



Human Rights Protection: An Analysis

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ABSTRACT

Prior to delving into the subject matter, let us first endeavor to comprehend the concept of Judicial. The term "judicial" refers to matters related to judgement in a court of law or to a judge's role in administering justice. The judiciary in India operates with independence. The presence of a courageous and autonomous judiciary is inherent in the constitutional framework of India. An outstanding characteristic of the Indian constitution is its provision for granting a prestigious and pivotal role to the judiciary in India. The Indian judiciary has served as the protector of human rights in the period following independence. The constitution guarantees civil and political rights as fundamental rights. The Supreme Court and High Courts have the authority to enforce these rights by claiming their jurisdiction under Article 32 and 226. While the majority of social and economic rights are outlined in the Constitution as Directive Principles of State Policy, the Supreme Court has granted elevated status to certain rights such as the right to education, right to health, and right to a clean environment. This elevation is based on considering them as integral components of the right to life. Human Rights commissions were founded solely during the 1990s. Before the foundation of the commissions, the judiciary served as the sole efficacious instrument for safeguarding human rights. Despite the formation of the Human Rights commission, the higher judiciary has persistently played an innovative and active role in safeguarding the human rights of ordinary individuals.

Courts utilize strategies such as offering clear instructions to the administration, providing dynamic interpretations of the law, and compensating victims of human rights violations. In order to ensure that the supreme court and high courts can carry out their duties in an unbiased manner, without any influence or bias, the constitution includes provisions to protect judicial independence. In a country governed by the rule of law, it is crucial that all decisions are made in accordance with the rule of law, rather than being influenced by any particular group's pressure. India is a signatory of the International Covenant to Protect Human Rights, as established by the Human Rights Act of 1993. This act establishes many mechanisms to enforce human rights, including the National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts.

Key Words: Protection of Human Rights, Human Rights Commission, Administering Justice, Right to education, Right to Health, Right to Clean Environment.

Received 12 Feb., 2025; Revised 22 Feb., 2025; Accepted 24 Feb., 2025 © The author(s) 2025.

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I. INTRODUCTION

What is judicial? Let's try to define it before we go into the topic. Judicial, according to the dictionary, refers to a judge's role in administering justice through rulings rendered in legal proceedings.

The Indian judiciary operates autonomously. The constitutional framework of India guarantees the presence of a courageous and autonomous judiciary. The constitutional recognition of the judiciary as an important and respected institution is a striking aspect of India's legal system.

The Indian court has been a staunch advocate for human rights since the country's independence. The power to enforce civil and political rights resides with the Supreme Court and High Courts, as they are empowered to do so under Article 32 and 226 of the constitution, which guarantee most of these rights as

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fundamental rights. Despite the fact that the majority of economic and social rights are enshrined in the Constitution as directive principles of state policy, the right to health, education, and a clean environment have been recognized by the Supreme Court as fundamental rights, being considered an element of the right to life. Only in the 1990s were human rights commissions formed. The judiciary had been the sole effective instrument for protecting human rights prior to the commissions' formation. The higher judiciary's innovative and dynamic role in protecting the rights of the common man has persisted even after the creation of the Human Rights commission.

The judicial system implements strategies by compensating victims of human rights breaches, providing dynamic interpretations of legal provisions, and issuing effective directions to the administration.

In order for the highest court and other courts to carry out their duties without bias or favoritism, the constitution includes provisions that ensure judicial independence. In a legal democracy, the rule of law rather than the demands of special interests must inform all policymaking.

The Human Rights Act of 1993 established the National Human Rights Commission, State Human Rights Commissions, Human Rights Courts, and other enforcement mechanisms in India, which is a signatory to the International Covenant on Economic, Social, and Cultural Rights.

II. HUMAN RIGHTS AND INDIAN CONSTITUTION

The concept of human rights is not anything new. These are the minimal rights which every individual must have against the state or other public authorities by virtue of being a member of the human family irrespective of any other consideration. This concept was earlier referred to as 'Natural Rights'. The first documentary use of expression 'Human Rights' is to be found in the charter of the United Nations which was adopted at San Francisco on 25th June 1945. The purpose is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion.

The philosophers of Vedic age opine that human rights are those rights which are inherent in our nature without which we cannot live as human beings. They supported vehemently the view point that human rights are based on mankind's increasing demand for a life in which the inherent dignity and worth of that human rights are universal and apply to all persons without discrimination³.

India being an original member of the U.N. and a member state which voted for the adoption of universal declaration of human rights on 10 December, 1948 could not be oblivious of all these developments yet the constitution of India is conspicuous by its absence of the words 'human rights'. It is difficult to say whether this omission was deliberate or just incidental.

Preamble of Indian Constitution

According to the preamble of Indian Constitution, India is a 'sovereign, socialist, secular and democratic republic'. Preamble begins with the words 'we, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular democratic republic'⁴.

In *Dr. Pradeep Jain Vs. Union of India*⁵, Justice Bhagwati observed that the preamble emphasizes that the people who have given to themselves the glorious documents are the people of India and it gives expression to resolve the people to constitute India into a sovereign, socialist, secular democratic republic and to promote among all its citizens fraternity assuring the dignity of all the individual and unity and integrity of the nation.

In *S.H. Bommai Vs. Union of India*⁶, the Supreme Court has rightly declared that democracy is an essential feature of our constitution and is part of its basic structure.

Thus, the preamble to the constitution of India is aimed at to protect and promote the human rights of all the people.

Civil and Political Rights

The framers of the Indian Constitution were influenced by the concept of human rights and guaranteed most of human rights contained in the universal declaration. The universal declaration of Human Rights contained civil and political as well as economic social and cultural rights. While civil and political rights have been incorporated in part-III of Indian Constitution, economic, social and cultural rights have been incorporated in part IV of the constitution.

The fundamental rights as incorporated in part III of the constitution can be classified as under :

³ 'Indian Constitution and Human Rights' Indian Institute of Human Rights, New Delhi, p. 1.

⁴ Dr. S.K. Kapoor, 'Human Rights under International Law and Indian Law', Ed. (14) 2002, Central Law Agency, Allahabad, p. 764.

⁵ AIR 1984 SC 1420.

⁶ AIR 1994 SC 1918.

a. Right to Equality (Articles 14-18)

The right to equality is the faith and create of our democratic republic. It forms the foundation of socio-economic justice. Article 14 embodies the idea of equality as expressed in the preamble. The succeeding articles 15, 16, 17 and 18 lays down specific application of general rule laid down in Article 14 of constitution.

The expression 'equal protection of laws' is more positive concept implying equity of treatment in equal circumstances.

b. Right to freedoms (Article 19-22)

Personal liberty is one of the most important for all human rights. Articles 19 to 22 of the Indian constitution deal with different aspects of this basic rights. The principle that is all human being are born free" is found in articles 1 to 2 of the universal declaration of Human Rights.

1. All citizens shall have the right
 - a. To freedom of speech and expression
 - b. To assemble peaceably and without arms.
 - c. To form association or unions.

c. Freedom Against Exploitation (Article 23-24)

Article 23 of the Indian constitution prohibits the traffic in human beings and beggar in and other similar forms of forced labour.

'Traffic in human beings' means selling and buying of men and women and includes immoral traffic in women and children for immoral or other purposes. Whereas Beggar it means involuntary work without payment.

The abolition of slavery has gone on for a long time. Rome abolished slavery, America abolished it and we did but only the words were abolished, not the things⁷.

d. Right to Freedom of Religion (Articles 25-28)

India is a 'secular state'. Articles 25 to 28 of the Indian constitution specifically provide freedom of religion etc. The 'freedom of conscience' means absolute inner freedom of the citizen to have their own relation with almighty. To 'profess' means to openly declare ones faith or belief.

However, these freedoms are not absolute. They are subject to following restrictions. (i) Public order, (ii) Morality (iii) health.

e. Cultural and Education Rights (Articles 29-30)

Articles 29 and 30 of the Indian Constitution deal with cultural and educational rights. Cultural and educational rights are indispensable for the dignity of a person and for the free development of his personality.

f. Right to Constitutional Remedies (Articles 32-35)

The talk of all human rights and declaring them as fundamental rights in the constitution is meaningless unless they can be enforced by an effective machinery if there is no effective remedy against the violation of human rights, there are no effective human rights in the real sense.

g. Directive Principle of State Policy (Articles 36-51)

Directive Principles of State are enshrined in Part IV of the constitution (Articles 36-51). The directive principle aims at the betterment of the individual as an integrated component of the society.

Thus, at the first place, the directive principles in part IV have been much 'unenforceable' by any court.

The reason for the division of directive principles and fundamental rights into two parts making one enforceable and other as non-enforceable has best been explained by the planning commission⁸.

III. CRIMINAL PROCEDURE AND HUMAN RIGHTS IN INDIA

Human Rights are rights to which all human beings are entitled, simply because we are human. Our human rights are inalienable and they belong to all of us, whatever our caste, class, race, age, gender, religion or belief and should not be taken away from us under any circumstances. Regardless of whether you live in China, the United States, India, or any other country, you have certain rights that are guaranteed by international law, and sometimes also by domestic law.

The criminal law in India is contained in a number of sources. The Indian penal code of 1860, together with other local and special laws such as the dowry prohibition act 1961, the protection of civil right act 1955, the Indian evidence act sets forth the rules under which evidence is admissible in Indian courts. And the code of criminal procedure of 1973, outlines the procedural mechanisms for prosecuting criminal acts, providing for the constitution of criminal courts, the procedure for conducting police investigation and arrests, the procedure for holding criminal trials and inquiries.

⁷ V.N. Shukla, 'Constitution of India' Ed. (11) 2006, Eastern Book Company, Lucknow, p. 162.

⁸ Lohit D. Naikar, 'The Law Relating to Human Rights' Ed. (1) 2004, Puliani and Puliani, Bangalore, p. 225.

Salient features of Indian Criminal Justice System

a. Police Organization

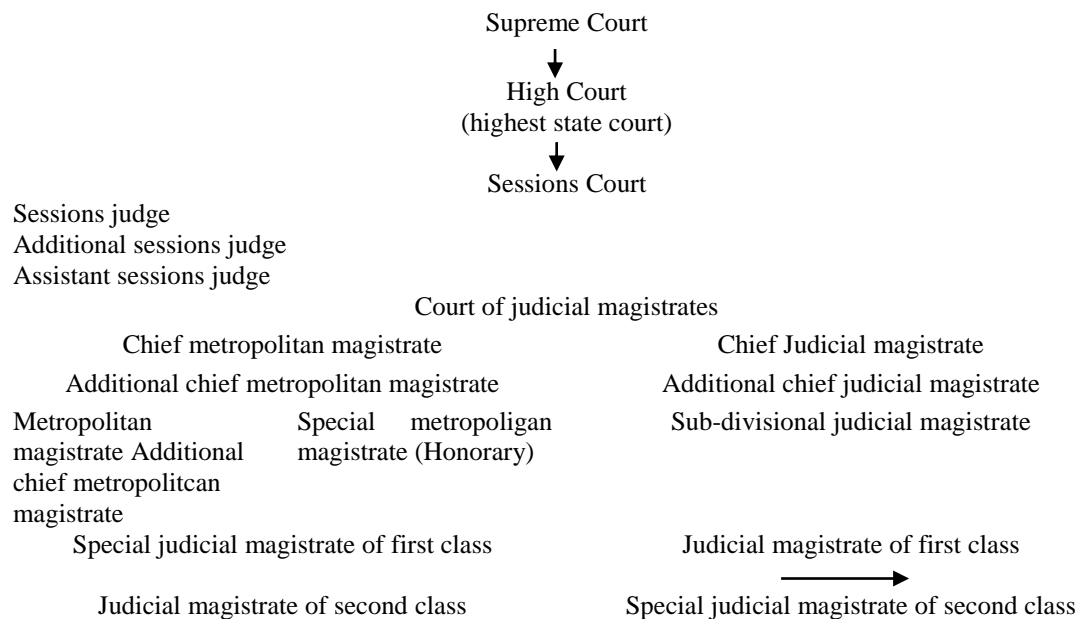
The Police Act 1861 largely govern Indian police force, aiming to make them a more efficient instrument for the prevention and detection of crime. In each state, the Inspector General of Police, presently designed as the Director General of Police is responsible for the overall administration of the police in that state. It is also important to note that the police are not above the law. Police officers are not allowed to behave as they like or to violate the law just they wear a badge.

b. The Prosecution

In a criminal trial, the public prosecutor or assistant public prosecutor conducts the prosecution of the accused on behalf of the state prosecutor play a critical role in the administration of justice.

c. The Courts

The court system in India is based on British model. Enforcement of criminal law is a state function, meaning that each state has its own facilities in the form of state courts, for dealing with criminal offenders, within each state there are lower courts at a distinct level called magistrates, courts, middle courts at a session level called court of sessions and high courts at a state level. The highest national court in India is the Supreme Court of India⁹.



IV. SUPREME COURT AND THEIR POWER

To enable the Supreme Court and High Courts discharge their function impartially without fear or favor, the constitution consists provisions to safeguard judicial independence.

a. Right to Equality (Article 14)

Article 14 of the constitution guarantee the right to equality to every citizen of India. The phrase 'equality before the law' and 'equal protection of law' in almost all written constitution that guarantees the fundamental rights. The guarantee of equality before the law is an aspect of what Dicey calls the rule of law in England. It means that no man is above the law and that every person, whatever his rank or condition is subject to the jurisdiction of ordinary courts¹⁰.

The true meaning and scope of Article 14 have been explained in a number of cases by Supreme Court.

D.S. Nakara Vs. Union of India¹¹, the supreme court struck down Rule 34 of the central services (pension) Rules, 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a particular date and retiring after the date was not based on any rational principle and was arbitrary and violation of Article 14 of the constitution.

⁹ Dr. S. Krishnamurthy, 'Human Rights and Criminal Justice in India', Ed. (1) 2006, Oxford University Press, New Delhi, p. 12-13.

¹⁰ J.N. Pandey, 'Constitutional Law of India', Ed. (43) 2005, Central Law Agency, Allahabad, p. 75.

¹¹ AIR 1983, SC 130.

In *Suneel Jatley Vs. State of Haryana*¹². In this case, the reservation of 25 seats for admission to M.B.B.S. and B.D.S courses for students who were educated from classes I to VIII in common rural school was held to be violative of Article 14 and it was held to be constituting invalid.

In *Randhir Singh Vs. Union of India*¹³, the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our constitution to be a fundamental right, but it is a constitutional goal under Articles 14, 16 and 39 (c) of the constitution.

b. Right to Freedom (Article 19)

Article 19 of the constitution guarantees to the citizen of India following six fundamental freedoms :

- a. Freedom of speech and expression
- b. Freedom of assembly
- c. Freedom to form association
- d. Freedom of movement
- e. Freedom to reside and to settle
- f. Freedom of profession, occupation, trade or business.

In the *National Anthem Case*¹⁴, the supreme court held that no person can be compelled to sing the national anthem, if he has genuine conscientious objections based on his religious faith'. The children in this case stood up respectively when the national anthem was being sung at their school but they did not join in singing it. Accordingly, it was held that children's explosion from the school was a violation 19 (1) (a) which also included the freedom of silence.

c. Protection of Life and Personal Liberty (Article 21)

i. Personal liberty

Article 21 of the constitution says that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.

An examination of Indian Law begins with the Supreme Court's decision in *A.K. Gopalan Vs. State of Madras*¹⁵, following that, an attempt is made to trace the development of article 21 jurisprudence and examine the resulting status under the constitution of domiciliary privacy, foreign travel and the death penalty.

In *Gopalan's case*, personal liberty was said to mean only liberty relating to, or concerning the person or body of the individual and in this sense it was antithesis or physical restraint or coercion. It was further limited to freedom from punitive and preventive detention. The meaning accepted for purposes of Article 21 of the constitution was restricted to limits set by Dicey, according to whom 'personal liberty' means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.

ii. Right to Privacy

In *Kharak Singh Vs. State of U.P*¹⁶, it was held that expression 'life' was not limited to bodily restraint or confinement to prison only but something more than mere animal existence. In that case the petitioner, Kharak Singh had been charged in a dacoity case but was released as that was no evidence against him. The Supreme Court held that the domiciliary visits of the policeman were an invasion on the petitioners personal liberty.

iii. Right to Travel Abroad

In *Maneka Gandhi Vs. Union of India*¹⁷, in that case the court has given widest possible interpretation to the words 'personal liberty'. In that case the petitioner's passport was impounded by the central government under Section 10 (3) (c) of the passport act, 1967. The Act authorized the Government of India declined 'in the interest of the general public' to furnish the reason for its decision. The petitioner challenged the validity of the said order on the following grounds that to section 10 (3) (c) was violative of Article 14 as conferring an arbitrary power since it did not provide for a hearing of the holder of the passport before the passport was impounded Section 10 (3) (c) was violative of Article 21, since it did not proscribe 'procedure' within the meaning of the Article 21. It was hold that the procedure contemplated in Article 21 could not be unfair or unreasonable.

iv. Right to Livelihood

In *Olga Teleis Vs. Bombay Municipal Corporation*¹⁸, popularly known as the 'pavement dwellers case a five judge bench of the court has finally ruled that the word 'life', in Article 21 includes the right to livelihood also.

v. Right of Women

¹² (1984) 4 SCC 296.

¹³ AIR 1982 SC 879.

¹⁴ (1986) 3 SCC 615.

¹⁵ AIR 1950 SC 27.

¹⁶ AIR 1963 SC 1295.

¹⁷ AIR 1978 SC 597.

¹⁸ AIR 1986 SC 180.

The judiciary is very enthusiastic in protecting the right of women. The courts are very particular that any attempt on the part of the agencies of government to violate the rights of women should be viewed seriously and adequate compensation should be given to the victims. The decision of the Supreme Court in **Chairman Railway Board Vs. Chandrima Das**¹⁹, the fact of the case disclose that a lady who arrived at Howrah railway station to catch a train for Ajmer was taken by some railway employees to rail yatri niwas a building owned and controlled by the railways. The room of yatri niwas, a building owned was booked in the name of employee against railway card pass, she was raped there by four railway employees. Later she was taken out to a rented house by another railway employee and was raped. On a writ petition filed by a lady advocate against the Railways Calcutta High Court awarded a sum of Rs. 10 lakh as compensation.

Analysing the provision contained in part III of the constitution, the court held that 'rape' would amount to violation of right to life and personal liberty confined in Article 21 of the constitution. It pointed out that 'according to the tenor of the language used in Article 21, the right will be available not only to every citizen of this country, but also to a 'person' who may not be a citizen of this country²⁰.

vi. Right of Child

It is an accepted principle of human rights, that special in terms should be given to the protect the right of child.

In **Sarita Sharma Vs. Sushil Sharma**²¹, in a divorce case in a district court in the U.S.A. the custody of children was granted to the husband. However, the wife flew to India with the children without obtaining any order from the American court. According to the court, in order to protect the best interest of the children it was better to leave therein the custody of the mother.

vii. Right to Health

In **P.R. Sushas Chandran Vs. Government of A.P.**²², a writ petition was filed by a journalist seeking a direction to the state government to submit a report on the steps taken to prevent the exploitation of patients undergoing surgery in corporate hospital or government hospital super specialty in the matter of incurring extra unexpected expenses for purchasing imported or other equipments or materials.

V. TORTURE AND HUMAN RIGHTS - THE ROLE OF JUDICIARY

i. Introduction

Human rights can generally be defined as these rights which are inherent in our nature without which we cannot live as human beings. As recent years, the problem of death resulting in police custody or caused due to false encounter shown by the police is still increasing²³.

ii. Administration and judicial action in police custodial death

Since all are equal in the eye of law, everyone is liable to punishment without any distinction of rank, caste and creed. Consequently administrative and judicial action are taken against police in cases of custodial death and it found guilty, they are punished like ordinary persons²⁴.

In **Dilip Singh Vs. State of Haryana**²⁵, it held two constables along with the sub-inspector district (Haryana), guilty of causing death of the accused by beating and convicted them under Section 304 II of Indian Penal Code 1860.

iii. Relief in Police Custody Death

Since police custodial death deprives the deceased of his fundamental rights to life guaranteed under Article 21 of the Indian Constitution, compensation has been considered an appropriate relief in such cases.

In **Nilabati Behra Vs. State of Orissa**²⁶, in this case the letter of one Nilabati Behra was treated by the court as writ petition under Article 32 of the constitution wherein she had claimed compensation for death of her son Suman Behra (22) in police custody in Orissa. The court, while awarding Rs. 1,50,000 as compensation to the deceased's mother, made it clear that there can be no question of availability of the defence of sovereign immunity in case of constitutional remedy.

¹⁹ (2000) 2 SCC 46.

²⁰ B.R.P. Bhaskar, *Supra Note 1*, p. 145.

²¹ AIR 2000 SC 2023.

²² AIR 2000 A.P. 272.

²³ D.N. Saraf, 'Journal of Indian Law Institute', Vol. 30, 1998, p. 38.

²⁴ N.S. Kamboj, 'Journal of the Indian Law Institute', Vol. 36, 1994, p. 372.

²⁵ AIR 1993 SC 2302.

²⁶ AIR 1993, SC 1960.

In *Hussain Vs. State of Kerala*²⁷, the issue was wrongful imprisonment for five years due to the wrong conviction that happened as a result of inadequate legal representation. The supreme court set aside the conviction stating that the court was not considering the question of awarding compensation to the appellant but he is free to resort to his remedies under law for that purpose.

VI. HUMAN RIGHTS AND PUBLIC INTEREST – THE ROLE OF JUDICIARY

The Supreme Court of India, as saviour of human rights has done a yeoman service in the area of human rights jurisprudence, more particularly during instances of violation of personal liberty by way of arrest²⁸.

The traditional rule of locus standi reined this period and remained as an impediment to provide access of justice to the deprived and vulnerable sections of the community. Public interest litigations widened the concept of locus standi with a view to provide access to justice to the deprived and under-privileged. The court did not insist on formal petitions and sensitive cases entertained even letters addressed to the court as petition. The turn of event lead to a major development in the human rights jurisprudence of India²⁹.

In *Seela Basu Vs. State of Maharashtra*³⁰, the Supreme Court entertained a public interest litigation initiated by a freelance journalist addressing to the print of treatment of women in police lockups. While taking up this issue, the court did also consider the reality of the working of the criminal justice system, more specifically during times of arrest and suggested ways and means to safeguard the interests of the accused arrested and to improve the condition of police lock ups.

Remedies

One of the remedies that is available to the victims of custodial crimes is to avail compensation. Article 9 (5) of the International Covenant on Civil and Political Rights 1966 envisaged provisions safeguarding the basic human rights of arrested persons and provided therein a right to claim compensation. When claims for compensation for custodial violations are preferred before the Supreme Court and the high courts by involving their jurisdiction under Article 32 and 226.

In *Bhim Singh Vs. State of Jammu and Kashmir*³¹, the Supreme Court awarded Rs. 50,000/- as monetary compensation by way of exemplary cost for the most high handed behaviour by police officers.

In *Peoples Union for Democratic Rights Vs. State of Bihar*³², the Supreme Court for the first time evolved a working principle for payment of compensation.

In *Saheli³³ and Ravikant Patil³⁴*, the Supreme Court did exhibit the humanness towards instances of police atrocities and extended relief by way of monetary compensation to the victims.

In *Nilabati Behera Vs. State of Orissa*³⁵, the supreme court laid a new law for provision of compensation for victims of human rights violations. The court said that the award of compensation in a proceeding under Article 32 or under public law based on strict liability for contravention of fundamental rights.

VI. CONCLUSION

Analysing the landmark decisions of the higher judiciary, one can arrive at the conclusion that the judiciary is the most effective mechanism for protecting human rights even after the establishment of Human Rights Commissions. Humanitarian approach is visible in the matter of interpretation of the provision of law. The court is very determined that positive action should be taken by the administration to ensure clean environment.

The Indian Constitution confers on courts the power to review and invalidate ordinary legislation. However, it declines to grant them the power to establish standards of procedural fairness in cases of alleged governmental deprivation of personal liberty.

No doubt, stern actions are taken against persons found guilty in police custodial deaths besides holding the state liable in such cases. But still these cases are increasing. The reason behind it is the unlimited powers police enjoy under the existing legal system of the country. It has been empowered to enquire into any

²⁷ 2000 (8) SCC 139.

²⁸ Durga Das Basu, 'Human Rights in Constitutional Law', Ed. (2) 2003, Wadhwa and Co. Nagpur, p. 176.

²⁹ Dr. D. Sankar, 'Nyayadeep', Vol. VIII July 2007, National Legal Service Authority, New Delhi, p. 60.

³⁰ AIR 1983 SC 378.

³¹ (1985) 4 SCC 677.

³² (1987) 1 SCC 265.

³³ (1990) 1 SCC 422.

³⁴ (1991) 2 SCC 373.

³⁵ (1993) 2 SCC 746.

complaint of violation of human rights and make the recommendations to the government against the guilty person.

The relation between the human rights and the public interest is one of the most important issue in contemporary human rights jurisprudence. The Supreme Court as the custodian and protector of the fundamental and the basic human rights of the citizen has intervened and consider it a sacred duty to protect the rights of every human being.

Judiciary in India remain as the one and the last resort for common man. The judicial magistrates are required to play a crucial role during the stage prior to and after investigation several instances have come to light where the lower judiciary has failed to perform the vital role it is expected to play.

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