

Situation of Human Rights: Legal Support and Action in Gujarat

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Preface

With our work experience on human right violation cases and addressing these issues to civil society and judiciary for justice, we had planned to study in context of legal support and action, as it is one of the major instrument to ensure justice. However, the pre-planning didn't help much in conducting the study.

Originally, this study was to be conducted as part of Jesuits in Social Action (JESA) and preparing a proposal for future action plan. A workshop was organized in April 2009 to set research framework, methodology, time frame, role & responsibilities of each JESA centre and expected outcome. At that time, one of the English dailies had reported quoting national human rights commission (NHRC) that Gujarat ranks 3rd in India for human rights violation. In this light, decision was taken that our study would be a value addition and thus we discussed methodology and outcome of the study. As time passed, we realized that the information passed on by the newspaper was not reliable and there was a need to change course of study related action.

As the collective decision ran in to confusion with changing scenario, getting data from JESA became difficult vis-à-vis time frame and geographic distances; finally we decided to revise research methodology and data collection. We are happy to present the report, though delayed, as we have raced against all odds, namely, changes in research team, getting adequate information about the legal case studies took longer than we expected, participation of lawyers on team became critical, since they were busy fighting cases on communal violence in Gujarat in 2002 with Special Investigation Team (SIT) appointed by the Supreme Court of India and much awaited justice and so on.

The study is of importance as it is encompassing such a wide topic with enriching educational material, i.e. linking up micro and macro components, describing limitations of existing law enforcement & justice providing machineries and deriving trends for ensuring justice and protection of human rights through various mechanism.

We are thankful to Dr Balpreet Kaur Arora, a political scientist, who invested her time and energy to initiate and taking off the study. She had to leave us for personal reasons but without her, taking off of the study would have been difficult. We are also thankful to Hansa Vaghela and Imran Khan, the research

assistants and Janki Shah for translating material from Gujarati to English as and when required. We are grateful to lawyers on our team, Bhushan Oza, Govind Parmar and Rizwana Bukhari.

We are grateful to JESA members who have given inputs and have supported the study with necessary data and sharing their experience related to legal support and action.

We are grateful to Sangeeta Parmar, Pravin Parmar, Dalpatbhai Sindhav, Asifkhan, Sinabhai Dhrangi and his family members, Idris Pathan, the lawyer who had helped public prosecutor in fighting the case and turn in to victory, and Nanjibhai Vaniya for sharing us greater details for each case study covered in the report. We are thankful to those who have directly or indirectly have contributed to the study.

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Acronym

HR	Human Right/s
HRV	Human Rights violation
BJP	Bharatiya Janata Party
GoI	Government of India
NCRB	National Crime Records Bureau
SC	Scheduled Castes
ST	Scheduled Tribes
SC&STPAA	Scheduled Castes and the Scheduled tribes (Prevention of Atrocities) Act, 1989
CaW	Crimes against Women
IPC	Indian Penal Code
NSSO	National Sample Survey Organisation
BPL	Below Poverty Line
RTI	Right to Information Act
ACHR	Asian Centre for Human Rights
NHRC	National Commission for Human Rights
NREGA	National Rural Employment Guarantee Act, 2006
PWDVA	Protection of Women against Domestic Violence Act, 2006
PHRA	Protection of Human Rights Act, 1993
JESA	Jesuits in Social Action
NGO	Non-government Organisation
GSHRC	Gujarat State Human Rights Commission
NCW	National Commission for Women
NCPCR	National Commission for Protection of Child Rights
DRMU	Daxin Rajasthan Mazdoor Union
NCSC	National Commission for Scheduled Castes
NCST	National Commission for Scheduled Tribes
NCM	National Commission for Minorities
CSO	civil society organisations
AI	Amnesty International
NCDHR	National Campaign for Dalit and Human Rights
HRLN	Human Right & Law Network
LC	Lawyer's Collective
UP	Uttar Pradesh
PIL	Public Interest Litigation
PSI	Police Sub-Inspector
CBO	community based organization
PASA	Prevention of Anti-Social Activities Act, 1995
CEO	Chief executive officer's
NPC	National Police Commission
CrPC	Criminal Procedure Code
DM	District Magistrate
SP	Superintendent of Police

Executive Summary

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. The concept of HR is not universal; it covers a wide spectrum and it is not possible to touch upon the whole content in its entity.

Hardly any day passes when we do not witness one or other types of human rights violations (HRV) of women and children, of lower castes and otherwise disadvantaged communities, of religious and ethnic minorities, and of workers. These violation ranges over whole conspectus of HR, civil and political rights as well as social and economic. There are mass killings and widespread disappearances, torture, wide displacement of communities and traditional abode; arbitrary detentions and extensive censorship of thought and expression.

The police, judiciary (taluka to Apex Court), Human Rights Commission (State and National level) and other Commissions (Child Protection, Women, Inquiry, etc) are the existing mechanism to address HRV effectively. Other than judiciary, all are quasi-judicial mechanism with no statutory power. Within Judiciary, PIL, judicial activism, progressive judgements and guidelines for police and law enforcement machinery also have not been seen in practice to a wider extent.

The great discrepancy is observed in documenting and retrieving data on HRV, police action, judicial action and institutionalisation of guidelines given through judgements by the Supreme Court.

The limitations of existing mechanisms to deal with HRV are different types: Various sources of information that lacks coordination and amalgamation; various Commissions exist but they have limited statutory powers and membership is largely political; Socio-legal actions by NGOs have limited scope for intervention for seeking justice; Different expertise needed for civil cases, criminal cases and for PIL; PIL as judicial activism is not entertained by Supreme Court of India and supported by several lawyers and For preventive side of HRV, police or other law enforcement agencies are not well aware of HR concept and not able to follow constitutional values while on curative side, the judiciary is sluggish, not sensitive to caste, class or gender based discrimination leading to violence or hegemonic assertions.

The micro & macro analysis of HRV cases revealed that the process of legal action and justice delivery through judiciary has reported several limitations; the scenario of getting justice is dismal due to various reasons, such as, discriminatory attitudes towards dalits, adivasis and the religious minorities, custodial deaths on rise, despite Supreme Court's guidelines the attempts of institutionalising sexual harassment combating mechanism is not in place.

The cases undertaken by NGOs for ensuring justice to the marginalised communities and groups are very small in number; small numbers are not able to be trend setter in dealing with HRV cases effectively.

The NGOs have to equip themselves for effective legal framework and strategies to make an impact on serious and grievous human rights violation like murder, sexual harassment and so on; simultaneously, they have to evolve alternative mechanism or practices to ensure human rights that is universal and work as life giving force.

CHAPTER 1

INTRODUCTION

Contours of Human Rights

Human Rights (HR) are defined as those rights which are inherent in our nature and without which we cannot live as human beings. In everyday life, HR as ethical principles, give meaning to the relationships between people and to their individual and social lives.

The concept of HR is not universal; it covers a wide spectrum and it is not possible to touch upon the whole content in its entity. An equal enjoyment of Human Rights by all the people is necessary for development of intrinsic qualities, intelligence, talents and conscience in order to meet material and spiritual needs. Though the claim for rights as a human is instinctive, yet the State plays an important role in delivering and assuring its access to every citizen. A citizen can only claim to those rights which a State promises through its Constitution and other laws.

Human rights will no doubt continue to be expressed in changing language meeting requirements of legal guarantees to their observance. The fight for justice, freedom and human dignity will, however, be eternal and the values inherent in human rights will always constitutes a benchmark for humanity.

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. Human rights are indivisible, interdependent and interrelated. This was asserted in the Vienna Declaration. However, the Government of India considers "a holistic approach which seeks to tackle poverty and underdevelopment, generate awareness and take affirmative action for the socially and economically vulnerable sections of society". In the Government of India's scheme of things, "civil and political rights" of the economically vulnerable sections of the society are not included. It is the economically vulnerable people who are susceptible to violation of their civil and political rights at the hands of the law enforcement officials. It is precisely the poor people who do not have easy access to the courts and other quasi-judicial mechanisms.

It is realized that for full development as human beings, exercise and enjoyment of Human Rights by all the people is necessary. Human Rights and fundamental freedoms help us to develop our intrinsic qualities, intelligence, talents and conscience to meet our material and spiritual needs.

The United Nations Development Programme's Human Development Reports have made it clear that poverty and underdevelopment are not impediments to effective exercise and enjoyment of all human rights.

About Human Right Violation

Though in large parts of the world there is a boast of a democratic set-up with a comprehensive charter of rights written into its constitution protected by an independent judiciary, a large scale violation of individual's rights has almost become a permanent feature. Hardly any day passes when we do not witness one or other types of human rights violations (HRV) of women and children, of lower castes and otherwise disadvantaged communities, of religious and ethnic minorities, and of workers. These violation ranges over whole conspectus of HR, civil and political rights as well as social and economic. There are mass killings and widespread disappearances, torture, wide displacement of communities and traditional abode; arbitrary detentions and extensive censorship of thought and expression.

Indian society is divided into several religions, which is sub-divided into various castes, creed & sects, each trying to keep their identity separate. Language and regional differences are another type of divide and deterrent. The caste system, which pervades and inbuilt hierarchy, the practice of untouchability prevails despite constitutional provisions. In India, the root cause of poverty is the lack of employment as well as the ownership coupled with lack of social security schemes, misadministration and corruption¹.

The situation of human rights in India is very dismal. As per India Amnesty International Report 2009, while the country was experiencing economic growth, a quarter of the population, approximately 300 million people, 70 per cent of whom lived in rural areas, remained in poverty. The report also stated that "the Indian authorities could not manage to ensure the rights of already marginalized communities, such as landless farmers and adivasi communities, who oppose exploitation of their land and other resources for industrial projects"².

Articulating Human Rights & Human Rights Violation

The modern concept of HR is so structured that that it is not possible to apply it universally because it is constrained with several handicaps.

To present HRV in structured format is necessary for avoiding ambiguity. The following table articulates major concerns, which are actually 'wish list' of HR and the adjoining column describes form, scale, extent and status of HR & HRV.

¹ Shanker and Nanda, 2007. Human Rights Theory and Practice: Two Different Worlds, Academic Excellence, Delhi

² India Amnesty International Report 2009, consulted on [http:// thereport.amnesty.org](http://thereport.amnesty.org)

Major Concern	Status of HR & HRV
Right to Information Act	<ul style="list-style-type: none"> ☞ Implementation hurdles: Right to Information Act has been widely used by several citizens for various purpose but at least 20% of them go for appeal for getting detailed information and of them not more than 5% get information they required. ☞ Issue of Governance: The attitude of the government is that the people should not know whether the government is functioning well / performs its functions well, accountable, transparent and
Right to Vote & Democracy	<ul style="list-style-type: none"> ☞ Low voting, people's mandate?: Till 13 General Elections for parliament, average voting is varies from 48 to 61%; raising a question that the elected representative really has the mandate of majority people.
Corruption	<ul style="list-style-type: none"> ☞ Paying bribe: A study (2005) revealed that the citizens of India pay a bribe of 21608 crores (216 billions) per annum while availing one or more of the 11 eleven public services. And 62% citizens think that corruption is a reality in India.
Religious Violence	<p>According to Census (2001) at that time there were 11.67 per cent Muslims, 2.32 per cent Christians, 1.79 per cent Sikhs and considerable number of Buddhists (0.77 per cent), Parsees (0.4 per cent) and Jains (0.43 per cent) in India. Though each religion positively contributes to theoretical framework of HR, the conflicts between religious communities are grave HRV, as it promotes abuse, grievous injuries, killings and permanent mistrust.</p> <ul style="list-style-type: none"> ☞ Religious fundamentalism is considered a major driver; with Hindu nationalism, Sikh separatism, Christian Evangelism, and Islamic fundamentalism acting as catalysts or as primary forces for outbreaks of violence. ☞ According to the Human Rights Watch, World Report 2000, "The Hindu nationalist Indian Peoples Party (Bharatiya Janata Party or BJP) which led India's coalition government during the year, appeared to condone the activities of right-wing Hindu groups responsible for attacks on religious minorities and people at the bottom of, or outside, India's caste system, including members of tribal groups. These attacks increased significantly in the months proceeding national parliamentary elections in September and October. In Bihar a series of caste clashes and massacres between January and April once again reveal the unwillingness of the state authorities to protect

	<p>the rights of those born in lower caste."</p> <ul style="list-style-type: none"> ☞ For decades, Dalits in India have suffered abuses, name-calling and humiliation at the hands of dominant caste groups - separate feasts, separate cemeteries even separately assigned seats in some churches are not uncommon. The treatment meted out to Dalits has received international attention. Some churches and related groups have taken the issue of atrocities and discrimination against the Dalits to the United Nations Commission on Human Rights. They have campaigned for the appointment of a Special Rapporteur to document the human rights violations against the Dalit community as a result of intolerance and discrimination. ☞ Anti-Christian violence, incited by religious extremists, has taken the form of killing of Christians and burning of churches in the tribal regions of Gujrat, Madhya Pardesh and Orissa. The burning of an Australian missionary, Graham Staines, and his two children in Orissa was one in the series of incidents of religious violence that have, of late, afflicted the Indian society. The government has done little to bring these hate crimes under control. This has badly tarnished India's Gandhian image of non-violence.³
Development Initiatives	<ul style="list-style-type: none"> ☞ Implementation hurdles and suffering of under-privileged sections: Most of the times, participation and decision-making is not collectively undertaken; informed consent is lacking and therefore the under-privileged individuals or families or communities suffer more than the actual beneficiaries of the development projects. Internal displacement, impoverishment, alienation from traditions and culture, etc are known problems.
Poverty	<ul style="list-style-type: none"> ☞ Root cause of all HRV: Inequality, deprivation, victimization are result of poverty; it promotes hegemony and conflict to maintain power and supremacy over resources of all types.
Food Security	<p>India ranks 94th in the Global Hunger Index of 119 countries.</p> <ul style="list-style-type: none"> ☞ Unfinished agenda: Change in crop pattern, price rise of food items, malnourishment, and deaths due to hunger are obvious phenomenon known as part of food security. Poverty combined with food insecurity culminates into conflicts, control over resources and actions / violence that challenges the state for its non-performance of such basic

³ Samuel Azariah, The violence of religious intolerance, Echoes, issue 17/2000, Switzerland. see <http://www.wcc-coe.org/wcc/what/jpc/echoes/echoes-18-00.html>

	<p>duty.</p> <p>☞ Malnutrition: In all 230 million rural poor are undernourished - the highest for any country in the world. Malnutrition accounts for nearly 50% of child deaths in India as every third adult (aged 15-49 years) is reported to be thin (BMI less than 18.5). More than 1.5 million children are at risk of becoming malnourished because of rising global food prices⁴.</p>
Health Care	<p>☞ Neglected sector: Since independence to today, the government of India (GoI) has not spent more than 3% of total GDP. Rural areas face the greater brunt and shell out at least 20% of their total income for health care – simple problems like cold and cough to fatal disease like cancer.</p>
Custodial Violence, Death	<p>☞ It's been estimated that each year, more than 1,500 Indian prisoners die within less than a day of being arrested⁵.</p>
Under-privileged sections of the society / nation	<p>Indian Constitution has made special provisions for SC, ST, OBC and religious minorities. Despite constitutional safeguards, affirmative actions and implementing machinery, these groups have been suffering due to HRV in different forms and the number of violent incidents on them is on increase.</p> <p>☞ Scheduled Castes: The National Crime Records Bureau (NCRB) recorded 995 cases of crime against Scheduled Castes (SCs) including 20 cases of murder, 19 cases of rape and 359 cases under SC/ST (Prevention of Atrocities) Act of 1989 in Gujarat during 2006. The charge sheeting rate for the crimes against the dalits in Gujarat during 2006 was 97.7% but the conviction rate was only 5.2% which was one of the lowest in India. Out of total 813 cases in which trials were completed during 2006 only in 42 cases the accused were convicted. According to an NGO working for Dalit Rights, at least 225 cases of atrocities against Dalits were reported in Gujarat during April -December 2007, including six rape cases, four murders and four cases of social boycott.</p> <p>☞ Scheduled Tribes: Tribals are losing control over forest and natural resources, alienated from their roots, food habits, dialects / languages and cultural practices, tribes are vanishing, 80% of internally displaced persons due to development projects are tribals. Poverty and impoverishment forced them to migrate in search of</p>

⁴ Report on the state of food insecurity in rural India, 2009

⁵ <http://www.radioaustralia.net.au/programguide/stories/200809/s2364390.htm>

	<p>livelihood and economic exploitation at work place is rampant.</p> <ul style="list-style-type: none"> ☞ The NCRB recorded a total of 164 cases of crime against the Scheduled Tribes (STs) in Gujarat which included six cases of murder, 23 cases of rape, eight cases of abduction, 53 cases registered under SC/ST (Prevention of Atrocities) Act of 1989, among others during 2006. While the charge-sheeting rate for crimes against the STs in Gujarat was 99.4%, the conviction rate was only 3.3% which was one of the lowest in India during 2006. Out of total 152 cases in which trials were completed during 2006 only in five cases the accused were convicted. ☞ Crimes against Women (CaW): Under Indian Penal Code (IPC), the crimes against women are about 5 lakhs (0.5 million) per annum in India. In 2001, 7.4% was CaW out of total crimes recorded under IPC. In Gujarat state, every day 8 women burn themselves. Female infanticide is rampant and more than 200,000 women go for female infanticide every year in Gujarat and therefore in Ahmedabad city the male-female ratio is 1000:787. Surrogate motherhood is a complex issue, the Gujarat state leads in this aspect. ‘Witch branding’ kills at least one woman a day in Gujarat. ☞ Child abuse, labour, malnourishment, infant mortality, marriage, etc: Despite International Convention, legal provisions, Human Development Index that is globally accepted, problems of children and youth have been persistent. UNICEF cites 75-90 million child labour in India, 56 per 1000 children die at birth, more than 60% suffer malnourishment. ☞ Differently Challenged Persons: The National Sample Survey Organisation (NSSO) in 1990-91 carried out a survey for persons with any type of disability – sensory, visual, speech, hearing, locomotor and revealed that 25% of rural and 20% of urban population with physical disabilities could not perform activities of self-care & daily living even with aids / appliances.
<p>Other Vulnerable Groups</p>	<p>In span of HRV, internally displaced, suicides by farmers, ill-treatment to under-trials and prisoners are also need to be considered.</p> <ul style="list-style-type: none"> ☞ Status of internally displaced persons: More than 35 millions have been internally displaced due to various development projects as well as due to internal communal

	<p>conflicts. The rate of their rehabilitation is as low as less than 40%; at least 30% face multiple displacements.</p> <ul style="list-style-type: none"> ☞ In June 2007, a Supreme Court-appointed committee headed by N.C. Saxena found that 4,545 Muslim families comprising around 30,000 persons who were displaced by the post-Godhra communal riots were still living in miserable conditions in 81 relief colonies in Gujarat. They faced acute scarcity of food and security. None of the 81 relief colonies were set up or assisted by the state government. Only five of the 81 colonies had government or government recognised schools, and only four served mid-day meals to children. Only three colonies had fare price shops, and only 725 out of the 4,545 families were recognised as below poverty line (BPL). ☞ Violations of Prisoners' Rights: According to the information received by Asian Centre for Human Rights (ACHR) under the Right to Information (RTI) Act, the National Commission for Human Rights (NHRC) received 54 cases of deaths in judicial custody in Gujarat during the period of 1 April 2006 to 31 March 2007. ☞ Violations of the rights of minorities: Justice continued to elude the victims of the communal riots of 2002 while Christian religious minorities came under attacks from Hindu fundamentalists. On 30 October 2007, a local court in Godhra awarded life imprisonment to eight accused, including a taluk-level BJP chief, and rigorous imprisonment to three others in the Eral massacre and gang rape case which took place during the 2002 post-Godhra riots. ☞ Farmers' suicide: Farmers have been dying in Gujarat too due to agrarian crisis. According to the data obtained under the Right to Information Act from Gujarat Government, 489 farmers have committed suicide in the state during 2003-07. Junagadh district topped the list with 85 suicides, followed by Rajkot (62), Jamnagar (50) and Mehsana (48). The figure could be higher as the state government failed to provide information on six districts.
<p>Right to Social Justice with Legal Action</p>	<ul style="list-style-type: none"> ☞ Is Law an ass?: The legal action for under-privileged sections are divided into largely 2 sections – (i) demand driven laws and their implementation, and (ii) laws for social justice. The first category includes laws like Right to Information (RTI), National Rural Employment Guarantee Act (NREGA), Protection of Women against Domestic

	<p>Violence Act (PVDVA) while the latter includes laws like Prevention of Atrocities on SC & ST, Dowry Prohibition Act, etc.</p> <ul style="list-style-type: none"> ☞ Expensive and Lengthy Legal Procedures: One of the major weaknesses of the present legislation problems is – legal provisions are left to judicial pronouncements without specifying summary procedures to be followed in the event of proceedings under the respective legislations. The under-privileged people have limited resources and legal knowledge to participate in complicated, lengthy and expensive legal process. ☞ Very low conviction rate in cases of violence on SC & ST: In Gujarat, out of 1,301 cases of violence on SC & ST registered in 2005, the conviction rate was a poor 3.8%.
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Out of the set of overarching concerns, we have narrowed down the focus of the present study to “HR and Legal Action” in order to understand and present ‘justice’ that the victim gets. As part of this, understanding police, Judiciary – structure and actors, civil society’s views and attitudes are necessary. We have therefore studied and scrutinized Protection of Human Rights Act, 1993⁶ (PHRA) enacted by Government of India.

India has since then decided to enact laws in compliance with HRA. It is then important to study not just PHRA and HR protecting and promoting structures like National Commission for Human rights (NHRC) and State chapters of HRC but the procedures, rules & regulations of each law, its practical aspects like how the law is used to promote HR or to support culprit for HRV.

Objectives of the study

- ⇒ Documenting the status of human rights and human rights violation in Gujarat
- ⇒ Articulating human right violation and sharing need for developing strategies to address human right violation in India
- ⇒ Studying human right violation and getting justice through legal action in Gujarat

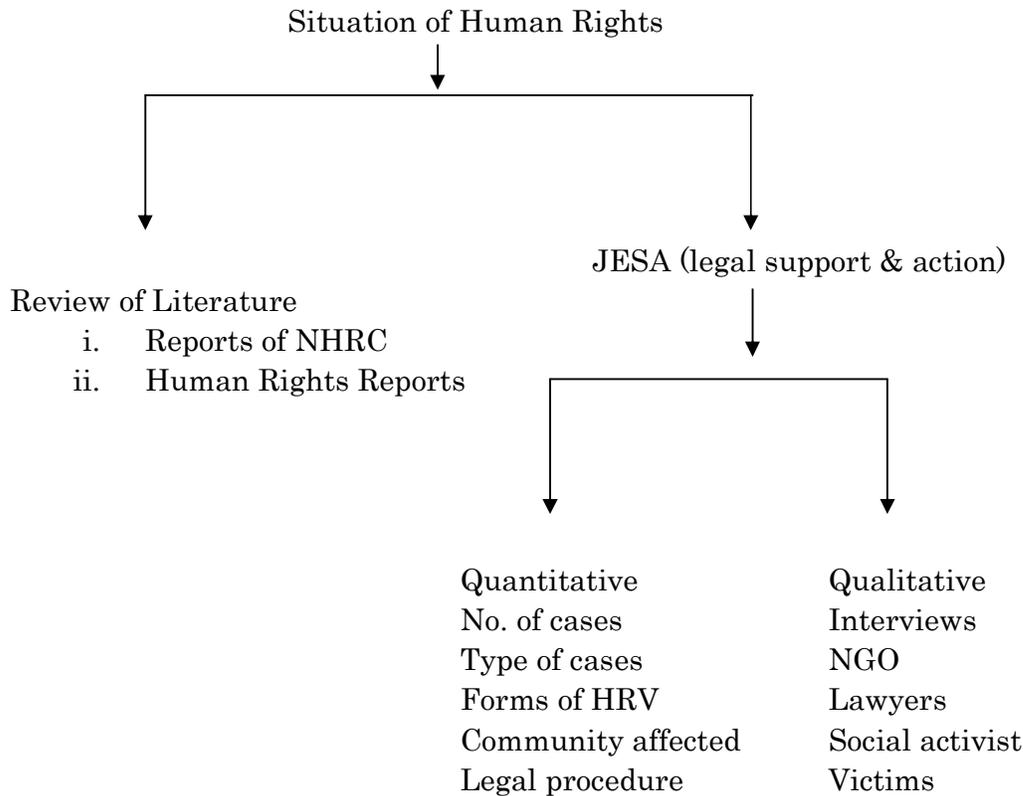
Research Framework & Methodology

The research framework and methodology have undergone frequent revisions due to changing circumstances. Initially, a common understanding among Jesuits in Social Action (JESA) members was that deeper understanding of

⁶ Section 2 of the Act, "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India.

human right violation and legal action will lead to strategic planning and therefore contribution of all JESA members was ensured.

A. Original research framework & methodology



A workshop was organised to discuss research framework and methodology on the issue; that time, one of the newspapers⁷ reported that “According to the NHRC, Gujarat ranked 3rd highest as far as violation of Human Rights are concerned. The rights Commission received a total 94,559 cases of human rights violation across the country last year, out of which a total of 3,813 complaints of human rights violation were received from Gujarat.” Based on this, entire discussion was steered around this report and the group decided to focus on this data and its detailed analysis.

As time passed, it was realised that the newspaper had quoted NHRC data but no verification of information source was available and therefore the study had to decide the revised methodology, i.e. collecting primary information from JESA for last 10 years. With this confusion, JESA members couldn’t provide data by initially by August 2009 and delayed to September 2009. Meanwhile we conducted interviews of lawyers working with JESA for legal support and action

⁷ Ahmedabad Mirror, Ahmedabad, 19th March 2009

but in absence of reliable primary data, the study couldn't move forward satisfactorily.

B. Revised framework & methodology

In October 2009, BSC decided to revise the methodology and decided that we will collect 5 to 10 cases from Sessions Court and will study them in detailed in the perspective of human right violation; the cases will of the marginalised communities and the judgement was given. However, under right to information act (RTI), we couldn't get information required within a month as planned. The data we could collect was of 5 cases.

Finally, we decided to analysed these cases in detail along with secondary data to describe micro and macro scenario related to human right violation. The detailed analysis of these cases includes:

- Awareness among the victim to register complaint for HRV
- Circumstance in which incidence took place
- Attitude and behaviour of police for registration of complaint
- Attitude and behaviour of lawyers – of public prosecutor when state is a party and lawyers that fight cases for the cause of justice to the marginalised communities
- Attitude and behaviour of judiciary – judge, procedures and proceedings in the Court
- Attitude and behaviour of the victims and accused to withstand police custody, Court procedures, etc
- Timeframe – complaint to judgement
- Judgement and whether justice is achieved
- Pattern emerged based on these cases – justice for the disadvantaged person or community

The research would be divided into following chapters:

- ⇒ First chapter: Conceptual framework of Human Rights and human rights violation to asses the status of Human rights in India, specifically in Gujarat, if possible, through the secondary data.
- ⇒ Quantitative Analysis of secondary data to depict macro scenario for HRV.
- ⇒ Qualitative Analysis of selected cases to depict micro scenario for HRV, legal action, legal processes & procedures and HRV perspective employed by police, judiciary, etc to identify gaps for dealing with HRV. As part of this, five HRV cases as samples would also be analyzed with the help of in-depth interviews of the victims.

Structure of the report

The first chapter as an introduction covers various aspects of human rights and human rights violation. It also provides basic information about the study, namely objectives, research framework and methodology and structure of the report.

The second chapter provides an overview of HRV in India and Gujarat, sources of information about HRV and existing state machinery for law enforcement and dealing with HRV directly, indirectly or as an interface with the judiciary. It briefly presents role, responsibilities and limitations of each law enforcement mechanism in the context of dealing with HRV.

The third chapter is largely based on primary and secondary data covered under the study and its detailed analysis including role & attitude, behaviour of police, judiciary and civil society actors.

The fourth and last chapter summarises the findings of the study on HRV and legal action; also presents a set of recommendations for improvement in socio-legal action by NGOs to ensure justice to the marginalised communities and vulnerable groups.

CHAPTER 2

MECHANISM TO DEAL WITH HUMAN RIGHTS VIOLATION IN INDIA

This chapter presents scenario of HRV – existing mechanisms, their functions and way of functioning, sources of information about HRV, limitations of existing mechanism in dealing with HRV and overviews briefly on socio-legal actions by government agencies and non-government agencies and actors.

Existing Mechanisms to address HRV

The HRV has several forms; insult of any one is probably one of the simplest types of HRV to serious injuries or killing is the most threatening HRV.

The police, judiciary (taluka to Apex Court), Human Rights Commission (State and National level) and other Commissions (Child Protection, Women, Inquiry, etc) are the existing mechanism to address HRV effectively. Other than judiciary, all are quasi-judicial mechanism with no statutory power.

Though each state machineries has a mandate to deal with any type of or any form of HRV in preventive and curative manner but it mainly deals with reported incidents and post-incident actions. For example, a police registers a complaint after HRV incident is reported / taken place under Indian Penal Code (IPC) and respective existing laws. In case of IPC and serious crime, the State becomes party, otherwise, it remains between 2 parties (persons or groups or communities), i.e. oral or physical abuse will generally be considered under the latter category.

a) Role of Police and HRV

The role of police is dual – as law enforcement agency for prevention of HRV, especially ‘crime’ and ‘deviant’ cases as well as for post-incident (crime and deviant cases) actions.

☞ In India, harassment of poor, person belonging to scheduled castes (SC) or scheduled tribes (ST) and weaker sections of the society in police custody is common but under-reported; total 136 cases of death in police custody and 1357 cases of judicial custody deaths are reported during 2000 and 2005.

HRV by Police in Gujarat state

☞ According to the NCRB (2006), a total of 893 complaints were received against the police in Gujarat during 2006. Of them, a departmental inquiry was ordered into 639 cases and magisterial inquiry was ordered into one case. 232 police personnel were sent up for trial during 2006. Of the seven police

personnel whose cases/trials completed, three were convicted and four acquitted.

- ☞ According to the figures received by Asian Centre for Human Rights (ACHR) through the Right to Information (RTI) Act, the NHRC received four cases of illegal arrest, six cases of unlawful detention, 142 cases where police failed to take action, two cases of disappearance and 79 other police excesses in Gujarat during the period of 1 April 2006 to 31 March 2007.
- ☞ The security forces continued to be responsible for human rights violations including custodial killings. The NCRB recorded eight deaths in police custody in 2006. The police claimed that three died during hospitalization/ treatment, three while escaping from custody, one due to illness/natural death and one committed suicide. A Magisterial inquiry was ordered into five deaths and a judicial inquiry was ordered into three others.
- ☞ According to information obtained by Asian Centre for Human Rights the NHRC received seven cases of deaths in police custody in Gujarat during the period of 1 April 2006 to 31 March 2007.
- ☞ According to Navsarjan, an NGO, 53,395 cases of violence against women were reported from 12 districts of Gujarat from 1995 to 31 October 2007. These included 640 dowry death cases, 1,443 rape cases, 14,998 cases of cruelty by husband and in laws, 4,030 cases of attempted rapes, 3,006 cases of abduction of women, among others. The data was obtained through filing applications under the RTI Act. However, the data collected were from just 12 districts of Gujarat. Most of the cases of violence against women go unreported.

The Supreme Court of India has given specific guidelines for functioning of police but its implementation is very poor and thus the police has remained less humane, lack sensitivity towards HRV, especially on poor and vulnerable sections of the society.

According to the Gujarat State Human Rights Commission (GSHRC) overcrowding in the state's jails was 113.40 per cent with 12,134 persons in the jails, of whom 11,509 were convicts and 625 under-trials.

b) State & National Human Right Commission and its limitations

The Protection of Human Rights Act, 1993 makes provisions for the establishment of State Human Rights Commissions, 14 States have already set up such bodies, including Gujarat state.

These commissions autonomous, having powers of a Civil Court, authority to interim relief; they are get complaints registered and investigate and submit report and undertakes review of existing laws or new laws under-making.

One of the major limitations of these commissions is lack of statutory powers their impact in curbing HRV is limited.

The NHRC registered 32 custodial deaths in 1999-2000, 38 in 2000-2001, 52 in 2001-2002 and 51 in 2002-2003 in Gujarat. The NHRC received 54 cases of deaths in judicial custody in the state during 1 April 2006 - 31 March 2007.

Types of complaints entertained by the Commission

Ordinarily, complaints of the following nature are not entertained by the Commission:

- ☞ In regard to events which happened more than one year before the making of the complaints;
- ☞ With regard to matters which are sub-judice;
- ☞ Which are vague, anonymous or pseudonymous; are of frivolous nature; and that pertain to service matters.

Functions of Human Rights Commission

Inquiring, *suo motu*, or on a petition, presented by victims, or persons on their behalf, into complaints of:

- ☞ Violation of human rights or abetment thereof, or negligence or dereliction of duties in the prevention of such violation, by public Servants
- ☞ Intervening in any proceedings involving any allegations of violation of human rights pending before Courts, with the approval of such Courts.
- ☞ To File proceedings in the High Court or the Supreme Court
- ☞ Visiting, under intimation to State Governments, jails or other institutions under the control of State Governments, where persons are detained or lodged for purposes of treatment, reformation or protection, to study the living conditions of the inmates, and make recommendations.
- ☞ Reviewing the safeguards provided by, or under, the Constitution, or any laws for the time being in force, for the protection of human rights, and recommending measures for their effective implementation.
- ☞ Reviewing factors, including acts of terrorism, that inhibit the enjoyment of human rights, and recommending appropriate remedial measures.
- ☞ Studying treaties and other international instruments on human rights, and making recommendations for their effective implementation.

- ☞ Undertaking and promoting research in the field of human rights.
- ☞ Spreading human rights literacy amongst various sections of society, and promoting awareness of the safeguards available for the protection of these rights, through publications, the media, seminars and other available means.
- ☞ Encouraging the efforts of non-governmental organizations, and institutions working in the field of human rights.
- ☞ Undertaking such other functions as may be considered necessary for the promotion of human rights

NHRC reports its achievements with initiatives, as follow:

- ☞ Review of statutes, including Terrorist & Disruptive Activities Act, and (draft) Prevention of Terrorism Bill, 2000;
- ☞ Protection of human rights in areas of insurgency and terrorism;
- ☞ Guidelines to check misuse of the power of arrest by the police
- ☞ Setting up of Human Rights Cells in the State/City Police Headquarters
Steps to check custodial deaths, rape and torture
- ☞ Accession to the Convention against Torture, Additional Protocols to the Geneva Conventions

However, Human rights training for the armed forces and police, public authorities, civil society, and students; research on HR & HRV are need of the hour but NHRC or State Human Rights Commission do not undertake these activities on large scale.

c) National Commission for Women (NCW)

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India) to:

- ☞ Review the Constitutional and Legal safeguards for women;
- ☞ Recommend remedial legislative measures;
- ☞ Facilitate redressal of grievances, and
- ☞ Advise the Government on all policy matters affecting women.

NCW consists of 7 persons. Like NHRC, NCW also works on complaints it received and acts *suo-moto* in selected; undertakes awareness raising programmes and reviews existing laws and recommends necessary changes for its effectiveness; organizes workshops/consultations, constituted expert committees on economic empowerment of women and for gender awareness in

order to generate awareness in the society against social evils. (see annexure -4 for mandate of the commission)

According to the National Crime Records Bureau, a total of 7,279 cases of violations against women were reported in Gujarat during 2006. These included:

- 354 cases of rape,
- 50 cases of dowry deaths,
- 945 cases of kidnapping and abduction,
- 4,977 cases of cruelty by husband and relatives,
- 736 cases of molestation,
- 78 cases under Immoral Trafficking (Prevention) Act of 1956, among others.

d) National Commission for Protection of Women & Child Protection

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission, while enquiring into any matter, has all powers of the Civil Court trying a suit under the Code of Civil Procedures, 1908 and in particular, with respect to the following matters:

- ☞ Summoning and enforcing the attendance of any person from any part of India and examining them on oath
- ☞ Requiring the discovery and production of any documents
- ☞ Receiving evidence on Affidavits
- ☞ Requisitioning of any Public Record or copy thereof from any Court of Office
- ☞ Issuing commissions for the examination of witnesses or documents
- ☞ Forwarding cases to Magistrates who have jurisdiction to try the same
- ☞ On completion of inquiry, the Commission has the powers to take the following actions:
 - a. To recommend to concerned Government for initiation of proceedings for prosecution or other suitable action on finding any violation of child rights and provisions of law during the course of an inquiry

- b. To approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary
- c. To recommend to concerned Government or authority for grant of such interim relief to the victim or the members of his family as considered necessary.

It undertakes tasks, such as, raising public awareness and create a moral force in the country to stand by children and protect their rights; reviewing existing policy framework and the legal framework, identifying gaps and making recommendations to see that rights-based perspective is adhered to by the Government to ensure child rights; to take up specific complaints that come up before it for redressal of grievances and also take up *suo-moto* cases, summon the violators of child rights, get them presented before the Commission and recommend to the Government or the Judiciary, action based on an inquiry and undertaking research and documentation for enhancing legitimacy and credibility of the Commission. (See annexure - 4 for mandate of the commission)

The NCRB also recorded a total of 977 cases of crimes against children in 2006. These included 87 cases of murder, 112 cases of rape, 360 cases of kidnapping, 12 cases under Child Marriage Restraint Act of 1978, among others.

A study conducted by the Daxin Rajasthan Mazdoor Union (DRMU), which was released in November 2007, revealed that 33 per cent of the about two lakh workers employed in the BT cotton fields were children below 14 years of age. They faced sexual harassment and physical abuse. According to the study, 36 per cent of the children working in the farm lands complained of verbal abuse while 12 per cent faced physical abuse. There was no protective clothing. Many of the children have health problems related to pesticide exposure.

e) National Commission for Scheduled Castes and Scheduled Tribes (NCSC & NCST)

For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for SCs & STs was assigned the duty to investigate all matters relating to the safeguards for SCs and STs in various statutes and to report to the President upon the working of these safeguards.

The first Commission for SCs & STs (Multi-Member) was set up in 1978 and worked as National Level Advisory Body to advise the Government on broad

policy issues and levels of development of Scheduled Castes and Scheduled Tribes. The statutory National Commission for Scheduled Castes and Scheduled Tribes in 1990, followed by second commission in 1995, third in 1998, fourth 2002.

The National Crime Records Bureau (NCRB) recorded 995 cases of crime against Scheduled Castes (SCs) including 20 cases of murder, 19 cases of rape and 359 cases under SC/ST (Prevention of Atrocities) Act of 1989 in Gujarat during 2006

The erstwhile National Commission for Scheduled Castes & Scheduled Tribes has been replaced by - National Commission for Scheduled Castes, and National Commission for Scheduled Tribes in 2006. The Chairman and Vice-Chairman of the Commission has been conferred the status of Union Cabinet Minister and Union Minister of State and the Members of the Commission will enjoy a rank of Secretary to the Government of India.

The Commission can directly investigate or inquire into the matters falling within its authority; it can also constitute an Investigating Team and can undertake tasks through its State Offices. The Commission may hold sittings for investigation into matters relating to safeguards, protection, welfare and development of the Scheduled Castes for inquiry into specific complaints.

f) National Commission for Minorities (NCM)

With the enactment of the National Commission for Minorities Act, 1992, the Minorities Commission became a statutory body and renamed as National Commission for Minorities.

The first Statutory National Commission was set up on 17th May 1993; five religious communities viz; the Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities. As per the 2001 Census, these five religious minority communities constitute 18.42% of the country's population.

NCM undertakes evaluation of the progress of the development of minorities under the Union and States; monitor the working of the safeguards for minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures; makes recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments; looks into specific complaints regarding deprivation of rights and safeguards of minorities and taking up such matters with the appropriate authorities; conducts studies, research and analysis on the

issues relating to socio-economic and educational development of minorities; suggests appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments; makes periodical or special reports to the Central Government or any matter pertaining to minorities and in particular the difficulties confronted by them; and any other matter, which may be referred to it by the Central Government.

The complaints now being received are mostly related to police atrocities, service matters, minority educational institutions and encroachments to religious properties. Reports were called for from the concerned authorities under the Union and State Governments. On receipt of the reports, the Commission made appropriate recommendations to the respective authorities for redressal of the grievances.

Sources of Information for Status Human Right

As human rights are universal, human right violation needs a well planned and evolved system for documentation and presentation. In India, there is only one agency that provides official data related to HRV, that is, National Human Rights Commission (NHRC) and its state chapters. However, data NCRB is also considered to be an official source of information. Thus, critical analysis of these data shows trends and pattern of HRV. (see annexure 1 for details)

Regarding HRV, other sources of information are by and large civil society organisations (CSO) and their reporting is also incidence based rather a compilation and consolidated data that shared extent, patten, trends of HRV. Among the CVOs, Amnesty International (AI), Asian Centre Human Rights (AHRC), National Campaign for Dalit and Human Rights (NCDHR) and websites of a few NGOs working for legal support & action in India provides some data, such as, Lawyer's Collective, Human Right & Law Network (HRLN) and their state chapters, etc.

Creating holistic picture of HRV in India is difficult with scattered and sporadic data; however, the study attempts to create a scenario of HRV based on available data.

Table 1: NHRC Data (Year 2000-2005): Emerging Trends

Year	Total number of HRV complains	Highest ranking first three states								
		Name of state	Total number of HRV complaints	%	Type of cases					
					Police Custody	Judicial Custody	Custodial death/rapes	Fake Encounter	Sexual harassment	Atrocities on SC/ST
2000-01	71555	Uttar Pradesh (UP)	40444	56.52	10	121	131	68	16	87
		Bihar	4273	5.97	02	137	139		9	16
		Delhi	4085	5.70	09	28	37		2	1
		Gujarat	756	1.06	11	27	38	02	2	7
		Total	71555	100	127	910	1037		73	206
2001-02	69083	UP	39588	57.30	11	183	194	74	81	227
		Bihar	4149	6.01	02	144	146		8	35
		Delhi	3849	5.57	05	27	32		12	1
		Gujarat	1210	1.75	08	44	52		3	14
		Total	69083	100	165	1140	1305		176	462
2002-03	68779	-	-	-	-	-	-	-	-	
2003-04	72990	-	-	-	-	-	-	-	-	
2004-05	74401	UP	44643	60	07	219	35	66	204	363
		Delhi	5264	7.08	05	27	07	09	24	5
		Bihar	4070	5.47	03	150	16	-	11	50
		Gujarat	1070	1.44	15	54	16	02	-	4
		Total	74401	100	136	1357	766	122	320	593

This table shows that information of years 2002-03 & 2003-04 provides only number of cases registered, as statewise information is not available. From available data, the patter observed is:

- More than 55% of total HRV cases in India are registered in Uttar Pradesh
- In the year 2000-01 Gujarat ranks 16th while in 2001-02 it ranks 10th and in 2004-05 it ranks 11th in HRV cases in India.
- NCB data shows that in 2005-06, total 1307 cases of crimes (violence) on scheduled castes & scheduled tribes followed by 1159 in 2006-07 and 1169 in 2007-08. However, according to NHRC, total 593 cases of atrocity on SC & ST are registered during 2000 and 2007.

- Crimes against women are constantly on rise; 6343 cases in 2005-06 followed by 7279 in 2006-07 and 8260 in 2007-08.
- Crimes against children are also on rise; 977 cases in 2006-07 and 1110 cases in 2007-08.

According to the 2006 Annual Report of National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 893 complaints were received against the police in Gujarat during 2006. Of them, a departmental inquiry was ordered into 639 cases and magisterial inquiry was ordered into one case. 232 police personnel were sent up for trial during 2006. Of the seven police personnel whose cases/trials completed, three were convicted and four acquitted.

This comparison indicates 2 major differences –

- (i) Classification of data varies with each agency, and
- (ii) Difference in number of cases.

Due to these reasons, consolidation is difficult.

- NHRC classifies data based on complaints it receives and therefore adopt classification⁸ related to police custody, judicial custody and fake encounters. (see annexure 3 for how NHRC undertakes mapping of Human Right Issues)
- NCB classify data based on social groups like women, children, SC & ST.

⁸ Broad classification of NHRC is as follow:

I. Ranking in Human Rights Violators Index:

II. Political freedom

III. Human rights violations by the security forces (a. Custodial violence b. Extra-judicial killings c. rbitrary arrest, illegal detention and torture)

IV. Judiciary and administration of justice (a. Legal reforms b. Judges' accountability c. Judicial delay)

V. Effectiveness of National Human Rights Institutions

VI. Repression on humanrights defenders

VII. Freedom of the press (a. Attacks by the state agencies and political activists b. Attacks by the Armed Opposition Groups)

VIII. Violations of the rights of indigenous peoples (a. Atrocities against tribals b. Land alienation and displacement c. Repression under the forest Laws d. Encroachment by non-tribals)

IX. Violations of the rights of the Dalits (a. Denial of access to public Places b. Physical attacks against the Dalits c. Violence against Dalit Women d. Denial of land rights)

X. Violence against women (a. Violence by the security forces, b. Violence by the Armed Opposition Groups c. Cruel cultural practices)

XI. Violations of the rights of the child (a. Child labour b. Child trafficking c. Children in armed conflict d. Orphaned children e. Girl child: Target of sexual abuse f. Juvenile Justice g. Torture of children)

XII. Status of internally displaced persons

XIII. Violations of the prisoners' rights

XIV. Violations of the rights of minorities (a. Attacks on the Christian minorities, b. Attacks on the minorities by the Armed Opposition Groups in J&K)

XV. Status of the refugees (a. Refugees under the government of India b. Refugees under the UNHCR)

XVI. Violations of International Humanitarian Laws by the Armed Opposition Groups (a. Torture b. Killings c. Abductions d. Extortion)

XVII. Application of the National Security Laws (a. Cases under the Prevention of Terrorism Act of 2002 b. Cases under the Terrorist and Disruptive Activities (Prevention) Act c. Cases under the Public Safety Act)

While cross-referencing available data, discrepancy is observed, e.g. NHRC has received total 593 cases in 7 years as against 2355 in 2 years reported by NCB.

As many as 489 farmers have committed suicide in the state since 2003. On 29 March 2007, the Gujarat government admitted in the State Assembly that at least 148 farmers had committed suicide in the state during January 2005- January 2007. Of these, 28 victims were tribal farmers. According to BKS, around 300 farmers committed suicide in 2006 alone but the police have been refusing to register FIRs.

Socio-legal action by NGOs for HRV

There are mainly two types of NGOs that are providing social, legal support and action for ensuring justice against HRV in form of violence, atrocity, harassment, torture, discrimination, deprivation and so on. The two types include: (i) community focused; (ii) legal focused. The first type attends cases by itself or passes it on to the later type while the later type takes up cases as and when reported to them or in alliance with the first type of the organisation. They have panel of lawyers to counsel the victim, entering into dialogue with both parties and reaching mutual acceptable formula and / or fight cases in the court (lowest to Apex Courts).

- ☞ The bulk of cases registered at these types of NGOs pertain to domestic domain and civil cases.
- ☞ The cases of atrocity need different type of expertise as these cases pertain to either criminal cases where state is a party.
- ☞ The cases of discrimination and deprivation at community level needs different expertise – knowledge of Indian Constitution, jurisprudence, national and international charters, covenants and treaties, ability to interpret rights of citizens in tune with constitutional provisions. Largely, these cases are fought at High Court of the state and at Supreme Court at national level.

Initiatives of Judiciary in India to address HRV

The Emergency of 1976 marked not just a political watershed in this country, but a judicial one as well. In the euphoria of the return to democracy and in an attempt to refurbish its image that had been tarnished by some Emergency decisions, the Supreme Court of India opened the floodgates to public interest litigation (PIL).

Under PIL, courts take up cases that concern not the rights of the petitioner but of the public at large. In the last two decades, PIL has emerged as one of the

most powerful tools for promoting social justice and for protecting the rights of the poor.

Public Interest Litigation (PIL) is a right given to the socially conscious member or a public spirited NGO to espouse a public cause by seeking judicial for redressal of public injury. Such injury may arise from breach of public duty or due to a violation of some provision of the Constitution. Public interest litigation is the device by which public participation in judicial review of administrative action is assured. It has the effect of making judicial process little more democratic.

Among the numerous factors that have contributed to the growth of PIL in this country, the following deserve special mention:

- ☞ The character of the Indian Constitution. Unlike Britain, India has a written constitution which through Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) provides a framework for regulating relations between the state and its citizens and between citizens inter-se.
- ☞ India has some of the most progressive social legislation to be found anywhere in the world whether it be relating to bonded labor, minimum wages, land ceiling, environmental protection, etc. This has made it easier for the courts to haul up the executive when it is not performing its duties in ensuring the rights of the poor as per the law of the land.
- ☞ The liberal interpretation of *locus standi* where any person can apply to the court on behalf of those who are economically or physically unable to come before it has helped. Judges themselves have in some cases initiated *suo moto* action based on newspaper articles or letters received.
- ☞ Although social and economic rights given in the Indian Constitution under Part IV are not legally enforceable, courts have creatively read these into fundamental rights thereby making them judicially enforceable. For instance the "right to life" in Article 21 has been expanded to include right to free legal aid, right to live with dignity, right to education, right to work, freedom from torture, bare footers and hand cuffing in prisons, etc.
- ☞ Sensitive judges have constantly innovated on the side of the poor. for instance, in the Bandhua Mukti Morcha case in 1983, the Supreme Court put the burden of proof on the respondent stating it would treat every case of forced labor as a case of bonded labor unless proven otherwise by the employer. Similarly in the Asiad workers judgment case, Justice P.N. Bhagwati held that anyone getting less than the minimum wage can approach the Supreme Court directly without going through the labor commissioner and lower courts.

- ☞ In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.

According to the Annual Report 2007-08 of the Ministry of Rural Development, Government of India, total of 20,704 cases alleging alienation of 75,966 acres of land have been filed in the court in Gujarat. 19,819 cases have been disposed of by the court, of which 19,322 cases have been disposed of in favor of tribals but it was only in 376 cases (involving 1942 acres of land) in which alienated land was restored to tribals. 885 cases were pending in the court

Sensitising Lawyers

Given the above scenario, one of the most difficult tasks for a social activist is to find a lawyer with a vision who is able to see the bigger picture and be prepared to fight for it. This calls for activists to sensitize lawyers on an ongoing basis and not restrict this activity to the peculiarities of a specific case. Also there is a need to sensitise law students in order to build a body of public interest lawyers in this country.

"Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

Public Interest Litigation's explicit purpose is to alienate the suffering off all those who have borne the burnt of insensitive treatment at the hands of fellow human being. Transparency in public life & fair judicial action are the right answer to check increasing menace of violation of legal rights. Traditional rule was that the right to move the Supreme Court is only available to those whose fundamental rights are infringed.

Part of the reason why there are few public interest lawyers in India is due to how poorly it pays. Public interest lawyers in the USA (sometimes derisively called 'ambulance chasers') are easier to find. They largely operate on a 'no-win, no-fee' basis, given the huge damages that are awarded by US courts and which are then split between the client and the lawyer. In India even where free legal aid is provided - as it is to SCs & STs, industrial workers, women, bonded laborers, etc. - public-spirited lawyers end up paying out of their pocket as the amounts that are fixed for even photocopying of documents do not cover the cost of the service, says Ravi Rebba Pragada of the NGO Samata - which works

among tribals in the Vishakapatnam district of Andhra Pradesh - who has accessed free legal aid services.

Supreme Court's recent rulings relaxing PIL

Supreme Court has now realised its proper role in welfare state and it is using its new strategy for the development of a whole new corpus of law for effective and purposeful implementation of Public Interest Litigation.

- ☞ **Peoples Union for Democratic Rights v. Union of India** (A.I.R.. 1982, S C 1473): The court now permits Public Interest Litigation or Social Interest Litigation at the instance of "Public spirited citizens" for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief.
- ☞ **In the Judges Transfer Case** - AIR 1982, SC 149: Court held Public Interest Litigation can be filed by any member of public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress.
- ☞ **Shiram Food & Fertilizer case** AIR (1986) 2 SCC 176 SC through Public Interest Litigation directed the Co. Manufacturing hazardous & lethal chemical and gases posing danger to life and health of workmen & to take all necessary safety measures before re-opening the plant.
- ☞ **In the case of M.C Mehta V. Union of India** (1988) 1 SCC 471 - In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.
- ☞ **Council For Environment Legal Action V. Union Of India** - (1996)5 SCC281: Public Interest Litigation filed by registered voluntary organisation regarding economic degradation in coastal area. Supreme Court issued appropriate orders and directions for enforcing the laws to protect ecology.

Judicial Activism through PIL and its Limitations for HRV Now

PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists. This trend shows stark difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role. PIL is necessary rejection of laissez faire notions of traditional jurisprudence.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In Hussainara Khaton v. State of Bihar, AIR

1979 SC 1360, the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of undertrial prisoners languishing in various jails in Bihar. These proceedings led to the release of more than 40,000 undertrial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

Over the years, the true objective of PIL as originally conceived has been lost sight of, and it believed to be general jurisdiction for correcting government action or inaction, regardless of constraints of established principles of judicial review.

The judiciary and lawyers try to dissuade NGOs and people ensuring democratic rights, arguing that, “PIL jurisdiction is not a unique jurisdiction by which courts can transcend their limitations to act as a body to set right actions of the government, which are believed to be wrong or could be improved...There is a difference between ‘judicial activism’ and ‘judicial adventurism’, as the origins of PIL were in such unexceptional interventions in 1970, as when the court ordered the release of bonded labourers and stopped inhuman working conditions in stone quarries and in mental asylums etc. Correctly, this jurisdiction should have been named SAL or Social Action Litigation to gather its true import.”⁹

- ☞ Except for procedural relaxations, the PIL jurisdiction should not exceed the permissible limits and parameters of judicial review by the court over the actions or omissions of government, legislatures or public bodies, or transcend the basic separation of powers underlying the Constitution.
- ☞ Judicial review in a democratic constitution must also not supplant the normal processes of representative self-government, in which the representatives of the people make choices and policies which may not be ideal or correct, but which can be set right by the people themselves.
- ☞ When Court welcome PIL, its attempt is to endure observance of social and economic programmes frame for the benefits of have-nots and the handicapped.

Limitations of existing mechanism to deal with HRV

As emerged from the information presented here, the limitations of existing mechanisms to deal with HRV are different types:

- a. Various sources of information that lacks coordination and amalgamation
- b. Similar *modus operandi* and structures but limited reach out and impact

⁹ Tehmtan R Andhyarujina, 2009. Judicial Activism in Public Interest Litigation, www.ngosindia.com and Judicial Activism and Constitutional Democracy in India (1992)

- c. The Commissions have limited statutory powers and membership is largely political
- d. Socio-legal actions by NGOs have limited scope for intervention for seeking justice
- e. Different expertise needed for civil cases, criminal cases and for PIL
- f. PIL as judicial activism is not entertained by Supreme Court of India and supported by several lawyers
- g. For preventive side of HRV, police or other law enforcement agencies are not well aware of HR concept and not able to follow constitutional values while on curative side, the judiciary is sluggish, not sensitive to caste, class or gender based discrimination leading to violence or hegemonic assertions.
 - i. In many cases where police do register a case under the Act, they do not cite proper sections. For serious crimes, which includes murder, rape, destruction of property, dispossession of land, fouling of drinking water sources, etc., police are only citing sec. 3(1)(x) of the Act, which section relates to insulting or intimidating a SC/ST person with intent to humiliate him or her in public view.
 - ii. Besides non-registration of cases despite merit, there are delays in investigation, collusion with offenders and manipulation of witnesses and evidence - all of which contribute to reduce the effectiveness of legislation on atrocities. The report of Sakshi states that in Andhra Pradesh mere 4.9 percent of cases registered under the Atrocities Act were actually charge sheeted. Only in 9.3% cases charge sheets are filed within the stipulated time of 30 days. Even if we take the Cr.P.C. time limit of 90 days, charge sheets are filed in only 31% of cases. For about 28% of cases the investigation agency is taking more than 365 days. Therefore, delay in Investigation and charge sheet filing are a common feature with regard to the cases relating to Dalits.
 - iii. NHRC and Justice Punnayya Commission Report of Andhra Pradesh observed that “in the several representations presented to the One man Commission of Andhra Pradesh, they stated that in their cases, the Sub-Inspectors or Circle-Inspectors did not arrest the assailants who committed the atrocities even though, the Sub-Inspectors or the Inspectors of Police, recorded F.I.Rs and registered cases”.
 - iv. NHRC report 2002 on Prevention of Atrocities on Scheduled Caste states that “this behaviour of the police reflects a deeply embedded caste bias if not openly exposed.
- h. Very low rate of convictions is de-motivation in itself for HRV cases, e.g. Out of total 813 cases in which trials were completed during 2006 only in 42 cases the accused were convicted.

CHAPTER 3

CASE STUDIES: HUMAN RIGHTS VIOLATION IN GUJARAT

This chapter presents five case studies of HRV, of different nature and forms. Based on 5 cases of different types, with different persons that belong to different caste, religion, sex, class and areas, the pattern of HRV, how they are dealt by law enforcement agencies and judiciary has been analysed.

Each case is briefly presented in the format:

- Background information – name, place, social status, economic status and causal factors to the event
- Victim's testimony
- Victim's feelings

At the end of the case study, the entire case is analysed with human rights perspective to articulate human right violation, with the following aspects:

- a. date of the event
- b. date of police complaint registered
- c. Category defined as per NHRC
- d. Social status of the victim
- e. Social status of the accused
- f. Comparing dates – event, accused arrested
- g. Total time taken for the case – event, 1st hearing to judgement given OR action taken by the concerned authorities
- h. Attitude of the judge, witnesses, lawyers and treatment to the victim versus accused
- i. Number of hearings took place and the expenses borne by the victim
- j. Money spent by other stakeholders / supporters to ensure justice
- k. Whether justice ensured

Case study 1: Asifkhan case

Nature of case: Custodial violence

Background Information

A person may apparently be known as involved in crimes or person has been proven guilty in past but our judiciary system does not blame any one as criminal unless it is proved under the court of law and / or our court of law does not consider the person guilty in the current case on the basis of his previous records.

Till the date the person is in custody, s/he deserves just behaviour from the police; the police are there to safeguard the people and the law. When the police treats under-trial prisoner in ill manner (abuse, torture or punishments, beating, etc) other than what court of law has

given, it is not only a violation of human rights, also a 'contempt of court'. This kind of behaviour in police custody, in police station premises or prison also results in citizen's mistrust in police and judiciary system.

Asifkhan case is an example of torture by police in police custody, based on his previous criminal background and his biases towards his religion, i.e. Islam.

Asifkhan Pathan is a resident of Naroda Patiya area during 2002, where communal riots took place. He was known as bootlegger and gambler, black marketing and selling edible oil at extremely higher rates on installments to the poor. He is also an eyewitness of one of the Naroda Patiya communal riots cases, in which politicians of the then ruling political party and senior police officials are involved. As an eyewitness, he has been given police protection the then. Simultaneously, he was also considered one of the accused in the murder of another person named Ranjitsingh, and was arrested in October 2002.

According to Asif, he even doesn't know that the person was murdered. His bail was rejected initially at Session's Court (Ahmedabad - district level), but after a year's effort, his bail was granted by High Court of Gujarat in October 2003, with consistent efforts of Behavioural Science centre. In year 2004, the High Court of Gujarat court declared him innocent in the Ranjit Singh Murder case and ordered for his release.

Victim's Testimony

Asif was ill-treated by the local police, i.e. at Ahmedabad. On 28th February 2002, curfew was imposed in the area due to communal violence. On that day, inauguration of Asif's new Pan Parlour was scheduled, which was situated in the Hindu Area, also affected by communal riots. His two sons had gone to that area since early morning for preparation towards inauguration. Meanwhile the riots took severe form. Looking at the severity of the riots, Asif went out to take care of his two sons who were in Hindu area. He was not allowed to enter the chawl, as the crowds inside was violent and had put houses on fire. He saw crowds moving further to attack other areas where Muslims stayed. When he approached the local police sub-inspector (PSI) to request him to take women and children in the camp then he was severely beaten by him, thrown out of the camp.

Confused of where to go and afraid of the crowd, Asif along with others from his community took shelter in a three storied house in Husain Nagar. At around 11.30 am, police team came to rescue. They saw from the roof that it was not the local police but seemed some higher authorities. So gathering his courage he shouted to police for rescue. Late, others also came out and every one was taken to the camp. After a week he found his children also in the same camp. They stayed in the camp for 7 months, during the phase his loan was sanctioned from Canara bank and then Asif Shifted to a rented house in Juhapura along with his family.

When Asif shifted to other area for residence, the local police of Naroda Patiya was also transferred to Vejalpur Police Station and after 15 days of transfer of police official, he was arrested in Ranjit Singh murder case.

In police custody, in the beginning, he was verbally abuse by the PSI saying that ‘how did you survived in riots?’. Later he was beaten with punch on his faces and kicks on his back. In police custody, he fell sick, and was being taken to the hospital for check up. In the van, when he asked for water and go to toilet, he was again severely beaten by the police. He got head injury and had to be taken to the hospital for treatment, he got four stitches on his wound.

He launched a complaint against this in Shahibaug Police Station, on which he was threatened by the police.

Victim’s feelings

Asif is extremely scared of him being killed by those who were involved in Naroda Patiya village case, as the accused are scared of he being eyewitness, leading to punitive action by the Court. Asif is so nervous that he cannot even sleep peacefully at night, and is constantly afraid of being murdered.

Table 2: Analysis of the case to articulate Human Right Violation

Analytical category	Factual information	Interpretation and articulating HRV
Date of the event	28 th Feb 2002	Police registered complaint after 10 days of the event
Date of police complaint registered	10 th March 2002	
Category defined as per NHRC	Communal violence, custodial violence, lack of medical facilities in jail	
Social status of the victim	Muslim	Police and the then ruling political party are biased, against Muslim as religious minority
Social status of the accused	Police, political leaders, state government	
Comparing dates – event, accused arrested		His bail was denied for 24/03/2003 at Sessions Court and after April 2003 he was granted bail from Gujarat High Court.
Total time taken for the case	20 months	
Number of hearings took place and the expenses borne by the victim	Rs. 25,000/-	
Money spent by other stakeholders / supporters	Rs. 30,000/- by Behavioural Science Centre, an NGO fighting for ensuring human rights	

to ensure justice	
Whether justice ensured	Charges not proven

As Asif is an eyewitness in communal riots cases (of Naroda patiya village) in which the then ruling political party and senior police officials were involved, he has been intimidated with threats and ill-treatment in police custody.

His bail was denied for 24/03/2003 at Sessions Court and after April 2003, he was granted bail from Gujarat High Court.

Case study 2: Sinabhai Jogabhai Dhrangi (Dhandha Case)

Nature of the case: Huts of adivasis (indigenous people) were burnt as threat to survival

Background Information

Sinabhai Jogabhai Dhrangi, a migrant adivasi (tribal - indigenous people), staying in the outskirt (classified as wasteland) of the village Dhandha of Palanpur taluka in Banaskantha District, is an example of atrocity and violence on adivasi (indigenous people). His father had migrated 20 years ago with his 4 sons and was cultivating waste land of the village the then. They were then threatened several times being killed if does not go away from the waste land of the village since 2004 burnt by upper caste people and their huts were burnt in 2006.

Victim's Testimony

On 19th September 2006, Sinabhai and his nephew were coming for lunch after working in the fields, two women from the family came running to inform them that few upper caste community persons from the adjoining Godh village have attacked their huts. The women asked them not to come home, as the attackers wanted to beat them as well. The women informed them that the attackers broke their cattleshed and burnt two of the huts.

While they were talking, the attackers arrive at the place and started beating Sinabhai and his nephew asking, "why have they built huts on the land under their ownership?" One of the attacker Alwarsingh had wooden log in his hand and he hit Sinabhai with that on his thighs while others started beating him with kicks. When his nephew tried to save him, the attackers started beating him as well. At this point, the women interfere and stopped the attackers from beating both the men. Before leaving, they burnt other two huts as well and Alwarsinh threaten Sinasinh to kill, if he wouldn't leave the place.

Sinasinh immediately rushed to his neighbour Dalpatsinh Parmar and informed him about the incident, who called and informed Palanpur Taluka Police station. Sinabhai also launched a complaint about the incident in Palanpur Taluka Police Station.

Police initially didn't take any action on the complaint so Sinabhai along with his entire family moved in tents near the District Collectors' office, to beg for justice. During their

temporary stay, as per government resolution, the government officials made arrangements for their food and education of their children, while NGOs provided camp for stay. The Government also made arrangements for medical support and regular checkup for the pregnant lady in the family. They stayed in camp for 9 days which resulted into positive immediate action by the Executive, i.e. the Deputy Collector ordered for his return to the village and provided police protection to the entire family. For about one month, 4 armed police stayed in a camp near their huts and later on for 9 months, one police officer was visiting them every month. This gave the family emotional and moral support and due to presence of police, the villagers of the Godh village had stopped harassing them.

But during the judiciary process, the Village Panchayat's attitude was hostile. They passed resolution stating the following and was submitted to the Taluka Development Officer (TDO):

- ☞ The petitioner might have land and accommodation at his native village Hundamata, so they should be given land for cultivation and housing in their native village;
- ☞ The land occupied by this family actually belongs to the village and to a cooperative formed by communities belonging to Other Backward Classes (OBC).
- ☞ The family frequently gets into quarrel with the village residents.

The village Panchayat stopped giving milk to them from the village dairy. The villagers and their community members and other lawyers were constantly discouraging them saying that "the accused would not be punished."

NGOs provided them much needed moral and financial support along with proper assistance in the legal matter. Their lawyer was hired by local community based organization (CBO), who would guide them as to how to answer the questions during cross examination.

Victim's feelings

The petitioner fills that attitude of local police was caste biased, and they were supportive towards the accused (upper caste). According to Sinabhai police didn't conveyed the first order of the Court to remain present, due to that the Judge ordered him to be in custody for two days, till the case was on board. Except this one incident where judge didn't listen to his plea, Sinabhai feels overall attitude of the Judge was positive and that is why the decision came in his favor and the accused were punished.

Sinabhai feels that the punishment to the accused has set an example in the village and upper caste community of the village and surrounding villages refrained from harassing indigenous people and other lower castes. It also gave a boost to the morale and confidence of the tribal community.

Table 3: Analysis of the case to articulate Human Right Violation

Analytical category	Factual information	Interpretation and articulating HRV
Date of the event	19 th September 2006	Police registered complaint after 9 hours of the event
Date of police complaint registered	19 th September 2006	
Category defined as per NHRC	Atrocity and violence on adivasi (indigenous people)	Police didn't register complaint and therefore the victims migrate from native village and sat on dharna at Collector's office as protest from 25 th Sept 2006
Social status of the victim	Adivasi	Police initially didn't take any action on the complaint, attitude of local police was caste biased,
Social status of the accused	Upper caste	
Comparing dates – event, accused arrested	-	
Total time taken for the case	26 months (fast track court)	
Number of hearings took place and the expenses borne by the victim	About Rs. 2,000/-	
Money spent by other stakeholders / supporters to ensure justice	Rs. 20,000/- by Behavioural Science Centre, an NGO fighting for ensuring human rights	
Whether justice ensured	Yes, the accused were convicted	

Human Right Violation

A migrant adivasi family was attacked and their huts were burnt by the village residents (upper castes and community belong to OBC) for cultivating wasteland since 2 decades.

Initially, the police, Executive and Judiciary were not sensitive and supportive: The police denied complaint on the first day the Executive didn't listen to them for 9 days.

After protest measures in form of sitting at Collector's office for 9 days, police protection was provided at village where they resided.

Initially, the judge was supporting upper caste and encouraged lawyers to confuse the petitioner during cross-examination but due to pressure of CBO and proper legal guidance, the judge convicted the accused.

Case study 3: Lakadiya Murder Case

Nature of the case: Muredr of an awakened dalit (scheduled caste person)

Lakadiya Murder Case is an example of Atrocity towards Dalits, by upper caste – dominant community, to such an extent that a person lost his life.

Jethabhai, brother of Nanjibhai Vaniya, was murdered at Lakadiya village of Bhachau taluka in Kachchh District, by five persons of the upper caste community due to past resentment and with an intention to take revenge.

Family of Jethabhai and Nanjibhai is one of the well respected Dalit families in Lakadiya village, as he had supported his community member in fighting for social justice every time. Late Jethabhai was a gentle, educated person and a government servant. He was a lineman in Water Supply Board having his posting at Samkhiyali Pumping Station.

Background Information:

One of the accused of the Murder Case – Ramabha (Darbar, upper caste – dominant community) was arrested under Prevention of Anti-Social Activities Act (PASA) in 1995. He is also known for his involvement in many other crimes such as oil theft from the oil companies, forceful illegal money collection like mafia, money lending on heavy interest rate and snatching away the land of poor in case of failure to pay interest. To prove him innocent, his family members started collecting signature on a statement written on Gram Panchayat letter head, declaring that he is having impression of a noble person and not involved in any activity against the country's interest. Jethabhai denied to sign such false statement. At this, Ramabha's family members got very angry, and used derogatory words for Jethabhai – as dalit. Jethabha filed a case against Ramabha under Prevention of Atrocity on Scheduled Caste & Scheduled Tribe Act (PASCSTA) for using foul and derogatory words for a scheduled caste (dalit) person.

Victim's Brother Shared Information:

On 2nd September 2004, four accused members from the family of Ramabha, namely his father Nathabha and brothers Naranbha and Kanabha and Karshanbha Gadhavi planned and attack on Nanjibhai with tractor from his back. Nanjibhai got hint that they are attacking, he went down the road and saved himself while the tractor went out of control and bashed against the electricity pole on the road. Nanjibhai filed a complaint against them and they were arrested with relevant Indian Penal Code (IPC) and SC&STPAA.

With failure to kill Nanjibhai in first attempt, Ramabha and his brother planned full proof scheme to kill him. To safeguard themselves, Ramabha and Haribha decided not to get directly involved in the case and hence they hired 5 other persons from dominant

communities. With the involvement of one of the five hired persons and guidance of PSI Valsad, Ramo and Haribha succeeded in remaining in police lockup at the time of murder. As suggested by PSI, on 19th September 2004, both of them drank alcohol and misbehaved in public so they can be arrested.

Next day, on 20th September 2004, the hired killers attacked Nanjibhai with pistol when he was driving his 2-wheeler and shot him on his back. Nanjibhai fell down from the vehicle and he was bleeding profusely. One of the attackers pulled him from his hair, while another attacked on him with knife. At that time, a 3-wheeler (Chhakado) was passing from there and so the accused ran away from the site. Nanjibhai was first taken to the village doctor who advised to rush him to the taluka medical centre which is about 70 kilometers away. While traveling, Nanjibhai informed his brother saying that the strangers attacked him. With depleting condition of Nanjibhai due to profuse bleeding, he was taken to district hospital but at the hospital he was declared dead.

As per Indian law, in such condition, the doctor gives medical certificate for death and after post-mortem of dead body, it becomes a criminal case and the state becomes a party. In the complaint, Nanjibhai's brother alleged Ramabha and his brother but as planned they were in police custody, much away from Kachchh. Nanjibhai's brother feels that this was the mistake he made and that had weakened his case in the court of law. According to him two of the local police officers supported the accused.

Nanjibhai's reaction to the court processes:

Lower court though agreed that Jethabhai's death is not a natural death; both the accused Ramabha and Haribha were released in December 2007. The Court also directed police to search and arrest the strangers who killed Nanjibhai but till the date, the police has failed in arresting or find them or the weapons – pistol and knife used in murder.

Table 4: Analysis of the case to articulate Human Right Violation

Analytical category	Factual information	Interpretation and articulating HRV
Date of the event	20 th September 2004	Police registered complaint after 4hours of the event
Date of police complaint registered	20 th September 2004	
Category defined as per NHRC	Atrocity towards Dalits, by upper caste – dominant community	Despite law and special safeguards, dalits are continued to be discriminated, humiliated & victimized due to non-cooperative attitudes of non-dalits
Social status of the victim	Dalits	Discrimination with dalits

Social status of the accused	upper caste	and humiliate them to maintain hegemony, i.e. saying foul words in public places, beat them, grievous injuries, pressurize dalits for undue advantages, etc
Comparing dates – event, accused arrested	Of two accused, one was absconding for 10 months and then arrested by police while the other is still not arrested (more than 5 years)	
Total time taken for the case	The case was registered on 20 th September 2004 Total 120 hearings have taken place but justice delayed The victim's brother has spent more than 200,000 rupees	
Number of hearings took place and the expenses borne by the victim	About Rs. 1,500 - 2,000/- every hearing	
Money spent by other stakeholders / supporters to ensure justice	Rs. 20,000/- by Lok Adhikar Munch, an NGO fighting for ensuring human rights	
Whether justice ensured	No, justice denied, accused was acquitted at lower court. The case is in progress at High Court of Gujarat	

Human Right Violation:

A person from oppressed community (dalit) repeatedly complains the police to protect him against survival threat but police doesn't support.

In this case, the dalit had to prove that the accused are not guilty rather than the public prosecutor proves that if the accused were not directly involved but they planned the murder.

The health care in rural areas is poor and the health care centres are not equipped with necessary surgical instruments, medical persons and medicines.

Case study 4: Pravin case

Nature of case: Physically challenged Dalit boy harassed by teachers in the school and hostel, Education department took no action

This case presents an example of violation of HR – specifically child rights, as the kid is physically challenged and is from scheduled caste (dalit).

Background Information

A physically challenged adolescent boy aged 14 years was humiliated by an upper caste teacher, sacked from the hostel and was taken back at Apang Manav Mandal (a Trust for physically challenged persons), Ahmedabad on 16th February 2005 but despite complaining to the Education Department, Social Welfare Department, Police and the Court, there is no action taken by the Trust against the teacher or no action by the authority against the Trust. After a complaint was made to the court on 04th June 2008 but the case is still going on in the Court.

Victim's Testimony

Pravin Parmar was studying in 9th standard in 2005. He was standing in the corridor along with his few friends in the school during a break. Anjanaben, an upper caste teacher and the principal of primary section passed from there and asked the children in very rude tone, "why were they standing here?" She then asked them to move towards their secondary wing side. Soon a few of the children ran away except Pravin and two others. Anjanaben got angry and used harsh and humiliating language.

The matter didn't stop there, as Pravin describes, Anjanaben even physically beaten him and used derogatory language for his community. Then she asked Pravin to follow her to the office of Chief executive officer's (CEO) office. The principal of secondary section was present there as a silent observer and denied to interfere in the matter despite the fact that he was knowing the truth behind the whole incidence.

In front of CEO, Anjanaben again used harsh and abusive language for Pravin, demanded his immediate removal from the hostel. Pravin tried to explain the truth to Mr. Parikh but his efforts went in vein. Mr. Parikh immediately called the head of the Boy's Hostel and ordered for Pravin's immediate dismissal. And thus bound by order, Pravin was dismissed from the hostel at 3.30 pm. Fearing punishment, other students who were standing with him didn't come forward to support him and finally Pravin took his school bag and left.

At this point, Mr. Dalapatbhai Sindhav, a very student friendly and cooperative teacher of secondary section came there for some work. After knowing the whole incident, he asked Pravin to wait for him. Pravin waited at the gate from 3:30 pm to 5:30 pm for him. At 5:30 Pravin met Mr. Dalpatbhai, told the matter and gave him a written application regarding the same.

Then he left for his village to call his father. He arrived at his home pretty late at night at around 10.00 pm. As his father had migrated in search of livelihood, he returned after 3 days and then came along with Pravin to the school at Ahmedabad.

Anjanaben was on leave when Pravin and his father came to the school. They met C D Parikh, the CEO, and finally Pravin was allowed to stay at hostel and the school.

Pravin's father gave a complaint to the Education officer at district level to look into the incident, as per the guidance of Dalapatbhai, the friendly teacher.

After the incidence, Anjanaben's behavior towards Pravin was discriminatory, the same as before. Other teachers also responded saying that "Pravin shouldn't have complained to Education officer." Whenever an Education Inspector came for inquiring into the matter, Pravin was not allowed to go and talk to him alone. Finally the case was wind up by the Education Department and Pravin was failed in 10th standard Board Exams.

After one and half year of the incidence, Anjanaben's relatives came to Pravin's village and talked to his Father and GramPanchayat, to withdraw the case, but the Panchayat supported Pravin. Pravin's father said, "they would do so if Anjanaben apologise", to which she never agreed.

As per the Education Inspector's report, dated 27th April 2009, the trustees were instructed to take action against Anjanben but no action was taken by the management of the school. Knowing this, Dalapatbhai informed the satellite police station on 4th May 2009 but still police didn't registered the compliant under Scheduled Caste & Scheduled Tribe Atrocity (Prevention) Act, 1989; he then faxed a complaint to the Director of Social Welfare Department for further investigation, as Pravin belong to scheduled caste but so far (December 2009) no action has been taken by the trust on the accused teacher.

Victim's Feelings

Pravin strongly feels neglected, both as dalit and as physically challenged person. Despite approaching all concerned authorities, when justice is denied, the faith in justice delivery mechanism shrinks. The institution, which should uphold protection to physically challenged, is behaving as culprit and violate rights, nothing can be sad than that. Such incidences reinforce prejudices that dalit is a neglected lot and discriminatory practices with them in India will never go.

Table 5: Analysis of the case to articulate Human Right Violation

Analytical category	Factual information	Interpretation and articulating HRV
Date of the event	16 th February 2005	Police has not registered complaint under SC&STPAA, 1989 rather has registered complaint as IPC which is making the case mild.
Date of police complaint registered	16 th February 2005 and 4 th May 2009	
Category defined as per NHRC	Child rights, as the kid is physically challenged and is from scheduled	Not registering case under SC&STAPA, 1989 is loosing battle against HRV

	caste (dalit).	
Social status of the victim	Dalit	Police not registering complain under SC&STPAA, 1989
Social status of the accused	Upper caste	
Comparing dates – event, accused arrested	Since the accused didn't appear in the court for 6 months, the Sessions Court judge dismissed the case. Another case was registered and going on since last year and a half.	
Total time taken for the case	Still in court	
Attitude of the judge, witnesses, lawyers and treatment to the victim versus accused	<ul style="list-style-type: none"> ⇒ Not providing information under Right to Information Act ⇒ Not attending complaints of SC or ST in due manner; making case weaker with non-compatible IPC or law ⇒ No action taken against upper caste person or against educational institution since it is run by upper caste & elites of society ⇒ No action taken by concerned authorities, as it challenges upper caste persons and / or institution run by them ⇒ No action taken against the accused since she didn't attend the court; the case was dismissed because of her absence, which is unlawful. 	
Number of hearings took place and the expenses borne by the victim	Total 13 hearings have taken place; the victim has spent more than 1,500 rupees for the same. Moreover, to complaint other concerned authorities, the victim has borne 2,000 rupees for getting justice.	
Money spent by other stakeholders / supporters to ensure justice	Rs. 4,000/- to 5,000/-	
Whether justice ensured	No. None of the concerned authority or judiciary has taken any action against the culprit.	

A physically challenged adolescent boy belong to formerly untouchable community is discriminated based on notion of untouchability, humiliated and punished by teachers and no action has been taken against the teachers or the Trust working for physically challenged persons. The concerned authorities like Education Department, Social Welfare Department and police have been not supportive to the dalit young boy.

Even the Court is not sensitive enough to take up the matter on priority basis, as untouchability and discrimination with dalits has increased over the years despite legal provisions.

Thus each authority and judiciary is failed in protecting dalits against discrimination and in performing their duties to punish the culprit that upholds untouchability and vulnerability of dalits and such marginalized communities systematically.

Case study 5: Sangeeta case

Nature of case: Sexual Harassment of Dalit student in the College

This case presents an example of violation of HR – specifically women’s rights, as the girl student is physically abused and harassed and is from scheduled caste (dalit).

Background Information

A poor dalit girl is continuously demanded for physical favours from an upper caste, one of the trustees of the educational institutions. He had been charged 30 years back for raping a nurse, some other serious allegations against him include selling adulterated petrol, illegal possessing and firing from revolver, killing of 2000 cow by feeding carbon, sexual harassment of a young lady employee who left the job in 17 days due to his indecent behaviour. Despite with such criminal background, he has remained an executive trustee in an educational institution that prepares students for social work.

This case raises numerous questions on relevance of ‘Vishakha judgement’¹⁰ by Supreme Court in 1997, institutions not implementing abiding rule to protect women against sexual harassment and role of police.

Victim’s Testimony

Sangeeta Parmar, a dalit girl of a widow was trying to get an admission in Master’s in Social Work (MSW) in March 2004 at a college run by Kelvanli Mandal Trust at Dhasa, Mehasana district. She got late in fulfilling admission procedures and it was late evening; somebody advised her to stay back at the College as to travel late at night was not safe and she decided to stay back at the college hostel. She met Jheenabhai, an executive trustee of the College Trust for getting the permission. Jheenabhai took her along to show around the campus and

¹⁰ This writ petition has been filed for the enforcement of the fundamental rights of working women under Arts. 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon... Apart from Art. 32 of the constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil... In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of international Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Arts. 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

during this, in an informal discussion, he talked about his assets, the college and other properties. Sangeeta, too discussed about her family background and financial conditions. After dinner, around 8 pm, Jheenabhai called her to meet him in his office. He asked Sangeeta to show her hands claiming that he knew Palmistry. While holding Sangeeta's hand, Jheenabhai pressed it hard and told her that though according to his knowledge of Palmistry he could predict that she had to struggle a lot in her life. However, he claimed that if she wants he could change her life completely. He asked Sangeeta that whether she was ready to surrender herself before him. Sangeeta feared that if she denied him straight forwardly, she might be putting herself into danger, so out of fear she gave her consent at that time.

After this, she was allotted an adjoining room to Mr. Jheenabhai's office. There was a connecting door between both the rooms and Jheenabhai told her to feel free to use the bathroom at his office during night. Sangeeta was scared and latched the door from inside. At late night, Jheenabhai knocked the door and asked whether she was awake. She remained silent and did not respond. In the morning, she left for her village.

In July 2004, the session for MSW begun; Sangeeta was called by Jheenabhai to meet him in his office and asked her to give him a foot massage in August 2004. Out of fear, she as one of the students followed his instruction; Jheenabhai got physical and tried to abuse her sexually. Sangeeta somehow escaped and ran away from his office. After that incident, Jheenabhai started humiliating her and used abusive language for her in front of everybody. Such treatment was continued. Few days later, Sangeeta was asked to deposit a fee of Rs. 2000/- for field work Programme, which was a big amount for her to manage so she went to Jheenabhai to request some concession. Jheenabhai told her that he could exempt all her fees only if she agrees to make physical relations with him. She was quite embarrassed and left his office. She somehow arranged the fees. However, use of derogatory words for dalits, women and demanding physical services like foot massage, body massage were continued by Jheenabhai several times; she tolerated it for a while fearing that she might get expelled from the college or even get failed in her exams.

One day she lost her patience and reported the entire matter to the HRC cell of BSC, who advised her to lodge a complaint against Jheenabhai. BSC helped her to take her case to Rameela of NCDHR (National Campaign on Dalit Human Rights) to lodged a complaint against Jheenabhai.

Initially when Sangita (victim) and Ramila (NCDHR) went to Gadhad police station, PSI who was supportive of Jhinabhai, didn't accept her complaint. Later, Ramila and Jyotasana (BSC) went again to the police station and finally complaint was filed at 3.00 a.m. on 4th February 2005 at Gathara Police Station. Since then, the case is going on in lower court.

Victim's feelings

She feels that the Judiciary is extremely slow and government lawyer was not fully supportive. She informed that during her case period (February 2005 to January 2010), 6 judges have been changed and still the case is pending.

She said that the process of fighting case in the Court is very expensive and she could not afford it if NGO would not be fighting on her behalf. The process is also socially stressful, as it is for the first time in her community a girl has shown courage to come forward to legally fight against sexual harassment of oneself.

She strongly feel that the society has been extremely indifferent and more than that anti-women in such cases. It always points out to women's character in such circumstances while the man mostly enjoys clean-chit from society.

In this case according to her, many girls in last 5 years had suffered from Jheenabhai's behaviour but nobody has come forward to challenge him in public. Other girls studying along with her had also faced similar situation but due to one or other pressures nobody openly supported her except towards the end two of the girls supported her. She also says that all the teachers were also male and principal was also supportive of Jina.

Sangita feels that for her sufferings are because of her being a women and being poor and not because of her caste. She initially couldn't oppose trustee only because of her fear of loosing the opportunity to complete her MSW, which was according to her essential to get good job. She badly needed to take up a good job due to her family's financial position. She feels there is a need to create more awareness regarding women's rights and how to take legal action under such circumstances.

Despite so many odds, she will continue to fight the case.

Table 6: Analysis of the case to articulate Human Right Violation

Analytical category	Factual information	Interpretation and articulating HRV
Date of the event	During the academic year of 2004-05	-
Date of police complaint registered	9 th Feb. 2005	
Category defined as per NHRC	Sexual harassment / Exploitation of Women	
Social status of the victim	Dalit	
Social status of the accused	Upper caste	

Comparing dates – event, accused arrested	The accused is bailed with fine of 10,000 rupees which is no way making headway in getting justice
Total time taken for the case	More than 5 years, judgement is still pending
Attitude of the judge, witnesses, lawyers and treatment to the victim versus accused	<p>⇒ District convener of NCDHR accompanied the victim, police registered the complaint (FIR) after perusal of 5 hours in the midnight, i.e. 10 pm to 3 am</p> <p>⇒ IPC applied in FIR is not about physical harassment</p> <p>⇒ The case has been adjourned for 5 years; all hearings have been over but judgement is pending since a year</p>
Number of hearings took place and the expenses borne by the victim	Total number of 24 hearing Total expenses done by victim Rs. 5,000/-
Money spent by other stakeholders / supporters to ensure justice	Rs. 10,000/- by Behavioural Science Centre, an NGO fighting for ensuring human rights; NCDHR supported for justice seeking efforts
Whether justice ensured	No, the case is going on in court for more than 5 years; all hearings have been over but judgement is pending since a year

Human Rights Violations observed

A daughter of a dalit widow, complaints of verbal and physical abuse by an upper caste, power position holding person in educational institution for more than 5 years.

Despite 'Vishakha Judgement', the Court is not sensitive enough to take up the matter on priority basis, as sexual abuse need to be dealt with firmly, to set an example.

Atrocities faced being a Dalit and Indignity to women (As per NHRC category) is applicable here but the concerned authorities and the Court are not taking it on priority basis.

Process of Justice and Common Pattern Observed

e. In cases of Untouchability and atrocities on scheduled castes and scheduled tribes

The One man commission on Untouchability and atrocities in the state of Andhra Pradesh chaired by Justice K. Punnayya observed that “the tendency, on the part of the Sub-Inspectors or Inspectors of Police in not registering cases on the complaints given by the SCs and STs is on the increase. At the same time,

the tendency on the part of Sub-Inspectors or Circle-Inspectors to entertain indiscriminately the counter complaints and to arrest the SC complainants on the basis of counter complaints is increasing”.

“Whenever the SC or ST victim of atrocity presents a report to the Sub-Inspector or Circle-Inspector in charge of Police Station and if he records F.I.R., and registers a case, the Sub-Inspector or Circle-Inspector should arrest the assailant or assailants who committed the atrocity on the complaint of SC person. But the Sub-Inspector or Circle-Inspector who recorded the F.I.R., and registered a case did not arrest the assailants except in rare cases. On the other hand, it is stated in their representations that those assailants against whom the SC victims presented complaints, lodge counter complaints to the Police against SC-victims and the Sub-Inspectors or Circle-Inspectors register counter cases against the SCs (Victims) and immediately arrest them as well. When a counter complaint is presented by the assailant who is the accused in the complaint preferred by the SC-victim, it was filed obviously with the sole intention to counter blast the complaint filed by the SC-victim. As a result of the counter cases, the real SC victims of the atrocities are being arrested and subjected to criminal litigation as accused in the counter cases”. This theory of “counter complaints” is hatched by police at the instance of the perpetrators, to mount pressure on the Dalit Victims to forge a forced compromise with the real culprits, in order to make the Dalits to come out from the false cases lodged against them. Police invariably colludes with the perpetrators of violence and render injustice to the real Dalit victims.

f. Police custody and ill treatment to under-trials

A landmark judgement of Supreme Court of India for Custodial violence mentions, “Custodial violence including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by the persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.”

In the brief of the case, it is mentioned, “India Constitution - Article 21 & 22 – Custodial death – Custodial violence - Power of Arrest - Requirements of -

Whether monetary compensation should be awarded for established infringement of fundamental rights guaranteed by Articles 21 & 22 - Held, Court laid down requirements of power of arrest in para 36 of the judgment and declared monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is victoriously liable for their acts.

g. Sexual harassment and abuse at workplace

Majority of women are ignorant of the judgement in the Vishaka case, passed in 1997, that not only defines sexual harassment at the workplace but also lays down guidelines for its prevention and disciplinary action against the erring employee. In an all-India survey carried out by the NGO 'Sakshi', the results of which are in the final stage of preparation, while 80 per cent of the woman respondents confirmed sexual harassment existed at their workplace, a mere 23 per cent said they were aware of the Vishaka guidelines whereby, **"The Supreme Court judgement laid down guidelines, prohibiting sexual harassment, which are legally binding and must be enforced."**¹¹

Bhanwari Devi's case brought sexual harassment into public glare in 1992; Vishakha guidelines in 1997 created norms before a law could be made against sexual harassment and now we have to wait for the final implementation of the sexual harassment of women at workplace bill. Ten years on, awareness has increased but without and hard-core method to completely end it. Despite the noble intention of the supreme court in issuing the above mentioned guidelines, fact remains that they are observed in breach of all the talk of the making the workplace free of sexual violence, is still a mirage. What people, whether men or woman; people inside the parliament or outside; should think about is a statement by Justice Arjit Pasayat:

"While a murder destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless women."

Today its 10 years of the Supreme Court having given these guidelines but has there been an implementation to these? One of the major drawbacks being, that such laws and guidelines find their places only in law books and few journals. The common masses don't get to know about such judgments. The NCW study shows that 60% of working woman is still not aware of this. In number of cases it was found that the women who made complaints had to meet with an enquiry about their own conduct and no enquiry was made against the person against whom the complaint was made. Lodging complaints often results in isolation of

¹¹ <http://gayathiri1.tripod.com/sexualharassmentatwork.html>

the women, both by employer and by the colleagues. It results in increase and sometimes more violent harassment. In a sexual harassment case the response of the employer institution is of great resistance. The institution gangs up against the women who complaints and then shield the person against whom the complaint has been reported. There is always a hesitation to initiate action against him. Worst of all, the victim is usually pressured to take the complaint back, through threat. Witnesses also tend to show their back since they are threatened to remain quite.¹²

d. Custodial violence

Custodial Violence is among the worst crime in a civilized society. It is a blatant violation of human dignity. It strikes at the very roots of the rule and law. In recent years, third degree torture and custodial deaths have become an intrinsic part of police investigations and the injury inflicted on the prisoners is sometimes unbearable.

Custodial death in India is defined as is the one occurring during the period the person is in the custody of police, prison or any other institutions set up by the State for detention, as mentioned in the Entry-4, State List (List II). The custodial justice is given a lot of emphasis through Human Rights Act 1993 and in terms of this Act; the National Human Rights Commission has been set up in 1993.

The recent amendment in Section 176 of the Criminal Procedure Code to provide that in the case of death or disappearance of a person or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty four hours of death and this will go a long way to ameliorate the situation in the Cases of custodial justice.

The National Police Commission (NPC) long ago recommended surprise visits by senior officers to police stations to deter the use of excessive force in lockups.

The Law Commission too recommended that custodial deaths should be deemed as murder unless proved otherwise, placing the onus of disproving it on the police. The Law Commission of India has recommended that a Section 114(B) should be inserted in the Indian Evidence Act, 1872, to introduce a presumption that injuries sustained by a person in police custody may be presumed to have been caused by the police officer. Such a provision will perhaps have a restraining effect on officers indulging in torture. Similarly, amendments in

¹² Awasthi Devina 2008 A Decade To The Vishakha Judgement, www.legalserviceindia.com/article/I217-Vishakha-Judgement.html

CrPC provide an examination of the arrestee by a medical practitioner, where compulsory physical examination of the arrested person should be done.

The Supreme Court of India had also issued important guidelines in the case of D.K. Basu vs. State of West Bengal which are to be followed by all authorities making arrest of individuals. These guidelines of the Supreme Court which have to be mandatorily followed have been circulated to all State Governments for compliance by Ministry of Home Affairs, Government of India.

One of the guidelines provides that a person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other persons known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

A direction should be issued forthwith to the District Magistrates and Superintendents of Police of every district that they should report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Failure to report promptly would give rise to presumption that there was an attempt to suppress the incident.

The District Magistrates/Superintendents of Police may be given suitable instructions in this regard so as to ensure prompt communication of incidents of custodial deaths/custodial rapes to the undersigned.

A perusal of the reports received from DMs/SPs in pursuance of the above mentioned communication reveals that reports are received in the Commission from some of the States, only on deaths in police custody. The objective of the Commission is to collect information in respect of custodial deaths in police as well as judicial custody.

The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death. The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts.

The Commission would like that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would

agree that human life is more valuable than the cost of video filming and such occasions should be very limited. We would be happy if you would be good enough to immediately sensitize the higher officials in your state police to introduce video-filming of post mortem examination with effect from 1st October, 1995

"No one can truly know a nation until one has been inside the jail. A nation should not be judged by how it treats its highest citizen but its lowest ones"¹³

Harassment to Religious Minority Person

Article 25 of the Indian Constitution gives all citizens the "freedom of conscience and the right freely to profess, practise and propagate religion". However, Muslims and Christians have almost always faced problems with this fundamental right especially with the last part of propagating its faith. A number of States such as Orissa, Arunachal Pradesh, Madhya Pradesh, Gujarat and Tamil Nadu have passed Acts through their legislature (religious conversion) severely curbing this right. This is undoubtedly a violation of Article 25. Despite 59 years of our independence the religious minorities continue to be the victims of all kinds of ill-treatment, discrimination and violence.

¹³ CNN-IBN Student's Forum, 18th August 2009, "Custodial Violence...The Worst Crime in a Civil Society", <http://ibnlive.in.com/cfs/blog/53758/1541>

CHAPTER 4

CONCLUSION: HUMAN RIGHTS VIOLATION AND LEGAL ACTION IN GUJARAT

The concept of HR is not universal; it covers a wide spectrum and it is not possible to touch upon the whole content in its entity. An equal enjoyment of Human Rights by all the people is necessary for development of intrinsic qualities, intelligence, talents and conscience in order to meet material and spiritual needs. Though the claim for rights as a human is instinctive, yet the State plays an important role in delivering and assuring its access to every citizen. A citizen can only claim to those rights which a State promises through its Constitution and other laws.

Scenario of Human Rights Violation

The situation of human rights in India is very dismal. Indian society is divided into several religions, which is sub-divided into various castes, creed & sects, each trying to keep their identity separate.

About 300 million people, 70 per cent of whom lived in rural areas, remained in poverty.

Till 13 General Elections for parliament, average voting is varies from 48 to 61%; raising a question that the elected representative really has the mandate of majority people.

In all 230 million rural poor are undernourished. Malnutrition accounts for nearly 50% of child deaths in India as every third adult (aged 15-49 years) is reported to be thin (BMI less than 18.5).

More than 35 millions have been internally displaced due to various development projects as well as due to internal communal conflicts.

It's been estimated that each year, more than 1,500 Indian prisoners die within less than a day of being arrested.

The National Crime Records Bureau (NCRB) recorded 995 cases of crime against Scheduled Castes and 164 cases against Scheduled Tribes in Gujarat during 2006.

Limitations of Existing Mechanism to Address HRV

The police, judiciary (taluka to Apex Court), Human Rights Commission (State and National level) and other Commissions (Child Protection, Women, Inquiry,

etc) are the existing mechanism to address HRV effectively. Other than judiciary, all are quasi-judicial mechanism with no statutory power. Within Judiciary, PIL, judicial activism, progressive judgements and guidelines for police and law enforcement machinery also have not been seen in practice to a wider extent.

The great discrepancy is observed in documenting and retrieving data on HRV, police action, judicial action and institutionalisation of guidelines given through judgements by the Supreme Court.

As emerged from the information presented here, the limitations of existing mechanisms to deal with HRV are different types:

Various sources of information that lacks coordination and amalgamation
Similar *modus operandi* and structures but limited reach out and impact

The Commissions have limited statutory powers and membership is largely political

Socio-legal actions by NGOs have limited scope for intervention for seeking justice

Different expertise needed for civil cases, criminal cases and for PIL

PIL as judicial activism is not entertained by Supreme Court of India and supported by several lawyers

For preventive side of HRV, police or other law enforcement agencies are not well aware of HR concept and not able to follow constitutional values while on curative side, the judiciary is sluggish, not sensitive to caste, class or gender based discrimination leading to violence or hegemonic assertions.

In many cases where police do register a case under the Act, they do not cite proper sections. For serious crimes, which includes murder, rape, destruction of property, dispossession of land, fouling of drinking water sources, etc., police are only citing sec. 3(1)(x) of the Act, which section relates to insulting or intimidating a SC/ST person with intent to humiliate him or her in public view.

Besides non-registration of cases despite merit, there are delays in investigation, collusion with offenders and manipulation of witnesses and evidence - all of which contribute to reduce the effectiveness of legislation on atrocities. The report of Sakshi states that in Andhra Pradesh mere 4.9 percent of cases registered under the Atrocities Act were actually charge sheeted. Only in 9.3% cases charge sheets are filed within the stipulated time of 30 days. Even if we take the Cr.P.C. time limit of 90 days, charge sheets are filed in only 31% of cases. For about 28% of cases the investigation agency is taking more than 365

days. Therefore, delay in Investigation and charge sheet filing are a common feature with regard to the cases relating to Dalits.

NHRC Report and Justice Punnayya Commission Report of Andhra Pradesh observed that “in the several representations presented to the One man Commission of Andhra Pradesh, they stated that in their cases, the Sub-Inspectors or Circle-Inspectors did not arrest the assailants who committed the atrocities even though, the Sub-Inspectors or the Inspectors of Police, recorded F.I.Rs and registered cases”.

NHRC report 2002 on Prevention of Atrocities on Scheduled Caste states that “this behaviour of the police reflects a deeply embedded caste bias if not openly exposed.

Very low rate of convictions is de-motivation in itself for HRV cases, e.g. Out of total 813 cases in which trials were completed during 2006 only in 42 cases the accused were convicted.

Micro and Macro Analysis of HRV Cases

The process of legal action and justice delivery through judiciary has reported several limitations; the scenario of getting justice is dismal due to various reasons, such as, discriminatory attitudes towards dalits, adivasis and the religious minorities, custodial deaths on rise, despite Supreme Court's guidelines the attempts of institutionalising sexual harassment combating mechanism is not in place and so on.

The cases undertaken by NGOs for ensuring justice to the marginalised communities and groups are very small in number; small numbers are not able to be trend setter in dealing with HRV cases effectively.

India, especially Gujarat as economically developed state has to work hard for combating human right violations in different spheres, especially on human development index, gender empowerment index as well as curbing violence and discriminatory practices.

The NGOs have to equip themselves for effective legal framework and strategies to make an impact on serious and grievous human rights violation like murder, sexual harassment and so on; simultaneously, they have to evolve alternative mechanism or practices to ensure human rights that are universal and work as life giving force.

Annexure 1: Human Right Violations in India¹⁴

Year	Total number of HRV complains	Highest ranking first three states									Note
		Name of state	Total number of HRV complains	%	Type of cases						
					Police Custody	Judicial Custody	Custodial death/rapes	Fake Encounter	Sexual harassment	Atrocities on SC/ST	
2000-01	71555	Uttar Pradesh	40444	56.52	10	121	131	68	16	87	<ul style="list-style-type: none"> ▪ Uttar Pradesh is the one of the state which is HRV cases registered more than 55% ▪ 2002-03 & 2003-04 years only number of cases registered, state wise information is not received. ▪ In the year of 2000-01 Gujarat is 16th number state in HRV cases in India. ▪ In the year of 2001-02 Gujarat is 10th number state in HRV cases in India. ▪ In the year of 2004-05 Gujarat is 11th number
		Bihar	4273	5.97	02	137	139		9	16	
		Delhi	4085	5.70	09	28	37		2	1	
		Gujarat	756	1.06	11	27	38	02	2	7	
		Total	71555	100	127	910	1037		73	206	
2001-02	69083	Uttar Pradesh	39588	57.30	11	183	194	74	81	227	
		Bihar	4149	6.01	02	144	146		8	35	
		Delhi	3849	5.57	05	27	32		12	1	
		Gujarat	1210	1.75	08	44	52		3	14	
		Total	69083	100	165	1140	1305		176	462	
2002-03	68779	-	-	-	-	-	-	-	-		
2003-04	72990	-	-	-	-	-	-	-	-		
2004-05	74401	Uttar Pradesh	44643	60	07	219	35	66	204	363	
		Delhi	5264	7.08	05	27	07	09	24	5	
		Bihar	4070	5.47	03	150	16	-	11	50	
		Gujarat	1070	1.44	15	54	16	02	-	4	

¹⁴ Based on NHRC reports

		Total	74401	100	136	1357	766	122	320	593	state in HRV cases in India.
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Annexure 2: Human Right Violation in India¹⁵

Year	Type of cases							
	Violation by the security forces	Violation of the right of Dalits / Tribals	Violation of the right indigeno us people	Violation against women	Violation against Children	Violation of the prisoner s rights	Violation of the right of Minority	Others
1999-02	32 (nhrc)	-	-	-	-	-	-	-
2000-01	38 (nhrc)	-	-	-	-	-	-	-
2001-02	52 (nhrc)	-	-	-	-	-	-	-
2002-03	51(nhrc)	-	-	-	-	-	-	-
2003-04	-	-	-	-	-	-	-	-
2004-05	71 (nhrc)	-	-	-	-	-	-	-
2005-06	4214 (ncrb)	1307 (ncrb)	-	6343 (ncrb)	-	-	-	-
2006-07	893 (ncrb)	995 (ncrb)	164 (ncrb)	7279 (ncrb)	977 (ncrb)	54 (nhrc)	-	-
2007-08	686 (ncrb)	1040 (ncrb)	156 (ncrb)	8260 (ncrb)	1110 (ncrb)		-	-

¹⁵ Based on ACHR Report Gujarat

Annexure 3: Chronology of human rights in India¹⁶

1829 - The practice of sati was formally abolished in British India after years of campaigning by Ram Mohan Roy against this Hindu funeral custom of self-immolation of widows after the death of their husbands.

1929 - Child Marriage Restraint Act, prohibiting marriage of minors is passed.

1947 - India achieves political independence.

1950 - Constitution of India establishes a democratic republic with universal adult franchise. Part 3 of the Constitution contains a Bill of Fundamental Rights enforceable by the Supreme Court and the High Courts. It also provides for reservations for previously disadvantaged sections in education, employment and political representation.

1955 - Reform of family law concerning Hindus gives more rights to Hindu women.

1973 - Supreme Court of India rules in *Kesavananda Bharati* that the basic structure of the Constitution (including many fundamental rights) is unalterable by a constitutional amendment.

1975-77 - State of Emergency in India - extensive rights violations take place.

1978 - SC rules in *Menaka Gandhi v. Union of India* that the right to life under Article 21 of the Constitution cannot be suspended even in an emergency.

- 1985-6 - The Shah Bano case, where the Supreme Court recognized the Muslim woman's right to maintenance upon divorce, sparks protests from Muslim clergy.
- 1989 - Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is passed.
- 1989-present - Kashmiri insurgency sees increasing violence between militants and security forces, resulting in heavy loss of lives.
- 1992 - A constitutional amendment establishes Local Self-Government (Panchayati Raj) as a third tier of governance at the village level, with one-third of the seats reserved for women. Reservations were provided for scheduled castes and tribes as well.
- 1992 – Demolition of Babri Masjid, resulting in riots across the country.
- 1993 - National Human Rights Commission is established under the *Protection of Human Rights Act*.
- 2001 - Supreme Court passes extensive orders to implement the right to food.[2]
- 2002 - Violence in Gujarat, chiefly targeting its Muslim minority, claims many lives.
- 2005 - A powerful Right to Information Act is passed to give citizen's access to information held by public authorities.
- 2005 - National Rural Employment Guarantee Act (NREGA) guarantees universal right to employment.
- 2006 - Supreme Court orders police reforms in response to the poor human rights record of Indian police

¹⁶ Source: NHRC

Annexure 4: The Mandate of NCW (Section 10)
National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India)

1. The commission shall perform all or any of the following functions, namely :-
 - a. Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
 - b. present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguard;
 - c. make in such reports recommendations for the effective implementation of those safeguards for the improving the conditions of women by the Union or any state;
 - d. review, from time to time, the exiting provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
 - e. take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
 - f. look into complaints and take suo moto notice of matters relating to:-
 - i. deprivation of women's rights;
 - ii. non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
 - iii. non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
 - g. call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
 - h. undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
 - i. participate and advice on the planning process of socio-economic development of women;
 - j. evaluate the progress of the development of women under the Union and any State;

- k. inspect or cause to inspected a jail,remand home,women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
 - l. fund litigation involving issues affecting a large body of women;
 - m. make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
 - n. any other matter which may be referred to it by Central Government.
2. The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any such recommendations.
3. Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward an copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance,if any, of any such recommendations.
4. The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause (f) of sub-section (1), have all the powers of a civil court trying a suit and, in particular in respect of the following matters, namely :-
 - a. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
 - b. requiring the discovery and production of any document;
 - c. receiving evidence on affidavits;
 - d. requisitioning any public record or copy thereof from any court or office;
 - e. issuing commissions for the examination of witnesses and documents; and
 - f. any other matter which may be prescribed.

Annexure 5: The National Commission for Protection of Child Rights (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 as a statutory body under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), an Act of Parliament (December 2005). It was set up to protect, promote and defend child rights in the country.

The functions of the Commission as laid out in the Act are as follows:

The Commission shall perform all or any of the following functions, namely;

Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation

Present to the Central Government, annually and at such other intervals, as the Commission may deem fit, Reports upon the working of those safeguards

Inquire into violation of child rights and recommend initiation of proceedings in such cases

Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures

Look into matters relating to children in need of special care and protection, including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures Study treaties and other international instruments and undertake periodic review of existing policies, programmes, and other activities on child rights and make recommendations for their effective implementation in the best interest of children

Undertake and promote research in the field of child rights

Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means

Inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organization, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary

Inquire into complaints and take sup moto notice of matters related to:

- Deprivation and violation of child rights
- Non implementation of laws providing for protection and development of children
- Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities
- Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions

Annexure 6: Constitutional rights and safeguards provided to the minorities in India

1. Constitutional safeguards for religious and linguistic minorities of India

Though the Constitution of India does not define the word 'Minority' and only refers to 'Minorities' and speaks of those 'based on religion or language', the rights of the minorities have been spelt out in the Constitution in detail.

2. 'Common Domain' and 'Separate Domain' of rights of minorities provided in the Constitution

The Constitution provides two sets of rights of minorities which can be placed in 'common domain' and 'separate domain'. The rights which fall in the 'common domain' are those which are applicable to all the citizens of our country. The rights which fall in the 'separate domain' are those which are applicable to the minorities only and these are reserved to protect their identity. The distinction between 'common domain' and 'separate domain' and their combination have been well kept and protected in the Constitution. The Preamble to the Constitution declares the State to be 'Secular' and this is a special relevance for the Religious Minorities. Equally relevant for them, especially, is the declaration of the Constitution in its Preamble that all citizens of India are to be secured 'liberty of thought, expression, belief, faith and worship and 'equality of status and of opportunity.'

2.1 'Common Domain', the Directive Principles of State Policy – Part IV of the Constitution

The Constitution has made provisions for the Fundamental Rights in Part III, which the State has to comply with and these are also judicially enforceable. There is another set of non-justiciable rights stated in Part IV, which are connected with social and economic rights of the people. These rights are known as 'Directive Principles of State Policy', which legally are not binding upon the State, but are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws". (Article 37). Part IV of the Constitution of India, containing non-justiciable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities :-

(i) obligation of the State 'to endeavour to eliminate inequalities in status, facilities and opportunities' amongst individuals and groups of people residing in different areas or engaged in different vocations;[Article 38 (2)]

(ii) obligation of State 'to promote with special care' the educational and economic interests of 'the weaker sections of the people' (besides Scheduled Castes and Scheduled Tribes); [Article 46] and

2.2 'Common Domain', the Fundamental Duties – Part IVA of the Constitution

Part IVA of the Constitution, relating to Fundamental Duties as provided in Article 51 A applies in full to all citizens, including those belonging to Minorities. Article 51A which is of special relevance for the Minorities stipulates as under :-

(i) citizens' duty to promote harmony and the spirit of common brotherhood amongst all the people of India 'transcending religious, linguistic and regional or sectional diversities; and

(ii) citizens' duty to value and preserve the rich heritage of our composite culture.'

2.3 'Common Domain', the Fundamental Rights – Part III of the Constitution

The Constitution has provided a definite space for both the 'domains' i.e. 'common' as well as 'separate'. In Part III of the Constitution, which deals with the Fundamental Rights is divided into two parts viz. (a) the rights which fall in the 'common domain' and (b) the rights which go to the 'separate domain'. In the 'common domain', the following fundamental rights and freedoms are covered:

(i) people's right to 'equality before the law' and 'equal protection of the laws'; [Article 14]

(ii) prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth; [Article 15 (1) & (2)]

(iii) authority of State to make 'any special provision for the advancement of any socially and educationally backward classes of citizens' (besides the Scheduled Castes and Scheduled Tribes); [Article 15 (4)]

(iv) citizens' right to 'equality of opportunity' in matters relating to employment or appointment to any office under the State – and prohibition in this regard of discrimination on grounds of religion, race, caste, sex or place of birth; [Article 16(1)&(2)]

(v) authority of State to make 'any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State; [Article 16(4)]

(vi) people's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights; [Article 25(1)]

(vii) right of 'every religious denomination or any section thereof – subject to public order, morality and health – to establish and maintain institutions for religious and charitable purposes, 'manage its own affairs in matters of religion', and own and acquire movable immovable property and administer it 'in accordance with law'; [Article 26]

(viii) prohibition against compelling any person to pay taxes for promotion of any particular religion'; [Article 27]

(ix) people's 'freedom as to attendance at religious instruction or religious worship in educational institutions' wholly maintained, recognized, or aided by the State.[Article 28]

2.4 'Separate Domain' of Minority Rights

The Minority Rights provided in the Constitution which fall in the category of 'Separate Domain' are as under:-

(i) right of 'any section of the citizens' to 'conserve' its 'distinct language, script or culture'; [Article 29(1)]

(ii) restriction on denial of admission to any citizen, to any educational institution maintained or aided by the State, 'on grounds only of religion, race, caste, language or any of them'; [Article 29(2)]

(iii) right of all Religious and Linguistic Minorities to establish and administer educational institutions of their choice;[Article 30(1)]

(iv) freedom of Minority-managed educational institutions from discrimination in the matter of receiving aid from the State;[Article30(2)]

(v) special provision relating to the language spoken by a section of the population of any State;[Article 347]

(vi) provision for facilities for instruction in mother-tongue at primary stage;[Article 350 A]

(vii) provision for a Special Officer for Linguistic Minorities and his duties; and [Article 350 B]

(viii) Sikh community's right of 'wearing and carrying of kirpans; [Explanation 1 below Article 25]

3. India's multi-culturalism interwoven in the Constitution

The various Articles of the Constitution providing rights to the minorities, clearly and firmly point out to only one direction: that of a multi-religious, multi-cultural, multi-lingual and multi-racial Indian society, interwoven into an innate unity by the common thread of national integration and communal harmony. By the yardstick adopted by the framers of the Constitution and crystallized into its provisions the Indian Nation is not just a conglomeration of individual inhabitants of this State; it comprises of two distinct categories of constituents. The two-tier commonwealth of Indian Nation includes, on one hand, every citizen of India individually and, on the other hand, the multitude of religious, linguistic, cultural and ethnic groups among its citizens. The Indian Nation is an enormous coparcenary in which the individual citizens are also members of their own respective branches taking the form of religious, cultural, linguistic and ethnic groups. And all these groups, like all individuals, have the same Fundamental Rights to enjoy and the same Fundamental Duties to discharge.

4. Protection of weaker sections in Indian pluralistic society

The social pluralism of India, as fortified by the unique Constitutional concept of secularism, raises the need for the protection and development of all sorts of weaker sections of the Indian citizenry – whether this 'weakness' is based on numbers or on social, economic or educational status of any particular group. The Constitution, therefore, speaks of Religious and Linguistic Minorities, Scheduled Castes, Scheduled Tribes and Backward Classes and makes – or leaves room for making – for them special provisions of various nature and varying import.

Annexure – 7: Compilation of Laws

FUNDAMENTAL RIGHTS: RIGHT TO EQUALITY (ARTICLES)

- 14 Equality before law
- 15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- 16 Equality of opportunity in matters of public employment
- 17 Abolition of Untouchability
- 18 Abolition of titles

RIGHTS OF FREEDOM

- 19 Protection of certain rights regarding freedom of speech, etc.
- 20 Protection in respect of conviction for offences
- 21 Protection of life and personal liberty
- 22 Protection against arrest and detention in certain cases

RIGHTS AGAINST EXPLOITATION

- 23 Prohibition of traffic in human beings and forced labour
- 24 Prohibition of employment of children in factories, etc.

RIGHT TO FREEDOM OF RELIGION

- 25 Freedom of conscience and free profession, and practice and propagation of religion
- 26 Freedom to manage religious affairs
- 27 Freedom as to payment of taxes for promotion of any particular religion
- 28 Freedom as to attendance at religious instruction or religious worship in certain educational institutions

CULTURAL AND EDUCATIONAL RIGHTS

- 29 Protection of interests of minorities
- 30 Rights of minorities to establish and administer educational institutions

Annexure -8: Laws Inconsistent With Or In Derogation Of The Fundamental Rights

- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- (2) The State shall not make any law made in contravention of this clause shall, to the extent of the contravention, be void.
- (3) In this article, unless the context otherwise requires, - (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law; (b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law (many part thereof may not be then in operation either at all or in particular areas.

DIRECTIVE PRINCIPLES OF STATE POLICY

- 39A Equal justice and free legal aid.
- 40 Organisation of village panchayats.
- 41 Right to work, to education and to public assistance in certain cases.
- 42 Provision for just and humane conditions of work and maternity relief.
- 43 Living wage, etc., for workers
- 43A Participation of workers in management of industries.
- 44 Uniform civil code for the citizens.
- 45 Provision for free and compulsory education for children.
- 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections
- 47 Duty of the State to raise the level of nutrition and the standard of living to improve public health
- 48 Organisation of agriculture and animal husbandry
- 48A Protection of monuments and places and objects of national importance
- 50 Separation of judiciary from executive
- 51 Promotion of international peace and security

LIST OF SOME OFFENCES (CRIMINAL) COMMITTED AGAINST WOMEN

OFFENCES SECS & COG/NON- MAXIMUM PROVISION COG PUNISHMENT OF LAW

MISCARRIAGE

Causing Miscarriage 312 IPC Non cog 3 to 7 yrs

Causing Miscarriage 313 IPC Cog. Life or 10 yrs
without consent

Death caused while 314 IPC Cog. 10 yrs or Life
causing miscarriage without Woman's Consent

Act done to prevent 315 IPC Cog 10 yrs.
child being born alive or to cause it to be after birth

KIDNAPPING

Kidnapping 363 IPC Cog. 7 yrs.

Kidnapping women 366 IPC Cog. 10 yrs. to compel marriage, seduced to illicit intercourse,
etc.

Procuration of minor 366-A IPC Cog. 10 yrs. girl under 18 years, Importation of girl 366-B
IPC Cog. 10 yrs.

SEXUAL ASSAULT

Punishment for Rape 376 IPC Cog 7 to 10 yrs. or Life time

Intercourse by a man 376-A IPC Cog 2 yrs. & Fine with him during Separation

Intercourse by public 376-B IPC Cog 5 yrs. & Fine servant with woman in his custody

Intercourse by Sup- 376-C IPC Cog 5 yrs. & Fine
superintendent of jail, remand home, etc.

Intercourse by any 376-D IPC Cog 5 yrs. & Fine member of the management or staff of a
hospital with any woman in that hospital

Unnatural Offences- 377 IPC Cog Life or 10 yrs. carnal intercourse

MARRIAGE

Cohabitation caused by 493 IPC Non-Cog 10 yrs. deceitfully inducing her under belief of
lawful marriage

Marrying again during 494 IPC Cog 7 yrs. life time of wife (away for 7 yrs.)

Going through unlawful 496 IPC Cog 7 yrs. marriage ceremony

Enticing, detaining a during 498 IPC Cog 2 yrs. women with criminal intention

CRUELTY

Abetment of suicide 306 IPC Cog 10 yrs. & Fine Cruelty by Husband or 498 A IPC Cog 3 yrs.

Relatives-Mental or physical Uses indecent language 92 -(o)- K.P.Act Cognizable if Fine of Rs.100 or behaves in a disorderly committed in manner in a public street the Presence or public place of police (KP Act—Karnataka Police Act)

Uses in any street abusive 92 -(r)-K.P.Act -do- -do5 or insulting words or affixes or exhibits any indecent, threatening abusive or insulting paper or drawing with intent to provoke

MODESTY

Outraging modesty, use of 354 IPC Cog 2 yrs. criminal force with intention to outrage her modesty

Outraging modesty by 509 IPC Cog 1 yrs. Uttering gesture, sound

DOWRY HARASSMENT

Dowry Death:- (Death of 304-B-IPC Cog 7 yrs. to Life a woman is caused by otherwise than normal circumstances within 7 years of her marriage and it is shown that soon before he death she was subjected to cruelty or harassment by her husband or relative for, or in connection with, any demand for dowry) Penalty for giving or 3 Dry.Pro.Act. Cog 5 yrs. & Fine taking Dowry (D.P.Act) Penalty for 4 Dry.Pro.Act. Cog 6 months to demanding Dowry (D.P.Act) 2 yrs. & Fine

IMMORAL TRAFFIC

Punishment for living 4 Immoral Traffic Cog 2 yrs. or Fine on the earnings of (Prevention) Act or Both prostitution

Procuring inducing or 5 Immoral Traffic Cog 3 to 7 yrs. & taking woman or girl for (Prevent) Action Fine the sake of prostitution

Detaining a woman or 6 Immoral Traffic Cog 7 to 10 yrs. & girl in premises where (Prevent) Action Fine prostitution is carried on.

Seduction of a woman or 4 Immoral Traffic Cog 7 yrs. or Life girl in custody (Prevent) Action & Fines

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