CHAPTER 7

CONCLUDING OBSERVATIONS
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Human Rights as one of the dominant terms of social and political discourses all over the world today relate to individual and collective entitlements to a desirable state of affairs for enjoyment and development. Human Rights have various meanings and from many perspectives, they can be elaborated upon. The issues of human rights have been the subject of debate over last few decades. The assumption of concept of human rights and civil liberties is the need to preserve liberty and human dignity. Right to personal liberty is one of the most important human rights. However, from the beginning of civilization two conflicting views, rule of men or rule of law, have competed for acceptance. It is tried to reconcile this problem during the time of framing the Constitution.

In 1993 National Human Rights Commission and State Human Rights Commission were setup to resolve the problem of violation of human rights. But the problems are still continued. Police which is an organ of society to maintain law and order and to protect human rights of people is involved in abusing human rights by way of custodial torture, fake encounter and wrongful imprisonment. This is probably because they lack human right sensitivity. Some times being away from family members for a long period frustration occurs to police personnel hence, too they become cruel. This factor must be taken into consideration and they should be given leave from time to time. Extra workload is another ground to be insensitive to the human rights. Police personnels have to
maintain law and order, and to investigate the matters. That is why they are over burdened. In this regard it can be suggested to separate the two works of the police – the law and order maintenance and the investigation, through their two different wings. Most of the time, policemen are engaged in taking care of politicians, resulting into the overburden of work on policemen. Apart from these sometimes, for personal benefits the police personnel torture the person in the custody, even the victim has not committed any offence. These policemen are not bothered about human rights of the person in the lockup. The person tortured has no evidence to prove that the injuries to him were caused by police. They have no eyewitness to prove it. The incidents of fake encounters are reported too in the media. That is why the time has come to consider the 113th Report of the Law Commission of India regarding "injuries in police custody" and to incorporate section 114-B in the Indian Evidence Act, 1872. It provides that, if there is evidence that the injury was caused during the period when the person was in the custody of police, the Court may presume that the police officer having the custody of that person during such period caused the injury. The Commission's recommendation that the Court which has been considering the question of presumption to injuries should regard to all relevant circumstances including the period of custody, statement made by the victim, medical evidence and the evidence which the Magistrate have recorded.

The Indian Judiciary has issued several guidelines and directions to safeguard the human rights of individuals even those of accused. The Courts have played vital role in balancing the societal need of crime
detection through effective enforcement of laws and human rights which an accused possesses. It is upon the implementing authorities and supervisory bodies to ensure that the guidelines issued by the Courts are strictly complied with, and the inhuman police behavior is done away altogether. It is necessary to give proper training to police personnel regarding human rights to sensitize them for human beings. Some sense of responsibility and sensibility among police personnel should be created by punishing the offenders of the human rights.

Besides the reforms in the police system, the prison system in India also requires urgent reformation. The conditions of prisoners are wretched, which are against the prescribed norms at the international and national levels for the prisoners. Overcrowding in the jail is well-known fact. Though the condition of the prisoners varies from prison to prison, the general condition in the jail is not at all conducive to safeguard the human rights of the prisoners. The overcrowding in jail in itself does not violate any constitutional right, it on the other contributes a greater risk of health hazard among the prisoners, high noise level, difficulties in surveillance etc. This apart, life is more difficult for inmates and works become more onerous for staff when prisoners are more in number than the capacity of the jail. It would be useful to consider the recommendation of 78th Report of the Law Commission of India, on 'Congestion of Under-trial Prisoners in Jails'. The Commission has suggested that the condition of release on bail should be liberalized. Overcrowding may be taken care of by evolving alternative to incarceration; such as imposing fines, sending the person to perform the works of civil commitments and on probation, short vocational courses,
etc. Overcrowding may also be reduced by release of prisoners on parole, as well as on conditional release. The recommendation of Mulla Committee (All India Jail Reform Committee, 1980) regarding premature release and remission should be considered. It will be an incentive for prisoners and will also help in rehabilitation and reformation.

The overcrowding has another harmful effect, which needs a brief discussion here too. There is no segregation among the convicts those punished for serious offences and are sentenced for a long and sometimes very long period of imprisonment and that of for minor offences and are in the jail for a short period. The hardcore criminals coerce and ultimately exploit other inmates. Hence, the problem of overcrowding should be tackled in right earnest for better future. Delay in trials finds an under trial prisoner in jail for a longer period while awaiting the decision of case. It is also needed that the under trials should be released on the bail and their hardship during the trial period, if any, should be taken care off.

There are a number of pathetic stories regarding ill treatment and torture in the jail of the prisoners. The cellular jail in Port Blair resounds with the cries of prisoners who were subject to various forms of torture in the past. The prisoners of other jails also tell the same stories. Various forms of ill treatment like putting of fetters and iron bars are generally taken recourse to in jails. If the harsh and inhuman treatment being given to the prisoners are part and parcel to maintain jail discipline as per the Jail Manuals; there exists a strong need for new All India Jail Manual
safeguarding the human rights of the prisoners in the whole country. This should stop torture and ill treatment to the prisoners. The National Human Rights Commission has also felt need for such exercise.

Besides these, prisoners are not getting adequate food, adequate clothing and proper medical facilities. It is important to provide proper basic facilities to them. For this the system of complaint box as introduced in Tihar Jail must be adopted in all the other jails of India too. The complaint received must be fairly inquired and appropriate action against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequences for lodging the same. A person in jail has no communication with outside world which causes additional trauma to the prisoners. A liberal approach in this regard may be adopted.

The majority of inmates are in their adulthood. Most of them must had married life before their imprisonment. For such persons denial of conjugal life during the entire period of incarceration creates emotional problems. Frequent visits by spouses is therefore of greatly required.

Another matter which is of major concern is regarding female prisoners who have small kids. These female prisoners should not be kept in the jail. In place of keeping in jail they should be kept at other places, otherwise it is violation of human rights of children. Hardly there is any jail which has qualified lady doctors. So, it is the need of situation that there should be qualified doctors in the jail so that they should keep proper care of women and expectant mothers. Expectant mothers in the custody should be given proper nutrition too. Other than this during
incarcerations, female prisoners are needed to be given strong support from the family as well as from the society to overcome social stigma and the problem of rehabilitation. If possible, they should be given alternative punishment like fine in place of imprisonment. Self-harm in jail is also a problem. To solve this problem, some preventive measures, like better mental health care, alternative sentence to ease pressure on prison, for 'at risk' prisoners check as many as four time in a day, new care plan, maintain regular family visit, quality relationship between staff and prisoners and proper remuneration or policy of minimum daily wages for prisoner against their works should be adopted. Various guidelines issued by the Supreme Court and High Courts are required to be implemented in this regard too.

Other than the above issues the issue discussed in the text is regarding violation of human rights of women. It is always said that women are the pillar of the society. However, they are still not getting proper respect in the society. The majority of the dropouts from the schools are girls. In the rural areas and even among the urban poor sections of the society the marriage of the girl is on priority than their school or college education. This notion should be changed. In most of the marriages, consent of a girl is not taken while that of a boy is necessary. It indicates discrimination between boys and girls. Though our Constitution says men and women are equals, however, mostly equality is not really practiced in the society. It is urgently required for the human rights of the girl child as well as the women of the society that they should be given equal opportunities. It is also found that economic status of women is not equal to men. And the health status of women is a
global problem mostly of the poor and developing countries. They are not getting proper nutrition and hence, are suffering from anemia and other disease. It is the duty of the government as well as of every human being that they should take care of women. But government is not very much sensitive regarding women's cause especially their human rights. The Women Reservation in legislative bodies is a current example to it. Several unsuccessful attempts in the past have been made to pass the Bill in the Parliament. Perhaps the Parliamentarians are not very much sensitive to the empowerment of women especially in politics.

The sexual harassment of women at workplace as well as in home is another issue of concern towards the human rights of women. The Indian Judiciary has issued guidelines in the case of *Vishakha and others v State of Rajasthan*¹, regarding sexual harassment at workplace, but still it is not implemented properly. It is the duty of the implementing agencies to assure that the directions issued by the Courts must be complied with. Prostitution and woman trafficking must be stopped. Socio-cultural and economic measures should be started towards rehabilitation of the women involved in prostitution.

The provision given under the section 497 of the Indian Penal Code also discriminates husband from wife. It favours husband. The section makes the act offence against husband not against wife. So, it should be changed to bring equality. Personal laws specially Muslim Law favours husband regarding marriage, which is discriminatory, and also the violation of human rights of Muslim wife. It is a need of the time

¹ AIR 1997 S C 3011
that both should be treated equally. The suggestion given by the Committee on Reform of Criminal Justice System to include the woman who was living with the man for reasonable long period should be treated as wife. So she should be included in the word ‘wife’ as used in section 125 of Criminal Procedure Code 1973. The suggestions given by V.C. Mahajan Committee, regarding protection of human rights of prostitutes and their children should be taken into consideration. We have constitutional guarantees and judicial decisions to protect and respect the human rights of women. Nevertheless, incidents of injustice against women are still going on. Perhaps such remedial measures are not sufficed. The male dominated structure of our society along with all patriarchal customs, practices and laws appear to be the only key to the vexed problem of safeguarding the human rights of the girl child and women.

Another important issue, which is discussed in the text, is human rights of children. Generally, it is said that children are the supreme assets of the nation, much more are required to be done for them. They are innocent but defenseless. The child abuse, either in form of physical or emotional abuse, is a persisting social problem violating the human rights of children. The physical abuse includes sexual abuse as well as child labour. The attempts are being made at national and international levels to avoid the violation of human rights of children. The Convention on the Rights of Child, 1989, endeavored to avoid this problem. The Constitution of India provides safeguards to the children but the safeguards are not properly implemented. Providing education to a child is a fundamental duty of every guardian. However, due to poverty and
socio-cultural and family obligations, it becomes difficult for parents to send a child or children to school. They are sent to earn wage to provide meal for other members of the family. So poverty and illiteracy should be eliminated without further delay for protecting the childhood of children and more especially safeguarding their human rights. Adequate arrangements should be made to provide education at the nearest doorstep. Media can also play an important role to spread human rights awareness among children and the parents. Schools are regarded as the safest place for the children. It is essential to make effort for the involvement of maximum number of children by innovative child friendly method of teaching. Better cooperation should be made between national, state and block levels for encouraging them to join and continue schools. Efforts should also be made to rescue children from joining manual jobs sometimes hazardous to them. Apart from the above Juvenile Justice Board, Child Welfare Committee, Juvenile Police Unit should be set up in every area for better implementation of the human rights of the children. Behaviours of the care-givers should also be checked to protect the human rights of children.

Besides above, conservation and preservation of environment is the need of the day. From last few centuries human beings, for their personal greed have been destroying the environment. If it continues, it will destroy the capability of the environment to support the civil society reasonably. Therefore, there is strong need to protect and preserve the environment. The Declaration on Rights to Development was adopted by U. N. General Assembly on 4th December 1986. Article 1 of the Declaration defines right to development as inalienable human rights by
virtue of which every human being is entitled to participate and contribute to enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. It is the responsibility of the States to create conditions favorable for the development of the people. But, if the development is an inalienable human rights and the States have responsibility to create atmosphere for the development then what about those human beings and their human rights who are forced to abandon their land and livelihood for the sake of the development of others. This question can be answered on the basis of sustainable development, which has its own goals, which are:

(1) Basic needs of human being i.e. food, clothing, shelter, health be met adequately. Priorities must go to these needs.

(2) Developmental process should be articulated in a way that ecological balance and environmental purity are least disturbed if at all.

(3) There should be balance between right to livelihood and environmental protection also.

Apart from the above the right to livelihood and environmental protection are also issues of great importance, especially for tribal people. These people in India used to have traditional control over the forest and they should be recognizer in law. Tribal welfare should be incorporated as an entry in the concurrent list of the Constitution so that centre and state both can take up measures to save the life of tribal people. The Judiciary has also come forward and declared the right to
clean environment as a fundamental right. So, it is necessary to implement the international and national provisions as well as judicial directions to protect environment for the betterment of the human rights in general.

Apart from the foregoing, the next issue discussed in the text is, enforcement of human rights. The National Human Rights Commission and the State Human Rights Commissions are set up through the Protection of Human Rights Act, 1993 but they are simply recommendatory bodies. They can send report to the Court. They cannot enforce the issues of human rights themselves. The time has come that they should be given power of enforcement of human rights and the power to punish the violators of the human rights. The human rights standard-setting and implementation process which the Indian Government had adopted in conformity with the universal standard on the one hand, and the constitutional mandate on the other have been set out through collective national goals by taking into considerations, national commitment towards secularism, pluralism and quasi-federalism among other issues to protect the human rights.

In the issues of the human rights one more problem is that there are some rights which are declared as human rights under United Nation Declaration of Human Rights 1948, and in U.N. Charter. Few of them are covered under the Fundamental Rights of the Constitution of India and the others are the part of the Directive Principles of State Policy. But those which are mentioned in the Directive Principles of State Policy are not enforceable by law. Although they are human
rights. So, all the issues concerning the human rights should be covered under the fundamental rights. It is to the government that they should take steps to cover all the human rights under the Part-III of the Constitution. However, the judiciary has, from time to time tried to cover these rights under Part-III of the Constitution, but it is not suffice. The government and the national institutions have to fully and adequately comply with the bindings of the human rights treaties to which India has been a party. The human rights policy should be made holistic and multi lateral by the Government of India. The need of the time is that proper identification and balancing of human rights, with social rights, and above all these effective enforcement of these rights should be provided. There cannot be any denial to the fact that now the issues of human rights are being taken seriously. We must make our efforts more comprehensively to realize the goal of “All human rights for all”.  

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