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FROM UDHR TO DOMESTIC IMPLEMENTATION: A STUDY OF VICTIM REPARATION AND ACCOUNTABILITY IN THE INDIAN HUMAN RIGHTS SYSTEM

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Abstract

Human rights are universal, inalienable protections inherent to all individuals regardless of status. While historical milestones like the Cyrus Cylinder and Magna Carta laid the groundwork, modern human rights jurisprudence evolved significantly following the atrocities of World War II, leading to the establishment of the UN Charter and the Universal Declaration of Human Rights (UDHR). In India, these rights are anchored in the Constitution and further protected by the Protection of Human Rights Act, 1993.

This article examines the critical role of victim compensation as a fundamental human right, focusing on the intervention of the National Human Rights Commission (NHRC) in addressing violations by state and non-state actors. The study analyses the legislative framework of the Protection of Human Rights Act and reviews various case studies where the NHRC exercised its recommendatory powers to award compensation.

Keywords: Human Rights, UDHR, NHRC, reparation

Introduction

Human rights represent a universal set of fundamental protections afforded to every individual, irrespective of their nationality, gender, ethnicity, religious beliefs, or any other identifying characteristic. These inherent entitlements are absolute and apply to all members of the global community without exception.

The scope of human rights is remarkably broad, covering a diverse spectrum of essential freedoms and needs. This includes, but is not limited to:

- **Fundamental Protections:** The right to life, individual liberty, and the absolute

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prohibition of slavery and torture.

- Civil and Political Liberties: The freedom of expression and the right to participate in the democratic process.
- Socio-Economic Entitlements: The right to meaningful employment and access to a quality education.

Ultimately, human rights integrate all dimensions of human existence, spanning civil, political, economic, social, and cultural spheres to ensure a life of dignity for all.

Historical accounts trace the foundational concepts of universal rights to 539 BC, following the conquest of Babylon by Cyrus the Great. Moving beyond traditional military victory, Cyrus implemented transformative social policies: he abolished slavery, advocated for racial equity, and established the principle of religious freedom. These decrees were documented on a baked clay artifact known as the 'Cyrus Cylinder'², which many historians regard as the earliest global charter of human rights. The enduring influence of this ancient record is reflected in its role as a conceptual precursor to the initial four Articles of the modern Universal Declaration of Human Rights.

The evolution of human rights progressed from the 'Magna Carta'³ (1215) and the English Bill of Rights, which established protections against arbitrary detention, to the 1789 French Declaration, which codified universal equality, legal due process, and the sanctity of private property. This legal trajectory culminated in the 19th and 20th-century Geneva and Hague Conventions, extending fundamental standards of human dignity and protection to individuals even during periods of armed conflict.

In the wake of World War II, the global community strengthened human rights protections to prevent a recurrence of the era's atrocities. The 1945 UN Charter Preamble reflects a collective resolve to shield future generations from the devastation of war while reaffirming a fundamental belief in human dignity and equal rights for all individuals and nations. To

² The Cyrus Cylinder (539 B.C.), *available at*: <https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human-rights.html#:~:text=From%20Babylon%2C%20the%20idea%20of,from%20the%20nature%20of%20things>.

³ Promulgated in June 1215, the Magna Carta stands as a landmark legal instrument, marking the first formal written commitment to the principle that sovereign authority is subject to the rule of law. By establishing the law as an independent and supreme power, the charter effectively curtailed royal overreach and prevented the arbitrary exercise of governmental influence.

operationalize these ideals, a dedicated Commission was established to define the specific liberties mentioned in the Charter, resulting in the thirty Articles of the UDHR. Central to the UDHR is the recognition that the inherent dignity and inalienable rights of every human being form the essential foundation for global freedom, justice, and peace.

The UDHR stands as a foundational instrument in the evolution of global rights, having been adopted by the United Nations General Assembly on December 10, 1948. Drafted by a diverse assembly of international delegates representing various legal traditions and cultural perspectives, the declaration establishes a uniform standard for fundamental human rights. To translate these principles into binding legal frameworks, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were enacted in 1966. These covenants serve as the primary mechanisms for the practical application and enforcement of the UDHR's ideals.

The conceptual framework of human rights integrates various fundamental protections, including the right to life, freedom from inhumane treatment, legal equality, and access to education and employment. Central to the right to life is the entitlement of victims to receive compensation for violations. The primary objective of such reparations is to mitigate the trauma of the victim and ensure justice by addressing the adverse consequences of the misconduct. This principle of restitution is firmly established within both domestic legal systems and international standards. Notably, the "Victims Declaration"⁴ provides an extensive framework for these compensatory measures. The judiciary nationally and internationally recognised this concept of reparation and in a number of cases awarded compensation to victims for human right violations.

Compensation for Human Rights Violations

Providing compensation is essential to transforming human rights from theoretical concepts into practical protections by restoring victims to their pre-violation state. Effective justice requires a dual approach: criminal accountability for the perpetrator and civil restitution for the survivor. Beyond the judicial system, human rights commissions play a vital role in identifying these breaches and awarding financial redress to ensure a non-discriminatory society.

⁴ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, GAOR, UN Doc A/Res/40/34 (November 29, 1985).

The Indian Legal Framework: Constitutional and Statutory Protections

In India, human rights are not merely philosophical ideals but are deeply entrenched in the Constitution, which guarantees fundamental liberties and ensures social justice for all citizens. To provide a specialized mechanism for the protection of these rights, the Indian Parliament enacted the 'Protection of Human Rights Act (PHRA), 1993'⁵. This landmark legislation led to the establishment of the National Human Rights Commission and various State Human Rights Commissions (SHRCs), creating a dedicated institutional oversight framework alongside the traditional judiciary.

Under the PHRA, 1993, the Commission is granted extensive powers to investigate complaints of rights violations and systemic negligence by public servants. Furthermore, the Act empowers the NHRC to intervene in judicial proceedings and review various factors, including acts of terrorism, that impede the enjoyment of human rights. Crucially, the legislation authorizes the Commission to recommend financial compensation as a remedy, reinforcing the principle that the State is accountable for the protection of its people's inherent dignity.

The NHRC has consistently acted as a watchdog to ensure that victims of terrorism and insurgency receive equitable financial redress, often intervening when state-provided relief is deemed insufficient. For example, during investigations into Naxalite-related violence in Andhra Pradesh, the Commission successfully advocated for a 100% increase in ex gratia payments, arguing that the existing state rates failed to meet the standards of dignity and necessity established in other regions like Punjab⁶. Similarly, in Nagaland, the Commission criticized the state for failing in its fundamental duty to protect citizens after an insurgent massacre of bus passengers, subsequently recommending enhanced compensation beyond the state's initial offerings.

In regions like Jammu and Kashmir, the NHRC's involvement often focuses on monitoring the swiftness and adequacy of the state's response to horrific acts of violence, such as the 2000 'Anantnag massacre'⁷ and the 2003 attack on Vaishno Devi pilgrims. By demanding detailed reports on security lapses and the status of ex gratia disbursements, the Commission ensures

⁵ Act 10 of 1994.

⁶ Enhanced compensation to persons affected by the activities of extremists in Andhra Pradesh. Other Cases, available at: <https://nhrc.nic.in/othercases#no5>

⁷ Killing of 35 Members of Sikh Community in Anantnag District of Jammu & Kashmir by Militants (Case No. 206/9/1999-2000)

that the state fulfils its compensatory obligations to the bereaved. While the NHRC closes cases once satisfied that adequate relief and legal proceedings are underway, these interventions reinforce the principle that the state remains vicariously responsible for the welfare of its subjects in the face of extremist threats.

The NHRC maintains that the State holds an absolute duty of care toward individuals in its custody, viewing any failure to ensure inmate safety as a fundamental breach of human rights. In cases such as the ‘homicidal death of an undertrial prisoner at Tihar Jail’⁸ and the ‘fatal assault of a convict in Muzaffarnagar’⁹, the Commission condemned the anarchy and negligence of prison staff. By applying the doctrine of vicarious liability, the NHRC holds the government accountable for institutional lapses, whether they involve direct physical abuse, medical neglect leading to death, or the failure to prevent inmate-on-inmate violence, resulting in recommendations for substantial financial compensation to the victims' families.

Furthermore, the Commission’s oversight extends to deaths resulting from custodial suicide and police brutality, as seen in the ‘cases of Afzal in Gonda and Manoj Rana in Delhi’¹⁰. In these instances, the NHRC looks beyond official administrative reports to identify underlying issues such as extortion, torture, and a lack of proper monitoring. By mandating compensation ranging from two to five lakh rupees, the Commission reinforces that law enforcement and correctional officers must act within the bounds of human dignity, ensuring that the right to life remains protected even within the confines of a prison or police station.

The NHRC frequently intervenes in instances of police misconduct involving arbitrary arrest, unlawful detention, and physical brutality. In the ‘case of Phuleshwar Yadav’¹¹, the Commission’s inquiry into allegations of illegal confinement and torture by the Maharashtra Police resulted in a directive for the state to provide financial restitution to the victim. These interventions highlight the Commission's role in penalizing procedural lapses and ensuring that law enforcement operates within the boundaries of legal due process.

⁸ Case No. 4533/30/9/2015-JCD. Annual Report 2017-2018, available at: https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf

⁹ Case No. 7699/24/33/2015-JCD. Annual Report 2017-2018, available at: https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf

¹⁰ Case No. 2929/30/9/2014-AD. Annual Report 2017-2018, available at: https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf

¹¹ Case No. 476/13/16/2012. Annual Report 2017-2018, available at: https://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2017-2018.pdf

A more extreme example of custodial violence involved the ‘death of Udai Singh’¹², who succumbed to 95% burn injuries after allegedly being set ablaze by personnel from the Delhi Police. Recognizing this as a grave violation of the right to life and a manifestation of extreme custodial cruelty, the NHRC mandated the Government of NCT Delhi to pay two lakh rupees in compensation to the bereaved family. Together, these cases underscore the NHRC’s commitment to holding the State vicariously liable for the criminal actions of its agents, ensuring that even in the absence of immediate criminal conviction, the victim's right to civil redress is upheld.

Analytical Review: Sexual Violence and Institutional Accountability

The NHRC’s intervention in cases of sexual assault highlights a critical gap in the protection of vulnerable populations, particularly within state-run or state-regulated environments. The following cases illustrate the Commission’s push for systemic accountability:

- **Abuse by Law Enforcement:** In Osmanabad, Maharashtra, the Commission addressed a grave breach of public trust where a minor girl was raped by a Sub-Inspector.¹³ Finding the officer guilty of the offense, the NHRC mandated a three lakh rupee compensation package, which the state subsequently fulfilled.
- **Vulnerability in Educational Institutions:** Institutional neglect was further evidenced in Odisha, where eighteen students at a government-run school were subjected to sexual harassment by their headmaster.¹⁴ While the state initially provided a nominal ex-gratia payment, the NHRC intervened, deeming the amount insufficient and recommending an additional seventy thousand rupees to better reflect the gravity of the trauma.
- **Systemic Failures in Shelter Homes:** One of the most significant interventions involved the Muzaffarpur Shelter Home case in Bihar. Following a massive investigation that led to the conviction of 19 individuals, the NHRC, alongside the Trial Court, ensured that 49 victims received merit-based compensation ranging from three to nine lakh rupees, addressing the state's failure to oversee a facility meant for protection.
- **Protecting Marginalized Communities:** The Commission has also been vocal regarding the intersection of gender and caste-based violence. In Andhra Pradesh, it ordered the state to compensate four Dalit women, including a girl with disabilities,

¹² Case No. 6565/30/8/2013

¹³ Case No. 1803/13/21/2016-WC.

¹⁴ Case No. 1799/18/30/2014-WC.

who were victims of rape. Crucially, the NHRC critiqued existing state relief schemes as inadequate, urging the government to ensure rehabilitation and financial support regardless of whether the perpetrator belonged to the same community.

- **Institutional Custody and Torture:** The case of a female prisoner in Bihar, raped by jail staff, highlights the extreme vulnerability of those in judicial custody. The Commission categorized this as a clear violation of human dignity, recommending three lakh rupees in compensation and reinforcing that the state bears absolute liability for the safety of female inmates.

The National Human Rights Commission plays a critical role in scrutinizing the use of force by security and paramilitary forces, particularly in cases of lethal encounters and indiscriminate firing. In the matter of 'Lakhan Boro'¹⁵, the Commission rejected official accounts of a standard military engagement in Assam, concluding instead that the encounter was staged. Consequently, it directed the state to provide five lakh rupees in financial redress, reinforcing the principle that fake encounters constitute a grave violation of the right to life that must be met with state accountability. Similarly, the NHRC oversees incidents involving border security and local villagers, as demonstrated in the 'case of Ismail Miah'¹⁶ in Tripura. After a human rights activist highlighted the death of a civilian due to indiscriminate shooting by BSF personnel, the Commission reviewed the initial state response. It found the local magistrate's ex gratia settlement of fifteen thousand rupees to be woefully insufficient in light of the loss of life. By ordering a significantly higher compensation of three lakh rupees, the NHRC emphasized that administrative reparations must be proportionate to the severity of the human rights breach, ensuring that the state's liability extends to the actions of all security agencies.

The National Human Rights Commission maintains a rigorous stance against institutional abuse, particularly concerning the safety and dignity of individuals within the prison system. In the 'case of Goura Siddulu'¹⁷ in Andhra Pradesh, the Commission rejected the state's administrative justifications after medical evidence revealed unexplained injuries consistent with custodial torture. By dismissing the official narrative as unpersuasive, the NHRC reaffirmed that the State is directly responsible for physical violations occurring behind bars, recommending three lakh rupees in compensation for the bereaved family.

¹⁵ Case No. 380/3/0/2012-AF.

¹⁶ Case No.19/23/4/2015-PF.

¹⁷ Case No.403/1/14/09-10-JCD.

Similarly, the Commission categorizes sexual violence within penal institutions as a superlative breach of human rights. In an instance involving the rape of a female undertrial prisoner by jail staff in Bihar, the NHRC intervened to emphasize the extreme vulnerability of incarcerated women and the State's failure to provide a secure environment.¹⁸ By mandating a payment of three lakh rupees to the survivor, the Commission reinforced the legal principle that custodial authorities are not above the law and that the State must provide financial restitution for the criminal actions of its employees.

Conclusion

The landscape of human rights in India is characterized by a sophisticated constitutional framework and specialized legislation, yet it remains challenged by persistent implementation gaps. While international instruments and the Indian Constitution place a high premium on human dignity, the reality on the ground often reveals a culture of lawlessness and a lack of organizational accountability. This is particularly evident in the Northeastern states and regions affected by Maoist insurgencies, where grave violations—including murder, kidnapping, and the recruitment of child combatants—are committed by both state and non-state actors.

The prevalence of extrajudicial killings, custodial torture, and arbitrary detention underscores the necessity for robust oversight. Despite statutory prohibitions against abuse, credible allegations against government personnel persist. Within this context, the NHRC serves as a pivotal, albeit limited, independent advisory body. Its dual mandate to investigate violations and foster public awareness is critical for maintaining democratic transparency.

Through its power to issue summons and review public records, the NHRC has been instrumental in identifying systemic failures, such as negligence in preventing terrorism and the perpetration of sexual violence by law enforcement. The Commission's practice of conducting routine prison inspections and recommending financial compensation for victims represents a vital mechanism for redress.

However, the efficacy of the NHRC is fundamentally constrained by its recommendatory status. While it can identify breaches and propose restitution, it lacks the enforcement machinery required to impose punishments or ensure the mandatory implementation of its

¹⁸ Case No.1856/4/34/2013.

decisions. For human rights to move beyond mere "words on a page," India must evolve its institutional framework to bridge the gap between the recommendation of justice and its actual enforcement.

