

# National Judicial Academy



## ANNUAL NATIONAL SEMINAR ON WORKING OF HUMAN RIGHTS COURTS IN INDIA

20<sup>th</sup> August -21<sup>st</sup> August, 2016

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National Judicial Academy P-987

Annual National Seminar on Working of the Human Rights Courts in India

20th – 21st August, 2016

Sl. no	High Court	Name of Participant	Address
1	Allahabad	Mr. Sarvesh Kumar	Additional District Judge, Ambedkar Nagar, Uttar Pradesh
2	Allahabad	Mr. Vidya Shankar Patel	Additional District & Sessions Judge-I, Basti, Uttar Pradesh
3	Allahabad	Mr. Lal Chandra-II	Additional District Judge, Baghpat, Uttar Pradesh
4	Allahabad	Mr. Krishna Kumar Asthana	Additional District Judge, Banda, Uttar Pradesh
5	Andhra Pradesh	Mr. Vutukuru Srinivas	XXVII Additional Chief Judge, Secunderabad, Telangana
6	Andhra Pradesh	Mr. K.B. Narasimhulu	1 st Addl. Dist. Judge, Warangal, Telangana
7	Bombay	Mr. Patil Anand Krishnaji	District Judge-1, Biloli Dist. Nanded, Maharashtra
8	Bombay	Mr. Rahul Nagnath Rokade	District Judge & Addl. Sessions Judge, Osmanabad, Maharashtra
9	Bombay	Mr. Abhay Narharrao Sirsikar	District Judge & Addl. Sessions Judge, Satara, Maharashtra
10	Calcutta	Ms. Chaitali Chatterjee Das	District Judge, Murshidabad, West Bengal
11	Chhattisgarh	Mr. Jagdamba Rai	District Judge, Dhamtari, Chhattisgarh
12	Chhattisgarh	Mr. Ram Kumar Tiwari	District Judge, Bemetara, Chhattisgarh
13	Chhattisgarh	Ms. Meenakshi Gondaley	Principal and District Judge, Surajpur, Chhattisgarh,
14	Delhi	Mr. Rakesh Pandit	Additional District & Sessions Judge-1, New Delhi
15	Delhi	Mr. Chandra Shekhar	Additional District & Sessions Judge, Tis-Hazari, Delhi
16	Delhi	Mr. Pawan Kumar Matto	Additional District & Sessions Judge, Tis-Hazari, Delhi
17	Guwahati	Mr. Gote Mega	Additional District & Sessions Judge, East Siang, Arunachal Pradesh
18	Guwahati	Mr. Lobsang Tenzin	Additional District & Sessions Judge, West Siang District, Arunachal Pradesh
19	Guwahati	Mr. N. Longshithung Ezung	District & Sessions Judge, Phek, Nagaland
20	Guwahati	Mr. Amir Uddin Ahmed	Additional District & Sessions Judge, Golaghat, Assam
21	Gujarat	Ms. Poonam B. Singh	Judge, City Civil & Sessions Court, Ahmedabad, Gujarat
22	Gujarat	Mr. Vipul Ramprasad Raval	Addl. District & Sessions Judge, Anand, Gujarat
23	Himachal Pradesh	Mr. C.L. Kochhar	District & Sessions Judge, Mandi, Himachal Pradesh
24	Jammu & Kashmir	Mr. Sanjay Dhar	Spl. Judge, Anti-Corruption (CBI Cases), Janipura, Jammu
25	Jharkhand	Mr. Kumar Ganesh Dutt	Principal District Judge-cum-Presiding Officer, Ranchi, Jharkhand
26	Karnataka	Mr. S.B. Vastramath	Principal District Judge, Chitradurga, Karnataka
27	Karnataka	Mr. Anil B. Katti	Additional Judge, Bengaluru, Karnataka
28	Kerala	Mr. P.D. Sarangadharan	District Judge, Ist Addl. District Judge, Thiruvathipuram, Kerala

29	Kerala	Dr. V. Vijaya Kumar	Principal District & Sessions Judge, Wayanad, Kerala
30	Madhya Pradesh	Mr. K.K. Tripathi	District & Sessions Judge, Jabalpur, Madhya Pradesh
31	Madhya Pradesh	h Mr. Satyendra Kumar Singh	District & Sessions Judge, Ujjain, Madhya Pradesh
32	Madhya Pradesh	Mr. Mohd. Fahim Anwar	District & Sessions Judge, Hoshangabad, Madhya Pradesh
33	Madras	Mr. P. Dhanabal	Principal District Judge, Cuddalore, Tamil Nadu
34	Madras	Mr. M. Jothi Raman	District & Sessions Judge, Sivagangai, Tamil Nadu
35	Orissa	Mr. Gourishankar Satapathy	District Judge, Kendrapada, Odisha
36	Orissa	Mr. Lalit Mohan Mishra	District & Sessions Judge, Bolangir, Odisha
37	Orissa	Mr. Kailash Chandra Swain	District & Sessions Judge, Malkangiri, Odisha
38	Patna	Mr. Ashok Kumar Gupta-I	Additional District & Sessions Judge, Saran at Chapra, Patna, Bihar
39	Punjab & Haryana	Mr. Rajinder Pal Goyal	Additional District Judge, Gurgaon, Haryana
40	Punjab & Haryana	Ms. Manjot Kaur	Addl. Dist. & Sessions Judge, Fatehgarh Sahib, Punjab
41	Punjab & Haryana	Mr. Lal Chand	Additional District & Sessions Judge Jhajjar, Haryana
42	Rajasthan	Mr. Prem Prakash Gupta	Additional District & Sessions Judge, Chirwa, Rajasthan
43	Rajasthan	Mr. Pradeep Kumar Jain	Judge (NDPS), Pratapgarh, Rajasthan

National Judicial Academy

P-987 Annual National Seminar on working of the Human Rights Courts in India

20<sup>th</sup> – 21<sup>st</sup> August, 2016

A one and a half day Seminar was organized on working of Human Rights Courts in India by National Judicial Academy from 20<sup>th</sup> to 21<sup>st</sup> August, 2016. The seminar provided a forum to participant Judges to discuss the inadequacies in the Protection of Human Rights Act 1993 establishing the Human Rights Court and how to overcome the lacunas with the help of constitutional principles to achieve the objective behind establishing these courts. District and Session Judges from across the states of India participated in the seminar. The programme was divided into 8 sessions.

Justice D.M Dharmadhikari, Justice G.M. Akbar Ali, Ms. Pritarani Jha, Ms. Sudha Shrotria, Justice S. Murlidhar, Prof. Mohan Gopal and Mr. Ravi Nair participated as Resource person in these various sessions and guided the participants.

Justice Akbar Ali chaired sessions on the first day.

Day 1.

- Session 1 -Inadequacy of Human Rights Act 1993 establishing Human Rights Courts.
- Session 2 -Constitutional Principles of FEDEF and their protection by Human Rights Courts.
- Session 3- Case Study 1 on protection of Human Rights
- Session 4-Case Study 2 on protection of Human Rights.

Day 2.

- Session 5-Common Human Rights Violations in India and how these can be addresses by Human Rights courts:
  1. Excessive use of force by police and armed forces
  2. Denial of Basic Minimum things to survive.
- Session 6- Human Rights of fair and impartial investigation.
- Session 7- Human Rights and Justice.
- Session 8- Participants audit the sessions/Feedback.

**Day 1**

**20<sup>th</sup> August, 2016**

**Session 1**

**(10:00 AM – 11:00 AM)**

**Inadequacy of Human Rights act 1993 establishing Human Rights Courts**

The session was commenced by Hon'ble Justice G. Raghuram extending a warm welcome to the Resource persons & participant Judges present. Hon'ble Justice Dharmadikari then took over the session by discussing the cases pending in the National Human rights Commission and in various Human Rights courts. He discussed the importance of peace in the society and mentioned that a balance has to be made between the conflict and peace in the society.

He pointed the inadequacies in the Protection of Human Rights Act 1993(PHR) Act 1993 and further stated that despite of international conventions and Constitutional courts the PHR Act faces lack of proper implementation and there are still unsatisfactory results in curbing the Human Rights violations. He suggested that Human Rights Courts have power to punish the perpetrators of the crime and can provide redressal to the aggrieved persons.

Quoting section 30 of Protection of Human Rights Act 1993 Justice Dharmadhikari stated:

Human Rights Courts have been established for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences: Provided that nothing in this section shall apply if (a) Court of Session is already specified as a special court; or (b) A special court is already constituted, for such offences under any other law for the time being in force.

Justice Dharmadhikari further asked questions to the participants regarding what is the object of Human rights Courts? Whether we have to punish the wrongdoer or compensate the victim? The participants responded with great enthusiasm and kept their point of view as, this section 2(d) provided under 1993 Act is not exclusively used. There must be specification of crimes committed. The offences under PHR Act, 1993 is not defined and how to differentiate that which offence should go to Human Rights court and which should not is a issue as this provision is also not properly operational. On this he suggested an amendment to the said section and thereby letting District judges take cognizance of the matter and not to rely solely on remedy under Article 32 and Article 226. He also suggested that

- Courts should take Suo moto cognizance and as and when there is Human Rights violation falling under section 12 (4) of PHR, Act 1993 to take proper measures for redressal.

- Approach Human Rights Commission whenever required, write to them, and send letters.
- As discussed in section 30 courts are notified as Human Rights Courts and these courts should see that witnesses should be protected and should not be tormented with threats.
- Resort to article 32 (3) of the constitution which elaborates upon the decentralization of power, redressal of the human rights violations by the lower judiciary

Following solutions to overcome lack of implementation of the PHR Act, 1993 were pointed out-

- There must be a definition for ‘Type of offences’ which are violated under PHR Act ,1993
- Definition of Punishment must be provided in the act.
- Awareness of Human rights violations so that they can be reached to Human Rights Courts instead of NHRC or any SHRC.
- The Act is only procedural and not substantive and a specific procedure has to be implemented and try to link it with Human Rights Commission.

He also discussed about the situation outside the courts and the prime reasons of witnesses turning hostile. Witnesses are often threatened outside the court and they tremble while appearing in front of the judges. To curb this problem he suggested various measures given as under:

- Social and moral support to be given to the victim
- Judges are inactive towards the Human Rights Violations and they shall Suo moto take cognizance of the offences involving such violations.

Further, he stated that, section 30 articulates, the reason for the formation of the Human Rights Court. He asked judges to be very clear and appropriate while making the decision. Justice Dharamdhikari pointed that Human Rights Courts were created for the purpose of providing speedy trial of offences arising out of violation of Human Rights. The object of this section is to provide speedy justice with regards to offence against inhumane behavior.

He also mentioned about the human rights jurisprudence that it has not developed properly and that many conventions are still not ratified. If courts fail in taking cognizance then it will lead to media coming in power and causing disharmony. He again focused on the existing provisions not being properly utilized by the courts. Delhi Legal Service Authority should come into picture and provide free legal aid to the aggrieved ones.

Then the participants were asked to share their experiences. A judge from Arunachal Pradesh enlightened the participants about the inhumane conditions of the prisoners in the jail, that the prisoners do not even have proper access to the medical facilities and to provide the medical facilities he wrote to the chief secretary of the concerned state.

Justice Akbar Ali suggested him to send the report to legal services authority in the state and even if no heed is paid then the last resort must be to approach National Human Rights Commission. It was startling to find out that there is no state legal service authority in the state of Arunachal Pradesh as pointed out by the participant and this shows the lack of implementation of the said act.

Justice G Raghuram mentioned that human being is the unique creation of god and a collective efforts would help bring a change .He also suggested various measures to curb the human rights violations like:

- Discover various techniques within jurisdiction to find a remedy
- Write a letter to High Court
- Address the grievances to National Human Rights Commission.

Ms. Pritarani Jha then proceeded the session by discussing the inadequacies in the Domestic Violence Act stating that the act talks about the provision of the protection officer which is not duly followed because of the lack of proper implementation just like the loopholes in the PHR Act, 1993. She expressed the view that Human rights Courts should be operationalize.

The session was concluded by Justice G Raghuram by stating that judges should write judgement which is coherent and in continuity and further added that one should become part of the problem rather than being a part of the solution.

## **Session 2**

**(11:30 AM – 12:30 PM)**

### **Constitutional principles of FEDEF and their protection by Human Rights Courts**

Justice Akbar Ali commenced the session by explaining the meaning of the word FEDEF. Where F stood for Freedom E is equality, D is for Dignity, E for equity and F stood for Fairness.

He further added that human rights has been a major concern of the United Nations. On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. The Declaration consists of thirty articles which have been elaborated in subsequent international treaties, economic transfers, regional human rights instruments, national constitutions, and other laws. He then enumerated some of the Human Rights under Indian Constitution such as Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion Cultural and Educational Rights and Right to Constitutional Remedies. Justice Akbar Ali defined Human Rights as “...rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.” He mentioned that to violate the most basic human rights; is to deny individuals their fundamental moral entitlements. It is, in a sense, to treat them as if they are less than human and undeserving of respect and dignity.

He further supported the definition with few judgements on Human Rights like (*PUCL V Union of India and another*)<sup>1</sup> which enunciated upon the right to have a telephone conversation in the privacy of one's home or office as part of the Right to Life and Personal Liberty enshrined in Article 21 of the Constitution, which cannot be curtailed except according to the procedure established by law. The Supreme Court asserted that telephone tapping amounts to an invasion of privacy violating this core right.

Article 21 Right to Life also includes Right to livelihood as laid down in (*Delhi Transport Corporation vs D.T.C. Mazdoor Congress*)<sup>2</sup> and also the right to live with human dignity held in (*D.K Basu vs State of west Bengal*)<sup>3</sup> He further quoted the famous quote by Mahatma Gandhi "Human Dignity demands courage to defend themselves"

In another case of (*Bandhua Mukti Morcha vs Union of India*)<sup>4</sup> it was held that Art. 21 Right to Life, includes not only animal existence but life with human dignity. Human dignity has many elements, he also highlighted that human dignity is infringed if a person's life, physical or mental welfare is harmed. "The scope of the right to life, conferred by Art 21 is wide and far reaching. Life means something more than mere animal existence" was also held in (*Olga Tellis V. Bombay Municipal Corporation*)<sup>5</sup>. He also said that unfortunately till date very few states have set up a human rights court. There are arrays of judgements pronounced in many states instructing to set up such court. To state a few but those remain as mere pronouncement. He also elaborated upon the various instances of human rights violations such as:

- ▶ Custodial death
- ▶ Fake encounters
- ▶ Cases related to women and children
- ▶ Police excesses
- ▶ Atrocities on Minority and Dalit
- ▶ Bonded labour
- ▶ Armed forces/ Para military

He mentioned that women and children are also suffering and encountering the violations of their rights. Cases relating to women and children are:

- ▶ Child marriage in the name of customs, despite of legal prohibition

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<sup>1</sup> AIR 1997 SC 568

<sup>2</sup> AIR 1991 SC101

<sup>3</sup> AIR 1997 SC 610

<sup>4</sup> (1984) 3 SCC 161

<sup>5</sup> (1985) 3 SCC 545



- ▶ Child labour
- ▶ Sexual assault on children as well as women
- ▶ Rape
- ▶ Female foeticide and infanticide
- ▶ Immoral trafficking
- ▶ Work place offences

Justice Akbar Ali pointed out the above violations through a judgement where the fact finding team constituted by the Delhi Government into the incident, where some street children were denied service by the Shiv Sagar restaurant in Connaught Place, submitted its report on Wednesday stating that the act violated the Human Rights and Fundamental Rights guaranteed by the Constitution of India. This refusal clearly established discriminatory behavior of the restaurant management and staff against the children on the socio-economic basis. Such an act violates the Human Rights and Fundamental Rights guaranteed by the Constitution of India, and is against its spirit and essence," the report stated. He also highlighted the matter where the Madhya Pradesh Human Rights Commission issued show cause notices to district collector Bhopal, Bhopal municipal corporation, commissioner state's environment department, and principal secretary urban administration and development department after taking cognizance in a case related to Bhanpur landfill site. PHR Act has been introduced for the purpose of providing speedy trial of offences arising out of violation of human rights. In spite of the Constitution and PHR Act 1993, equality, dignity of the person is still not preserved.

He also presented the view of Retired district court judge and member of the Goa Human Rights Commission, suggested that the Protection of Human Rights Act 1993, which administers the State Human Rights Commission, be amended or scrapped. "People have high hopes He added that the PHR Act, 1993 is a toothless paper tiger. In fact, it is toothless paper cat. He expressed his concern upon non –implementation of recommendations and many times they are thrown into the waste basket. He pointed the commission only has the right to advise, recommend and embarrass," suggesting that the Act be amended or scrapped.

He asked the participant judges to go through the facts and the circumstances of each case vehemently and to ensure a speedy and fair trial both for the accused and the victim. He explained the situation of the Hostile Witness Syndrome. The Criminal Justice system has turned blind towards the victims making them falling prey to the compromised system. He stated the reasons that most of the witnesses are turning hostile due to investigation methods of police, political interferences, poor socio economic conditions etc. He suggested that a collective effort would help eradicate the situation and implementing Victim Protection Programme where moral and social support be given to the victim will help to bring some change.

Lastly Justice Akbar Ali pointed that Counselling would also help educate them and motivate them to curb this problem. One assured word from a judge can change the hostile witness to a fair witness.

### Session 3

(01:30 PM – 02:30 PM)

#### Case study 1 on Human Rights

The session was resumed by Ms. Pritarani Jha after the lunch by distributing two case studies on Protection of Human rights amongst the participants and thereby dividing them into four groups. 15 minutes time was given to the participants to analyze the case study and present with the available human rights violations and remedies to these violations in their respective states. The Aim behind the session was to discuss and bring forward how the human rights cases are dealt by individual judges and what amount of compensation shall be granted. Brief facts of the case are as follows;

##### Case 1

A disabled women was kidnapped and Gang raped and police officials refused to lodge a complaint and directed the victim's father to compromise with the accused and settle the matter. Subsequent to this victim's father called on phone to some other police station and there also he met with the same fate and police told them to come after 7 pm in order to lodge a complaint. Later while recording the complaint .police officer took the victim to a separate room and ignored her demand of a women lawyer or some NGO activist .while noting down the details of the incident the officer very wittily watering down the details of the incident of Oral sex and finger penetration to vagina by saying that accused has brushed pass her, accidentally touching her bottom. To add to this medical examination of the victim was conducted by a male doctor and was forced to remove her clothes and the two finger test was performed on her.

Analyzing the above problem participants came out with many Human Rights Violations and suggested various legal recourse to remedy the situation which according to them was appropriate, like one such remedy was providing compensation to the victim.

Ms. Pritarani then added some solutions to the above given facts pointing to the Human rights violation. Many participant Judges along with Ms. Jha were of the view that Right to Human Dignity is the prime Human Right violation in the case since a victim in the case is deprived of her dignity and privacy. Further she added section 166 A added by criminal law amendment 2013 is also applicable which states that:

Public servant disobeying law, with intent to cause injury to any person.—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

She also enlightened the participants on section 114 A of Indian Evidence Act which states that: Presumption as to absence of consent in certain prosecutions for rape.—in a prosecution for rape under clause(a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Then the participant Judges were asked to peruse the second case study

#### Case 2

It was case of a girl who was a rape victim and was 6 months pregnant and her father discloses that she suffers from epilepsy and that they wrote about the police harassment to the state human rights commission and that they are financially not sound to hire an advocate. On contacting her advocate, advocate retaliated in a very bad manner and this lead her to commit suicide.

Ms. Pritarani then raised issues regarding the improper implementation of the Domestic Violence act and lack of protection officer to report the domestic violence cases and how provisions of sec 357A, 357B and 357C being implemented in the respective states of the participants and what is the state of shelters for vulnerable women and children in their states.

Participants discussed about the pathetic situation of the shelter homes for vulnerable women and children and talked about the need of sensitization about these issues which will help curb the harassment meted out to women. Moral support and proper training should be given to these vulnerable groups to come out of their shells and fight for the same and also the government at the same time should look into the proper implementation of these provisions.

### **Session 4**

**(3:00 PM – 4:00 PM)**

#### **Case study 2 on Protection of Human Rights**

Last Session was taken by Ms. Sudha Shrotria distributing three cases to the participants and divided them in various groups. Participant Judges were allotted 15 minutes to analyze the cases given to them and find out the answers to the questions as to what constitutional and human rights are violated and what are the appropriate remedies for such violations.

She also discussed about the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which was adopted on December 16, 1966 by the UN General Assembly and entered into force ten years later. The ICESCR, together with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), constitute the International Bill of Human Rights. The ICESCR defines a broad set of rights related to the economic, social, and cultural elements of life that states must provide to their

citizens. These rights relate to Housing, Education, Labor, Environment, Health, Cultural rights (including language and religion), Self-determination

#### Case 1

The brief facts of the first case study were that, one Ram Prasad belonged to the SC community lives in village with his family where there is no waste water disposal system. Polluted waste water from water supply pump and the from drains into an open space adjacent to his house. Because of which family members and everybody else is adversely affected and despite of many complaints no action was taken .Ram Prasad even made a representation to the SDM and District Collector but they turned deaf hear to him. He then approached NHRC saying that he has a Right to Life. His efforts received no support from the villagers

Many participants came out with different solutions and stated that it was majorly his Right to Life that was violated and quoted the judgement of (*M.C. Mehta v. Union of India (1988)*)<sup>6</sup>, the Supreme Court ordered closure of tanneries polluting water and Ms. Sudha added to participant discussions that the “Right to Life” under Article 21 means a life of dignity to live in a proper environment, free from the dangers of diseases and infection. Maintenance of health, preservation of the sanitation and environment have been held to fall within the purview of Article 21 as it affects the life of the citizens. Ms. Sudha Shrotria suggested a remedy to the problem which was to approach state pollution control board and adequate compensation shall be given to the victims.

#### Case 2

Brief facts of the second case were that, a US based company established a plant to manufacture soft drink and in such a process they are drawing 510,000 liters of water and depleting the ground water resources causing acute water shortage and are unable to grow their crops. As a result the villagers blocked a tanker lorry and protested peacefully and to this police arrested the villagers and the activists who were protesting. The state pollution control board ordered stoppage of production and refused renewal of license to the company.

After analyzing the above situation participants came out with many answers each presented the question put forth by the resource person. Many of them felt that the case involved violation of Article 19 i.e. assemble peacefully without arms, Article 21 Right to livelihood and clean and safe drinking water, Article 38 State to secure a social order for the promotion of welfare of the people and Article 39 Equal opportunities, safe and clean environment for the both men, women and children.

Ms. Sudha Shrotria pointed out a remedy which could be appropriate in such a case and that the repeated complaint must be made to the state pollution control board and revocation of the license could be the best available remedy.

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<sup>6</sup> AIR 1988 SC 1037 : (1987) 4 SCC 463

### Case 3

Brief facts of the 3<sup>rd</sup> case study were as follows:

Mr. Mani is living in such a pathetic condition that near to his place is a garbage dumping pit. More and more houses are built in the area and a school was also given approval for the construction. As a result the foul smell from the garbage pit is polluting the environment and children in the school is getting sick. Mr. Mani approached to the local authorities but nothing happened and State pollution control Board has also turned deaf ears to the problem, as a last resort he approached NHRC and the matter was closed by NHRC after receiving report from the local authority.

Ms. Sudha came out with various human rights violations involved in the matter falling under Article 21 Right to livelihood and other human rights such as Right to Live with Dignity, Right to clean environment, Right to safety of children and to live in a disease free environment. The facts also pointed out violations of section 269 of IPC which states that:

Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Lastly she concluded by suggesting that various organizations and local bodies could be reached out to remedy this problem such as National Green Tribunal, Pollution Control Board and adequate compensation must be awarded to compensate for the nuisance caused

**Day 2**

**21<sup>st</sup> August, 2016**

**Session 5**

**(09:30 AM – 10:30 AM)**

**Common human rights violations in India & how these can be addressed by Human Rights Courts:**

**1. Excessive use of force by police and armed forces**

**2. Denial of basic minimum things to survive**

Justice S. Muralidhar commenced the session on 21<sup>st</sup> August 2016 by drawing attention of the participants towards the early morning news on 21.08.16 about the Excessive force used by the Kashmir police on old parents of the boy whom they went to arrest at their house. The 70 year old mother sustained bullet injuries and 80 year old father sustained pellet injury while they were restraining the officials to perform the arrest.

Justice S. Murlidhar then posed a question to the participants about what is the law which allows the police to open fire? Participants enthusiastically answered the question by mentioning the sections of self-defense i.e. sections 96 to 106 of IPC .He further mentioned about the Judgement of *(Extra Judicial Execution Victim Families Association (EEVFAM) & Amr. ....Petitioners versus Union of India & Anr.)*<sup>7</sup>

Pointing out brief facts that a total of 1528 extra judicial executions had been carried out by the police and the security forces in Manipur .writ petition filed under Article 32of the constitution, 10 specific cases (out of 62) were referred where, according to the petitioners eye witness accounts existed of extra judicial executions but the police and the security forces justified them as the fake encounters with the militants. Victims of these extra –judicial executions included innocent persons with no criminal record whatsoever but they were conveniently labelled as militants and no FIR was lodged in this regard.

He further stated that such killings and use of excessive force by the police is very rampant and sometimes the officials comes in plain clothes, pick up the person and send them to Unmarked detention Centers which contradicts the law which provides that a person arrested must be presented within 24 hrs in front of the magistrate .The question now arose as what recourse does the families of the disappeared ones have?

Very vigilantly a judge participant answered that an appeal of Habeas Corpus could lie to the HC and also the complaint can be made to National Human Rights Commission. But results as usual will come out to be disappointing as many association of victims think NHRC is a toothless tiger

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<sup>7</sup> MANU/SC/0758/2016

whose investigation almost results into nothing .But Justice Murlidhar stressed on the quest of knowing the truth. Truth is a weapon which is neither hidden nor damaged.

He gave examples of Mass Crimes such as 1984 riots, 2002 Gujrat riots and Bombay riots which was committed against each and every individual Extra –Ordinary Rendition being one which is the government-sponsored abduction and extrajudicial transfer of a person from one country to another. He added that it almost exclusively carried out by the United States government, often with the collusion of other countries which is a crime against Humanity.

Justice S Murlidhar then gave a factual situation to the participant judges that what would be your first question if the first accused in your charge sheet is a police official ?

Participants replied that we would seek for sanction under section 197 Cr.pc. which states that, when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

He then discussed about the probable defense available to the police officers which is frequently used, is “fake encounters” and on the basis of this he explained about the two principle Immunity and Impunity. Immunity accounts for the Good Faith clause, public official discharging their duty in good faith leads to refusal of sanction under section 197 IPC.

Impunity on the other hand discloses the daunting side of the legal system where people abstain from filling the complaints because either they are afraid to do so or are aware of the fact that this would be paid no heed because people receiving the complaint are the ones who did the crime ,that the establishment itself is a perpetrator .He further broadened the horizons of the participants by giving example of the countries such as Yugoslavia ,Argentina and Bosnia where missionary itself is the perpetrator of crime .

Justice S Murlidhar elucidated upon the judgement which portrayed the incidents where police officials used excessive force which is;

*Anita Thakur & ors .....Appellant(S) Vs Govt. of J & K & ors.*<sup>8</sup>

Facts of the case pointed out as the Petitioners who are migrants of the State of Jammu & Kashmir (hereinafter referred to as the 'migrants') state that they had planned to take out a peaceful protest March upto Delhi for ventilating their grievances. However, when they reached near Katra in Jammu & Kashmir, the respondent authorities through their police personnel had beaten up and manhandled these migrants in a most brutal and barbaric manner on 07.08.2007. It is the allegation petitioners that this incident has violated their rights guaranteed to them under Articles 14, 19, 21 and 22 of the Constitution of India.

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<sup>8</sup> Writ petition (criminal) NO. 118 OF 2007

It was even held that police officers used excessive force than what was required to control the mob. He supported the judgement by giving instances where excessive force was used by the police in Pune, where Dalits were beaten.

Prof. Mohan Gopal then elaborated upon the theory of truth. He believed that there are three types of truth:

1. God's truth
2. Human truth
3. Law's truth

He explained that it is difficult to know the God's truth because for this a person should possess the Divine Knowledge, Human truth on the other hand is not to be trusted and Law's truth is propounded on the basis of proven facts and is achieved through a long procedure. He further told the participants about the famous cinema work Rashomon of Japanese Director Kurosawa. The film is known for a plot device that involves various characters providing alternative, self-serving and contradictory versions of the same incident. So by giving this example he wanted to exemplify that the truth is microscopic. It has to be established, the quest of knowing the truth of a case should never end. It takes a year to establish facts and only judges can expound the truth in order to reach a decision. Like in the above case it took years to establish one simple truth that there was Excessive use of force by police.

The session was then followed by a 15 minutes Tea Break

### Session 6

(10:45 AM – 12:00 PM)

#### Human Rights of fair and impartial investigation

Session resumed after Tea Break and Mr. Ravi Nair commenced the session by affirming to the points discussed by Justice Murlidhar. He asserted that District judges are important pillar of citizen's justice. He recommended to the participants to read NPC (National police commission report) which was introduced by Dharamveer Recommendations. He focusses on the sec 197 of IPC which states that, when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

He strongly recommended the participant judges to start the trial without waiting for the sanction .He gave examples of the extra ordinary rendition of Bhutanese leader from Delhi and of two



workers of Iran party who faced the same Fate. He then stated that the twentieth century movement to establish international human rights standards emerged as a reaction to the horrors of the Second World War. Since that time, human rights against humanity, genocide and torture became examples of human rights violations addressed through this process. Over time, new forms of human rights violations, such as extraordinary rendition, have emerged.

It demonstrates that extraordinary rendition violates numerous international human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Vienna Convention on Consular Relations and the Geneva Conventions.

He instructed the participants to strictly follow the Crpc procedure and said that J. S Verma report shows that 75 % of arrest are unnecessary hence deliver the judgments more cautiously. He further elaborated that jail is not a reformatory organization but rather forces the inmates to become more hardened criminals.

He talked about the Doctrine of Proportionality that only a calibrated force should be used, force proportional to the threat .He then supported his statement by stating the *Akshardam's terrorist case* whereby the Supreme Court had acquitted six innocent men who were tortured and then made to suffer imprisonment. The Supreme Court came hard on the investigating agencies of Gujarat and the way in which the lower judiciary had functioned in this case. He pointed that there was no court order granting monetary compensation or other restitution for those who had lost 11 years of their lives for a crime they did not commit.

Mr. Ravi Nair further advised the participants to speed up the trial process and not wait for the High Court or Supreme Court to issue notice or to wait for their court to become Fast track court .He guided the participants that the judges are at the best place to save the constitution and small fault from their side will cause miscarriage of human rights and justice.

He then ends the session with a Quote:

*“When you speak with your mouth, ear listens*

*When you speak with your heart, heart listens”*

Justice Murlidhar then elaborated on the Article 22 which states law about preventive detention and Article 20 which states law about Double Jeopardy and law against self-incrimination .He further stated about the abusive use of powers by the police officials and told the participant that they should be vigilant enough to see that the proper investigation is done and proper justice is arrived at.

## Session 7

(12:15 PM – 01:00 PM)

### Human rights and justice

Prof. Mohan Gopal concluded the programme summing up entire one & a half day through a session on Human Rights & Justice. Prof. Mohan Gopal initiated the discussion by posing a simple question to the participants that why NHRC is created? And answered that it is created to fill the gap between the state violations of human rights and judiciary's failure to provide for redressal to the rights .He talked about the right and the wrong way of behaving with a human.

He started his presentation by defining Right as given by J S Mill "rights are the work of the law that determines what rights exist and what circumstances give rise to and put an end to them; obedience to law cannot be subordinate to considerations of justice" he then defined duty as, this word is the correlative of right. Thus, wherever there exists a right in any person, there also rests a corresponding duty upon some other person or upon all persons generally. Something which less powerful demands from the more powerful. He defined privileged as something which you don't have to do .He then talked about the claim and defined claim as something which other must do perform for you

He deliberated upon the concept of justice .He explained that justice constitutes *Jus- right/norm Stice-stand still*. He said that justice is eternal value and that nation is a asset of values exist in the mind of the people .Values are dynamic and it keeps changing .He defined these values in the form of Raja, Raj and Swaraj.

Justice according to him is constitutional values defined where F stood for Freedom E for Equality D stood for dignity E for equity and F stood for fraternity .

And SSS which stands for socialism, secularism and sustainable and DSR which stands for Democracy ,sovereignty and rule of law .He further mentioned that these legal political ideas arise from the core values of **Struggle, Sarvodya, Antoydaya, Ahimsa ,Satya ,Swaraj**. He focused on how the human beings should behave with each other. Justice to be precisely defined as the standard of human conduct owed to human beings.

He further elaborated upon the case of (*Kailas & Ors vs State Of Maharashtra Tr.Taluka ...*<sup>9</sup>) The victim in the said case was a young woman of 25 years of age belonging to the Bhil tribe which is a Scheduled Tribe (ST) in Maharashtra, who was beaten with fists and kicks and stripped naked by the accused persons after tearing her blouse and brassieres and then got paraded in naked condition on the road of a village while being beaten and abused by the accused belonging to higher community.

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<sup>9</sup> CRIMINAL APPEAL NO. \_\_\_11\_\_\_/2011

He suggested that it is the duty of all people who love the country to see that no harm is done to the Scheduled Tribes and that they are given all help to bring them up in their economic and social status, since they have been victimized for thousands of years by terrible oppression and atrocities. Despite this horrible oppression on them, the tribals of India have generally (though not invariably) retained a higher level of ethics than the non-tribals in our country. They normally do not cheat, tell lies, and do other misdeeds which many non-tribals do. They are generally superior in character to the non-tribals. It is time now to undo the historical injustice to them.

He then shared the case of Sri Lankan Tamil fleeing prosecution from Sri Lanka and living in India in a refugee camp and he was then caught in the airport and was ordered to send back to Sri Lanka. Now here judge observed the constitutional Morality and says that constitutional right is a human right.

Prof. Mohan Gopal concluded the session by saying that justice is not an empty word there will be no delivery of justice without Human Right. Where justice is done is no justice unless a Human Right is protected

Hon'ble Justice G Raghuram concluded the conference by giving a vote of thanks to the participants present and asked for their valuable feedback.

### **Session 8**

**01:00 PM – 01:30 PM**

#### **Participants audit the sessions/ Feedback**

Feedback forms were distributed amongst the participants to evaluate the seminar & other facilities provided by the academy. Suggestions were also invited by the participant judges to improve future programmes of this sort at the academy.