries, incidence rates of rape per 100,000 people are quite low in India. The National Crime Records Bureau suggests a rape rate of 2 per 100,000 people.[10] This compares to 8.1 rapes per 100,000 people in Western Europe, 14.7 per 100,000 in Latin America, 40.2 per 100,000 in Southern African region and 28.6 in the United States. Most rapes go unreported because the rape victims fear retaliation or humiliation in India. During the partition of India, some 100,000

women were claimed to have been kidnapped and raped. The gang rape of a 23-year old student on a public bus, on 16 December 2012, sparked large protests across the capital Delhi. She was with a male friend who was severely beaten with an iron rod during the incident. This same rod was used to penetrate her so severely that the victim's intestines had to be surgically removed, before her death thirteen days after the attack. In August 2013, a 22-year-old photojournalist, who was interning with an English-language magazine in Mumbai, was gang-raped by five persons, including a juvenile, when she had gone to the deserted Shakti Mills compound near Mahalaxmi in South Mumbai. In May 2014 two girls aged 14 and 16 were gang raped in the northern state of Uttar Pradesh. The girls were then hanged from a tree. At least two police officers were suspected of involvement in the crimes.[11] This is very difficult for Government to make sure the human rights of these women. It seems that in India this is a big curse to be a woman as practically they don't have any right to life even. They are just considered as a thing of consumption and things don't have any human rights.

### Fake Encounters

In India, extra-judicial killings by the police or the security forces are called 'encounter killings', meaning that the killing occurred during an armed encounter between the police or security forces and the victim. The killing by the state forces is most often declared to be defensive, cases of attempted murder and other related offences are registered against the victims, and the cases closed without further investigation since criminal cases come to an end upon the death of the accused. Despite being 'unnatural deaths', and the victim having been killed, no investigation ensues to determine whether the death was in fact in an actual encounter, nor whether the use, and the extent of use, of force was justified. This is an acknowledged strategy of the state for eliminating certain kinds of opposition to the state and the established order. In Andhra Pradesh, for instance, the naxalites have been the targets; in Punjab, it was the militant; in Mumbai, it is those who are alleged to be part of the underworld. The Committee of Concerned Citizens (CCC), a group of individuals in Andhra Pradesh, has approached encounter killings differently. Addressing both naxalite groups and the state, the CCC has been working at de-escalation of violence. While the naxalite response has taken the CCC to the issue of land reforms as being fundamental in understanding violence of the opposition, the state, it is widely believed, is pursuing the path of unbridled unleashing of the use of encounters. The human rights community has had to contend with the issue of impunity which is immediately seen as arising from the non-registration and the non-investigation of cases.

### Domestic Violence

In locating domestic violence in the terrain of human rights, one point of view was that it is not the identity of the perpetrator alone which can be allowed to determine whether a victim has been subjected to a human right violation or not: that it is a man or his family who exercises their power to harass, assault and injure a woman, and not the state which is the perpetrator, should then make no difference to the place for this violence in human rights discourse. S.498 A was introduced into the Penal Code in 1983. It makes cruelty to a woman within the matrimonial home punishable with imprisonment up to three years and fine. It is a cognizable, non-bailable, offence. Widespread violence against women, and increasing evidence of women dying unnatural deaths in the matrimonial homes provoked the women's movement to demand a change in the criminal law. The offence is non-bailable, that is a complaint under s.498 A, once registered as an FIR, would result in the arrest of the members of the matrimonial family of the woman. They would have to be granted bail by the court before release and this could keep them in custody for varying periods of time. In matters of remission of sentence, too, offenders convicted under s.498 A may be excluded. On the one hand, there have been complaints of the misuse of this provision, and the consequent harassment, often incarceration, of many members of the family complained against. On the other, there is little scope to deny that the incidence of cruelty, including physical cruelty, which leads even to death, is extraordinarily high. This is an issue yet unresolved; the Domestic Violence Bill may have some impact on it.

## Child Labour

Apart from the employment of children in work, including those classified as hazardous, it was reported that, children continue to be sold into labour. The parents of a young girl from Assam were paid a sum of money for the girl to be brought to Delhi as a domestic worker. Her plight came to light when she ran away from the ill-treatment she suffered, and she was given shelter by a social activist. Child workers employed in homes and in commercial workplaces were subjected to ill-treatment. The chaining of bonded child labour in the carpet industry near Varanasi so that they could not escape was reported. Injuries on the person of domestic child workers in Delhi sometimes resulting in death have been reported intermittently in the press. In Maharashtra, a civil liberties organisation took the state and a contractor to court when the latter ill-treated, resulting in death, one of the young boys he had brought with him from Tamil Nadu[12]. These manifestations of violence against the child disguised as child labour calls to be addressed.

The vulnerability of the child has also been seen in Delhi, for instance, where child domestic workers have been accused of killing their employers, or in being accomplices to outsiders. The 'social clause' on child labour does not result in doing away with child labour but causes segregation. Education for the child has got tangled with the issue of child labour; sending the child to school is projected as a necessary step to ending the practice of child labour. In Andhra Pradesh, an organisation working in the area of education for children has done away with the uncertainties of definition by working on the premise that every child out of school is child labour. In the meantime, this 1999 Convention is being canvassed for signature, and ratification by the Indian State. The convention defines 'the worst forms of child labour' as comprising the following:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced or compulsory labour, debt bondage and serfdom
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

This is in consonance with the recent trend among UN organizations to directly involve human rights in standard-setting, and the creating of binding obligations of states in their area of operation.

## Dalits

The practice of untouchability has persisted, and dalit activists and unions have been making efforts to demonstrate its pervasiveness and variety, even while they contest its practice. In Andhra Pradesh, in a study done by dalit activists, ways of practising untouchability have been documented. In Kerala, there was collaboration underway between caste groups and dalits in combating caste and brahmanism. In Gujarat, a study of the practice of untouchability has been recently done. Some groups working among dalits, and including some dalit groups, have been lobbying to place caste as an agenda in the World Conference against Racism. The definition evolving in the conference, which includes discrimination based on descent and occupation is seen as an acknowledgment of caste discrimination. This is an avowed effort to internationalise the issue of caste-based discrimination and oppression. According to a report by Human Rights Watch, "Dalits and indigenous peoples (known as Scheduled Tribes or adivasis) continue to face discrimination, exclusion, and acts of communal violence. Laws and policies adopted by the Indian government provide a strong basis for protection, but are not being faithfully implemented by local authorities." [13] The UN stated in 2011 that the caste system of India will be declared a human rights abuse. The UN's Human Rights Council, meeting in Geneva, is expected to ratify draft principles which recognises the

scale of persecution suffered by 65 million 'untouchables' or 'Dalits' who carry out the most menial and degrading work.[14] Amnesty International says "it is the responsibility of the Indian government to fully enact and apply its legal provisions against discrimination on the basis of caste and descent.[15] Denotified tribes of India, along with many nomadic tribes collectively 60 million in population, continue to face social stigma and economic hardships, despite the fact Criminal Tribes Act 1871, was repealed by the government in 1952 and replaced by Habitual Offenders Act (HOA) (1952), as effectively it only created a new list out of the old list of so-called "criminal tribes. These tribes even today face the consequences of the 'Prevention of Anti-Social Activity Act' (PASA), which only adds to their everyday struggle for existence as most of them live below poverty line. National Human Rights Commission and UN's anti-discrimination body Committee on the Elimination of Racial Discrimination (CERD) have asked the government to repeal this law as well, as these former "criminalised" tribes continue to suffer oppression and social ostracisation at large and many have been denied SC, ST or OBC status, denying them access to reservations which would elevated their economic and social status.[16] The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been on the statute books since 1989. There are however hardly any convictions under this Act. Dalit activists say that there are many loopholes in the law which help offenders slip out of both the Atrocities Act as well as the Penal Code. An activist made particular mention of s. 3 (iv) and (v) of the Act in illustrating the non-user of this law. Studies on the working of this Act have been started in some states. Manual scavenging, and the disinterest of the state in putting an end to this inhuman practice which involves the carrying of excreta manually, and which additionally aggravates caste-based exclusion has been identified as a priority for action in Andhra Pradesh and Tamil Nadu.

## CONCLUSION

India, the world's most populous democracy, continues to have significant human rights problems despite making commitments to tackle some of the most prevalent abuses. The country has a thriving civil society, free media, and an independent judiciary. But longstanding abusive practices, corruption, and lack of accountability for perpetrators foster human rights violations. Government initiatives, including police reform and improved access to health care and education, languish due to poor implementation. Many women, children, Dalits, tribal communities, religious minorities, people with disabilities, and sexual and gender minorities remain marginalized and continue to suffer discrimination because of government failure to train public officials in stopping discriminatory behavior. Impunity remains a serious problem, particularly for abuses committed by security forces in Jammu and Kashmir, the northeast, and areas in central and eastern India facing a Maoist insurgency. Resource extraction and infrastructure projects often have deleterious environmental and economic impacts, and may infringe upon the rights of affected communities. The central government tightened restrictions on internet content, insisting the measures are to contain threats to public order. The protection of religious minorities received a boost from the prosecutions of several suspects in the 2002 Gujarat riots, resulting in over 75 convictions in 2012. Violence against women and girls continued in 2012, with increased reports of sexual assault, including against those with disabilities. The government had yet to properly investigate and prosecute sexual abuse in police custody. In June 2012, Pinki Pramanik, a renowned woman athlete, was arrested on allegations of rape. Male police officers mistreated her while taking her into custody and authorities conducted "gender determination" tests in violation of her rights to consent, privacy, and dignity. A video of her undergoing some part of the abusive examination was made public. India has yet to enact amendments to reform its penal laws to recognize a wide range of sexual offenses. While the central government modified its protocols for handling rape investigations, removing questions on the degrading "two-finger test," the changes still fall short of World Health Organization (WHO) guidelines on sexual assault, especially regarding medical treatment for victims.

## REFERENCES

1. Another instance from the Emergency era is reported in Niyamavedi v. CBI (1999) 1 Ker LT 56, where the confessions of a police officer who pulled the trigger in a fake encounter a quarter of a century ago reopened hitherto unresolved questions.
2. Smt.Kangujam Thoibi Devi v. State of Manipur 1999 Cri LJ 3584; Smt.Narayani Sharma v. State of Tripura 1999 Cri.LJ 3642.
3. S.Jagannath v. Union of India (1997) 2 SCC 87.
4. Tukaram v. State of Maharashtra (1979) 2 SCC 143
5. Vishaka v. State of Rajasthan (1997) 6 SCC 241
6. Students of Andhra Pradesh Agricultural University v. Registrar, Andhra Pradesh Agricultural University 1997AIHC 2671 (AP)
7. As happened when Priyadarshini Mattoo, a law student, was followed by another student. She was killed in her house,
8. NCRB, Crime against women, Chapter 5, Annual NRCB Report, Government of India (2013), page 81
9. Vasundhara Sirnate (1 February 2014). "Good laws, bad implementation". Chennai, India: The Hindu. Retrieved 1 February 2014.
10. "Rape statistics around the world". Indiatribune.com. 2012-09-11. Retrieved 2013-03-17.
11. "Perceived government inaction over rape and murder of two teenage girls sparks public anger". India's News.Net. Retrieved 31 May 2014.
12. PUCL v. Union of India (1998) 8 SCC 485.
13. "India Events of 2007". Human Rights Watch.
14. Nelson, Dean (29 September 2009). "UN says caste system is a human rights abuse". *The Daily Telegraph* (London).
15. "India's Unfinished Agenda: Equality and Justice for 200 Million Victims of the Caste System". 2005.
16. Meena Radhakrishna (16 July 2006). "Dishonoured by history". *The Hindu*. Retrieved 31 May 2007