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# **HUMAN RIGHTS IN CUSTODY: INSTITUTIONAL MECHANISMS FOR OVERSIGHT.**

AUTHORED BY - KUMARI POORTI SHARMA

## **HUMAN RIGHTS**

Appreciate for Human Rights has usually been one of the primary worries of every democratic society. it's miles universally recognized that democracy cannot live on and sustain itself without recognize for Human Rights and honest efforts to promote and protect them. even though Human Rights, in principle can be nurtured and more advantageous within diverse political systems history has convincingly proved that they can be surely guaranteed most effective in conditions of the greatest possible transparency in selection making on the part of those who are in positions of power however, before appreciating this factor, one has to understand the concept, and which means of 'Human Rights'.

### **Concept and Meaning**

Human is a concrete concept which refers to us and "Right" means recognized and protected interest by law. So it can be said that our interest which is recognized by law is human rights. Every human being needs certain necessities like food, water, cloth, shelter, health which are basic for sustaining life, without which one cannot live. Likewise, every human being is entitled to certain basic rights and fundamental freedoms and in the absence of which one cannot live as human beings. Thus 'Human Rights' are those rights which are essential to human beings to live as human being.

All societies and culture have developed some conception of rights and principles that should be protected and respected as such rights evolved on some basic principles which have been universally accepted and contributed to the development of human right. Rights of man – natural rights, civil rights, political rights, economic rights, social rights and cultural rights which evolved with different degrees of emphasis reflects one common feature – 'Human Dignity' which is considered indispensable for the attainment of individual's wholesome personality . Thus these rights come with birth and are applicable to all people throughout the world irrespective of the race, colour, sex, language or political or other opinion.

The idea of human rights is tied to the idea of human dignity, which is the cornerstone of all human rights. All those rights which are essential for the protection and maintenance of dignity of individual and create conditions in which every human being can develop his personality to the fullest extent may be termed human rights. The principles of human rights were drawn up as a way of ensuring that the dignity of everyone is properly and equally respected. Any action, which would affect or violate the inherent dignity of the human being, would amount to violation of Human Rights.

Human Rights are those minimal rights which every individual must have against the State of other public authority by virtue of his being a 'member of the human family', irrespective of any other consideration. But the concept and meaning of 'Human Rights' is not as simple as stated above. According to Professor Upendra Baxi, the very term 'Human Rights' indeed problematic. In rights-talk, the expression often masks the attempts, to reduce the plentitude of its meanings to produce a false totality. One such endeavour locates the unity of all Human Rights to some designated totality of sentiment such as human 'dignity' 'well-being' and 'flourishing'. Another mode invites us to speak of human rights as 'basic', suggesting that some others may be negotiable, even dispensable. Those who are deprived, disadvantaged and dispossessed may indeed find it hard to accept and justifications for a very notion of Human Rights that may end of denial of their rights to be human. Yet another mode of totalisation makes us succumb to an anthropomorphic illusion that the range of Human Rights is limited to human beings, the new rights to environment (or what is somewhat inappropriately, even cruelly, called 'sustainable development') take us far beyond such a narrow notion as descriptive ventures, such attempts at totalisation reduced to a 'coherent' category forbiddingly diverse world of actually existing Human Rights. As prescription venture, such modes simply privilege certain preferred values over others. In both cases, the normative complexity and existential outreach of Human Rights norms and standards are made to yield their historic features to the demands of a uniform narrative. This, overall, obscure the contradictory nature of development of 'Human Rights'. There is not one world of 'Human Rights' but many conflicting words.

The plurality and multiplicity of the fecund expressions 'Human Rights' is worthy of celebration only if we are able to designate distinctive modes of the sustaining networks of meaning and logics of popular action that protest against all forms of human violation. If the notion 'Human Rights' means many things to different people, these meanings need to be

configured in some patterns without violating the richness of difference. Professor Baxi essays it tentatively under the following different rubrics. viz. Human Rights as Ethical Imperative; Human Rights as Grammar of Governance; Human Rights as Languages of Global Governance; Human Rights as Syndrome of shared Sovereignty; Human Rights as insurrectionary proxies; Human Rights as Juridical protection and Human Rights as culture.

### **Human Rights according to Justice Palok Basu**

The concept of Human Rights falls within the framework of Constitutional Law and International Law. For this purpose it has been identified to “defend by institutionalized means the rights of human beings against abuses of power committed by the organs of the State and at the same time to promote the establishment of human living conditions and the multi-dimensional development of human personality.

A close look at the above definition shows that Human Rights, represent, claims which individuals or groups make on the society. They include the right to freedom from torture, the right to live, inhuman treatment freedom from slavery and forced labour, the right of liberty and security, freedom of movement and choice of residence, right to fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and form a family, the right to participate in one's Government either directly or indirectly or thought elected representative, the right to nationality and equality before law. These rights cannot be compromised universally. Human Rights are the birth right of the people the world over. Hence their fulfilment does not lie in the reproduction of the institution of the advanced world, but on the consciousness in the developing world, to ensure the respect and protection of Human Rights. This will forestall the ease in their denial as an incident of valid structural change.

### **Origin of Human Rights**

Human Rights are those irreducible minima which belongs to every member of the human race when pitted against the State or other public authorities or group and gangs and other oppressive communities, Being a member of a human family he has the right to be treated as human once he takes birth or is alive in the womb with a potential title to personhood. When legal ideas were not clear-cut that blurred, ancient Pandits thought of the doctrine of natural rights founded on natural law not because it is enacted but because it inalienably belongs to

each of us as conceived in civilised political societies. When the priestly order denies this right using religion sanction and authority, the independent mind of man expresses dissatisfaction and defies. When kings and queens and other diadems and despotism sought to suppress the individual's freedom and appeal to natural law was made on the assumption that beyond religious superiors and crowned heads, there was a system of natural law which embodied reason, justice and universal ethics. Though the concept of Human Rights is as old as the ancient doctrine of 'Natural Rights' founded on natural law the expression Human Rights" is of recent origin, emerging from (post second world war) International Charters and Conventions. Human Rights are derived from dignity and are inherent in human beings. Human Rights are natural rights which come by birth as human beings which are basic, indivisible, inalienable and inherent with which a person is born. Broadly speaking, Human Rights may be regarded as those fundamental rights which are possessed by every human being. Such rights by their free nature constitute the minimum that is necessary for an individual to live in civil and political society as a free person with dignity and respect.

### **Human Rights in Ancient India**

The notion of Human Rights as we understand it today, as universalistic, has developed in western civilization. The struggle, interest or concern to defend and to protect, preserve and promote Human Rights is perhaps as old as human civilization. In fact, the concept of Human Rights is neither entirely western nor modern. It is interesting to note that the cause of Human Rights is not alien to ancient India, which has age old culture of respecting Human Rights. It may be recalled that from time immemorial Indians have called their culture by name of human culture (Manava Dharma or Manava and sanskriti and it is inherent in the Hindu life.

Many centuries ago the principle of 'Vasudhaika Kutumbam' (we are all one human family) propounded universal brotherhood and equality and the highest ideal of human life was echoed 'Sarve Jana Sukhinobhavanthu' (let all people be happy) was proclaimed from this land. But the philosophy of human life was widely and wisely discussed on religious foundations and can be evident in the Rig Veda.

'No one is superior or inferior. All are brothers. All should strive for the interest of all and all should progress selectively'. (The original text is in Sanskrit and is taken from Mandala 5 Sukta 60 Mantra which states 'Ajyestasoakanishtasa etc., sambhratova vridhuuhu sowbhogya'). According to Rig Veda "there is one race of human beings" and validity of different traditions,

religious in deed of paths to truth, has always been respected and the guiding principle 'Sava Dharma samanana' (all religions are equal).

Rig Veda cites three civil rights that of Tana (body) Skridhi (dwelling place and Jibhasi (life). Mahabharatha tells about the importance of freedoms of individuals (civil liberties) in a State.

An eminent historian U.N. Ghosal [1] pointed out a number of civil rights enjoyed by the individual in ancient India. He says that they occupy an important place in the literature of Smritis. These rights were enjoyed by ancient Indians either expressly knowing them as comprehended in dharma or inferred from the concept of duties. The ancient Indian concepts of Human Rights and humanitarian law were primarily based on conduct of war, and were laid down in the legal text such as Manu Smriti or code of Manu (200 B.C. - 100 A.D), the Mahabharatha 1000 B.C. Koutilya's Arthasasthra (300 B.C. and Sukranitisara of Sukracharya. According to Manu, one who is sleeping with or without his armour or a person who is deprived of his weapons or who is engaged in fighting with another person or one who is only looking on the battle but not fighting should not be slain. Further, all such places of religious worship, houses of individuals could not be attacked or destroyed. The Mahabharata states that enemy captured in war not to be killed but is to be well treated. Koutilya's Arthasashtra evidenced that Chandragupta Mourya set free prisoners captured in war. The traditional practice of war was that attack should be informed earlier and war should take place only after sunrise and after sunset. In the 4th century B.C Koutilya's Arthasashtra elaborated on civil and legal rights. The concept of social, economic obligations of the State also mentioned that State (king) shall provide the orphan, the dying, the infirm, the affected and helpless with maintenance and shall also provide subsistence to mothers and children.

Both Buddhism and Jainism emphasized the principles of equality and non- violence. The Buddhist doctrine of non-violence in deed and thought is a humanitarian doctrine par excellence, dating back to 3rd century B.C. The Mauryan Empire Ashoka, the great king during his reign persuaded an official policy of Ahimsa (non-violence) and protection of human rights as his chief concern. Ashoka defined the main principles of non-violence, tolerance of all sects and opinions of all religious and ethnic groups were granted right to freedom of religious practice and equality.

## National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) in India is a statutory body established under the Protection of Human Rights Act, 1993. Its primary mandate is to protect and promote human rights across the country.

### 1. Establishment and Structure:

The NHRC was established on October 12, 1993, under the Protection of Human Rights Act, 1993, in accordance with the Paris Principles. It is an autonomous body that operates independently of the government.

The Commission consists of a Chairperson and four members, who are appointed by the President of India. The Chairperson should be a former Chief Justice of the Supreme Court, and one member should be a serving or retired Judge of the Supreme Court, one member should be a serving or retired Chief Justice of a High Court, and the remaining two members should have knowledge or practical experience in human rights matters. (D.K. Basu vs. West Bengal AIR 1997 SC 610: (1997) 1 SCC 416)

### 2. Functions and Powers:

The NHRC is tasked with several functions, including:

- Inquiring into complaints of human rights violations either Suo motu or on petitions presented to it.
- Intervening in legal proceedings related to human rights violations.
- Inspecting jails and detention centres to assess conditions and treatment of inmates.
- Promoting human rights literacy and awareness through education and training programs.
- Recommending measures for the effective implementation of human rights safeguards.

The National Human Rights Commission (NHRC) in India plays a crucial role in safeguarding and advocating for prisoners' rights, ensuring that individuals in custody are treated with dignity, fairness, and respect for their human rights.

In essence, the NHRC's multifaceted approach to prisoners' rights encompasses monitoring,

investigation, legal aid, advocacy, and policy reform, all aimed at ensuring that individuals in custody are treated with dignity, fairness, and respect for their human rights. The Commission's proactive role contributes significantly to the development of a rights-based approach within the criminal justice system and the protection of vulnerable populations within prisons.

**Monitoring and Inspection:** The NHRC conducts regular visits and inspections of prisons nationwide to assess various aspects of detention, including living conditions, healthcare, hygiene, and treatment of inmates. These inspections serve as a crucial mechanism for identifying violations of prisoners' rights, such as overcrowding, lack of basic amenities, and instances of abuse or neglect.

**Investigation and Redressal:** One of the primary functions of the NHRC is to investigate complaints and petitions regarding alleged violations of human rights, including those related to prisoners. The Commission conducts impartial inquiries, gathers evidence, and takes appropriate action to redress grievances, ensure accountability, and provide remedies to affected individuals.

**Legal Aid and Awareness:** Recognizing the importance of legal representation and awareness among prisoners, the NHRC facilitates access to legal aid and assistance for indigent inmates. This includes ensuring that prisoners are informed of their rights, providing guidance on legal procedures, and facilitating legal recourse for grievances through workshops, seminars, and outreach programs.

**Advocacy and Policy Reform:** The NHRC engages in advocacy efforts to promote policy reforms and systemic changes within the criminal justice system. This includes advocating for alternatives to incarceration, rehabilitation programs, mental health support, and measures to address issues like overcrowding, juvenile justice, and conditions in detention facilities.

**Preventing Torture and Inhumane Treatment:** The NHRC actively works to prevent torture, inhuman, or degrading treatment of prisoners by monitoring and addressing instances of custodial violence, abuse, and neglect. The Commission's interventions aim to uphold human dignity, ensure humane treatment, and prevent violations of prisoners' rights.

**Monitoring Implementation and Impact Assessment:** Following its recommendations and

interventions, the NHRC monitors the implementation of corrective measures by relevant authorities to assess their impact on improving prison conditions and protecting prisoners' rights. This ongoing monitoring and impact assessment contribute to accountability and continuous improvement within the criminal justice system.

**Reporting and Advocacy:** The NHRC includes findings, recommendations, and case studies related to prisoners' rights in its reports submitted to the government, Parliament, and other stakeholders. These reports serve as advocacy tools, raising awareness, fostering dialogue, and advocating for policy changes and legal reforms to uphold human rights standards in prisons.

### **State Human Rights Commissions (SHRCs)**

State Human Rights Commissions (SHRCs) are independent statutory bodies established at the state level in India to protect and promote human rights within their respective states. State Human Rights Commissions (SHRCs) in India play a crucial role in safeguarding and advocating for prisoners' rights within their respective states. SHRCs' engagement with prisoners' rights in India encompasses monitoring, investigation, advocacy, legal aid, and awareness-raising efforts aimed at protecting and promoting human dignity within the prison system. Their interventions contribute to improving prison conditions, preventing rights violations, and ensuring accountability and redressal for victims of rights abuses among prisoners.

#### **Establishment and Structure:**

SHRCs are established under the Protection of Human Rights Act, 1993, which mandates each state to have its own Human Rights Commission.

The composition of SHRCs typically includes a Chairperson and members appointed by the state government. The Chairperson should be a retired Chief Justice of a High Court, and the members should have experience or expertise in human rights matters.

#### **Functions and Powers:**

**Investigate Complaints:** SHRCs have the authority to inquire into complaints of human rights violations within their jurisdiction. Individuals, NGOs, and groups can file complaints with the SHRC regarding violations of civil, political, social, or economic rights.

**Conduct Inquiries:** SHRCs can conduct investigations, summon witnesses, gather evidence, and make inquiries into alleged human rights violations. They have quasi-judicial powers to gather information and make recommendations based on their findings.

**Recommend Measures:** Upon investigation, SHRCs can recommend measures to the state government or other authorities to address human rights violations, provide relief to victims, and prevent future occurrences of such violations.

**Monitor Implementation:** SHRCs monitor the implementation of their recommendations and ensure compliance by relevant authorities. They may follow up on cases to ensure that corrective measures are taken and victims receive appropriate redressal.

**Public Awareness and Education:** SHRCs engage in public awareness campaigns, educational programs, and outreach activities to promote human rights literacy, raise awareness about rights and responsibilities, and empower individuals to assert their rights.

**Monitoring Prison Conditions:** SHRCs conduct regular inspections and visits to prisons within their jurisdiction to assess the conditions of detention, treatment of inmates, and adherence to human rights standards. This monitoring helps identify violations of prisoners' rights, such as overcrowding, lack of basic amenities, and instances of abuse or neglect.

**Investigating Complaints:** Individuals, NGOs, and groups can file complaints with SHRCs regarding alleged violations of prisoners' rights, including torture, custodial violence, denial of medical care, and denial of legal rights. SHRCs have the authority to investigate these complaints, gather evidence, and take appropriate action based on their findings.

**Recommendations and Remedies:** Upon investigation, SHRCs can issue recommendations to state authorities and prison administrations to address human rights violations in prisons. These recommendations may include measures to improve living conditions, ensure access to healthcare, prevent abuse, and protect prisoners' legal rights. SHRCs may also recommend compensation or relief for victims of rights violations.

**Advocacy and Awareness:** SHRCs engage in advocacy efforts to raise awareness about prisoners' rights and the importance of upholding human dignity within the criminal justice

system. They may conduct educational programs, workshops, and outreach activities to promote awareness among inmates, prison staff, and the general public.

**Legal Aid and Assistance:** Recognizing the significance of legal representation for prisoners, SHRCs may facilitate access to legal aid and assistance for indigent inmates. This includes providing guidance on legal procedures, facilitating legal consultations, and ensuring that prisoners are aware of their rights and avenues for seeking redressal.

**Monitoring Implementation:** Following their recommendations, SHRCs monitor the implementation of corrective measures by state authorities and prison administrations to ensure compliance with human rights standards. This ongoing monitoring helps address systemic issues, prevent recurring violations, and hold accountable those responsible for rights abuses.

**Reporting and Advocacy:** SHRCs include findings, recommendations, and case studies related to prisoners' rights in their reports submitted to the state government, legislature, and other stakeholders. These reports serve as advocacy tools, highlighting key issues, advocating for policy changes, and fostering dialogue on prisoners' rights reforms.

### **Role of Judiciary in Ensuring Compliance**

The judiciary plays a pivotal role in ensuring compliance with the rights of prisoners, which are fundamental to upholding human dignity and fairness within the criminal justice system. Through its interpretative and enforcement powers, the judiciary meticulously scrutinizes and safeguards prisoners' rights as enshrined in constitutional provisions, statutes, and international conventions. This oversight extends to every facet of prisoners' well-being, including their right to life and personal liberty, protection against torture and inhumane treatment, access to legal representation, fair trial guarantees, and the maintenance of humane conditions of detention.

Central to the judiciary's role is its capacity for judicial review, a mechanism through which courts assess the legality and constitutionality of prison conditions, policies, and practices. By conducting thorough judicial reviews, courts ensure that prisons adhere to prescribed norms, rectify deficiencies, and uphold the rights of inmates throughout their incarceration. Moreover, the judiciary serves as a vital forum for redressal, providing a platform for prisoners to voice grievances and seek remedies for alleged violations of their rights. Court interventions, in the form of orders, directives, and judgments, compel prison authorities to comply with legal obligations and implement corrective measures where necessary.

In parallel, the judiciary undertakes a proactive stance in monitoring and overseeing prisons, conducting regular inspections, visits, and follow-up proceedings to evaluate compliance with court orders, legal standards, and the overall conditions of detention. This ongoing oversight not only holds prison authorities accountable but also identifies systemic issues and fosters continuous improvement in prison management and the treatment of inmates.<sup>72</sup>

Furthermore, the judiciary's role extends to the enforcement of its orders, ensuring that directives related to improving living conditions, providing medical care, preventing abuse, and protecting prisoners' rights are effectively implemented by prison authorities. Failure to comply with court orders may lead to contempt proceedings, underscoring the judiciary's commitment to ensuring adherence to its directives and upholding the rule of law.

Additionally, the judiciary actively engages in Public Interest Litigation (PIL) and advocacy initiatives focused on prisoners' rights, leveraging its influence to address systemic challenges, advocate for policy reforms, and promote compliance with legal norms that safeguard prisoners' rights. Through these multifaceted approaches, the judiciary plays a pivotal role in safeguarding prisoners' rights, promoting accountability, and contributing to a fair, humane, and rights-respecting criminal justice system.

**Interpretation and Enforcement of Prisoners' Rights:** The judiciary interprets and enforces the rights of prisoners as enshrined in the Constitution, statutes, and international conventions. This includes rights such as the right to life and personal liberty, protection against torture and inhuman treatment, access to legal representation, fair trial guarantees, and humane conditions of detention. Courts clarify the scope and application of these rights, establish legal precedents, and issue judgments and directives to ensure compliance with prisoners' rights.

**Judicial Review of Prison Conditions:** Courts conduct judicial review of prison conditions, policies, and practices to assess their compatibility with constitutional and legal standards. This includes examining issues such as overcrowding, healthcare services, sanitation, nutrition, safety, and treatment of inmates. Judicial review ensures that prison authorities adhere to prescribed norms, take corrective measures to address deficiencies, and respect prisoners' rights during their incarceration.

**Redressal of Grievances and Complaints:** The judiciary provides a forum for prisoners to raise

grievances and complaints regarding violations of their rights. Courts entertain petitions, writs, and complaints filed by prisoners or their representatives, and conduct inquiries to investigate alleged violations. Courts may issue orders, directions, or judgments to redress grievances, provide remedies to victims of rights violations, and ensure that prison authorities comply with legal obligations.

**Monitoring and Oversight of Prisons:** Courts engage in monitoring and oversight of prisons through regular inspections, visits, and follow-up proceedings. They assess the implementation of court orders, compliance with legal standards, and the overall conditions of detention.

Judicial monitoring serves as a mechanism for holding prison authorities accountable, identifying systemic issues, and ensuring continuous improvement in prison management and treatment of inmates.

**Enforcement of Court Orders:** Courts issue orders and directives that must be enforced by prison authorities. This includes orders related to improving living conditions, providing medical care, ensuring access to legal representation, preventing abuse, and protecting prisoners' rights. Failure to comply with court orders may result in contempt proceedings, where non-compliance is addressed through legal sanctions to ensure adherence to court directives.

**Public Interest Litigation (PIL) and Advocacy:** The judiciary entertains Public Interest Litigation (PIL) and advocacy initiatives focused on prisoners' rights. PILs enable judicial intervention to address systemic issues, advocate for policy reforms, and promote compliance with legal norms that protect prisoners' rights. Judicial advocacy contributes to raising awareness, fostering dialogue, and influencing government policies and practices to improve the treatment and rights of prisoners.

## **CONCLUSION:**

The protection of human rights in custody is a fundamental aspect of a just and democratic society. While custodial settings often involve restrictions on personal liberty, they must never justify the erosion of basic human dignity and constitutional safeguards. Institutional mechanisms—such as the National and State Human Rights Commissions, judiciary, prison visiting boards, and internal oversight bodies—play a vital role in ensuring accountability,

transparency, and adherence to the rule of law within detention facilities. However, these mechanisms must be adequately empowered, independent, and proactive to effectively address violations and systemic issues. Strengthening legal frameworks, improving training for law enforcement personnel, encouraging civil society participation, and promoting a culture of rights-respect are essential steps toward ensuring that custodial environments uphold the fundamental values of justice, equality, and human dignity.

