

UNION INTERPARLEMENTAIRE



INTER-PARLIAMENTARY UNION

**ASSOCIATION DES SECRÉTAIRES GÉNÉRAUX DES PARLEMENTS
ASSOCIATION OF SECRETARIES GENERAL OF PARLIAMENTS**

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MECHANISMS FOR TREATMENT OF HUMAN RIGHTS ISSUES IN NATIONAL PARLIAMENTS

Geneva Meeting

1st – 3 October 2003

Genève : ASGP c/o Union interparlementaire - Place du Petit Saconnex - case postale 438 - 1211 Genève 19 - SUISSE
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L'ASGP est un organisme consultatif de l'Union Interparlementaire et s'est réunie pour la première fois le 16 août 1939 à Oslo (Norvège)

Mechanisms for Treatment of Human Rights Issues in National Parliaments

The issue of human rights has assumed wide currency in the world. In the year 2002 the United Nations Development Programme (UNDP) brought out a special report "Human Rights and Human Development" and appropriately observed that "one of the 20th century's hallmark achievements was its progress in human rights". It is generally understood that human rights are products of liberal values and democratic ethos at the centre of which remained the individual.

However, tradition and culture of human rights date back to ancient times. While the West traces them in the Greek history, we in India further go into the past and locate them in the evolution of our civilisation through trackless centuries. Down the ages Indian tradition, apart from according dignity to the individual, and comprehending human being as the manifestation of divinity, acknowledged the rights and liberties of every person and evolved cultures and norms for respecting them. While primacy of the individual and his or her rights received priority, these were seen and understood as integral parts of society, humanity and environment. Historically safeguarding and enlarging such rights have remained a big challenge. Therefore it is said that "the history of human rights is the history of human struggles".

Our struggle for independence was an epic struggle for freedom and human rights of not only Indians but also of exploited and subjugated peoples of the world. As early as 1918 Mahatma Gandhi, the father of our nation, while spearheading a movement for suspension of land revenue in Gujarat had outlined its ultimate goal and said, "In truth we are fighting for democracy, for the revival of democratic government. The people have awakened and begun to understand their rights. A full understanding of these rights is what is meant by Swaraj (Independence)... This struggle is in the nature of a foundation for a future democratic structure".¹

The struggle for a foundation of the democratic structure with a Constitution guaranteeing human rights was carried forward to a decisive level when in the year 1930 on 26th January, the day consecrated in our history as the Republic Day, we adopted a resolution on fundamental rights which *inter alia* encompassed in its scope the right of freedom of speech, right for free association, right to assemble freely, freedom of religion, equality before law, etc.

After attainment of independence on 15th August 1947, the Constituent Assembly framed India's Constitution the Preamble of

¹ Collected Works of Mahatma Gandhi Vol.14 p.361, Speech of Mahatma Gandhi delivered on 20 April 1918

which poetically proclaimed to secure to all its citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity. Adoption of the Constitution of India has been described as "the greatest political venture since that originated in Philadelphia in 1787". While political and civil rights are guaranteed to the citizens by the chapter on Fundamental Rights of our Constitution, social and economic rights are embodied in the Directive Principles of State Policy. Celebrated constitutional expert Granville Austin has described the Indian Constitution as "first and foremost a social document". "The majority of its provisions" he wrote "are either directly aimed at furthering the goals of the social revolution or attempt to further this revolution by establishing the conditions necessary for its achievement".

The State is forbidden from making any law or taking any action which would take away or abridge fundamental rights guaranteed by the Constitution and judicially protected. There are numerous examples when laws passed by the Parliament or executive actions were set aside by the courts on the ground that these contravened fundamental rights. In fact these rights have been declared by our Apex Court as part of the basic structure of the Constitution which cannot be curtailed by any authority

including the Parliament which is invested with the constituent power to amend the Constitution.

Parliament and Human Rights

Our Parliament is a product of the struggle for our independence. While laying the edifice of parliamentary democracy the founding fathers of our Republic preferred more accountability to stability on the ground that continuous responsibility of executive to legislature will enable the latter to examine the policies and actions of the former on a sustained basis. It is now acknowledged that holding governments accountable is a bottom line requirement for good governance and ensuring human rights to the citizens.

Right since the inception of Parliament of which the Council of States is the organic part, the floor of the Council has been used to espouse for people's rights, defend and even amplify them so that democracy and freedom become meaningful for our people. Our Parliament remained in the forefront in initiating, debating and passing such social and economic legislations which contributed to what is called "the emergence of a Legislative State for the first time in history". Most of the progressive legislations which

restored, protected and even created new rights for the vast millions of our country were initiated in the Council of States. "The rights perspective" it is said "helps shift the priority to the most deprived and excluded, especially to deprivation because of discrimination". In fact since its commencement, the Council of States has become the sounding board of the nation to harp on the rights of the deprived and excluded. Introduction of legislations for abolition of bonded labour system (the Bonded Labour System (Abolition) Bill, 1976, prohibition and regulation of child labour (Child Labour Prohibition and Regulation) Bill, 1986) rehabilitation of the physically challenged people (the Rehabilitation Council of India Bill, 1992), etc. in the Council of States point to the appropriate way and means of using the highest forum of our democracy for upholding the human rights of our people. Debates and discussions in the Council not only reflect the concerns of the people's representatives on such issues but also help in sensitising the wider civil society and enlightened sections who through their own efforts maintain eternal vigilance to safeguard the liberties and freedom of the citizens. In fact the way our Parliament brought about social and economic changes by protecting political rights of our people and the way in which the issue of social justice has been integrated with civil liberties of the

citizens make Indian legislature a remarkable and perennial fountainhead of democracy and human rights.

There are numerous opportunities available to a Member of Parliament to raise human rights issues in both Houses of Parliament. For instance while participating in the discussion on Motion of Thanks on President's Address, discussion on Budget (General) or Budget (Railways) or discussion arising out of a calling attention notice a Member gets opportunities to speak on a wide range of issues which have a bearing on people's liberties and freedoms. Apart from these opportunities, there are other procedural devices such as the questions, Special Mentions, Short Duration Discussions, etc. which are used as mechanisms for treatment of human rights in Parliament. These devices are also used in holding the Government accountable which, as earlier stated, constitutes the bottom line for enhancing good governance and ensuring protection of human rights. The demand of Members of Parliament for implementation of government programmes meant for weaker sections of society, their stress on public health care and adequate nutrition for poor people and above all their constant refrain that the Union and State Governments adopt such policies which can empower underprivileged and deprived people, are concrete examples of their efforts in Parliament to look at

human rights' issue in a comprehensive manner. Enactment of the Directive to make primary education a fundamental right for children upto 14 years of age under the Constitution (86th) Amendment Act 2002 is a testimony to Parliament's role in creating a new right for children which is basic and important for protecting human rights and promoting human development.

While dealing with Parliament and human rights it is appropriate to appreciate the farsighted approach adopted by Members of Parliament in the Council of States to advocate environmental rights which now remain at the heart of human rights movement in the world. Johan Galtung in his celebrated book "Human Rights in another key" published in 1990s wrote, "The right to development would also place certain demands on the developmental context. Production and distribution to satisfy the needs are necessary but not sufficient. Respect for nature, structure and culture are also matters of deep significance". Our Supreme Court has expanded the scope of human rights by interpreting fundamental rights including the right to life which in this expanded form now encapsulates the right to health, right to clean air, water and good environment.

What was written in 1990s by a human rights activists and later judicially affirmed had been elaborated in our Parliament right from its very beginning in 1952.

The then Member of the Council of States Shri Krishna Moorthy Rao while participating in the Motion of Thanks on President's Address had cautioned that the path of development based on excessive industrialisation and at the cost of nature and environment would result in calamities and gravely endanger life which is the basis of all rights. Raising an alarm he said,

We talk of big irrigation projects and industries. Well, Sir, Bertrand Russell has stated, "Modern Industry is a rape, rape of nature". Industry is like a spendthrift, and the spendthrift will have to pay the penalty sooner or later. While we are planning for industry, we have to keep this in view and prevent the resultant calamities.... Our Watersheds are drying... There is a balance in nature. We have to protect that balance in nature. We have to protect the top soil".³

He then requested the Government of India and the Planning Commission to protect wild animals, start afforestation programmes, preserve river bases and prevent soil erosion.⁴

³ & ⁴ Rajya Sabha Debates, 21st may 1952, cols. 264-65.

Shortage of drinking water all over the world is jeopardising the right to life. It is predicted that nations might fight wars on the issue of water. As early as 1952 a Member of the Council of States lamented that people were famished for want of water, declared that the fundamental need of humanity is water, and expressed hope that every civilised government would pay attention to that fundamental problem.⁵

Four decades after, another Member while participating in the discussion on the Protection of Human Rights Bill, 1993 poignantly said, "... if a person is drinking polluted water and is dying of pain and suffering every day because of stomach trouble ... I feel this is a much greater violation of human rights, than what we are talking about". In 1996 three years after the National Human Rights Commission was set up it issued notices to a particular State Government asking for details of the human rights violations caused by presence of high dose of arsenic in drinking water.

Therefore the sum and substance of the argument is that the Indian Parliament has always remained in the forefront not only in protecting and defending human rights but also in anticipating

⁵ Rajya Sabha Debates, 1951, 1952, col.132.

threats to human rights and recommending suitable measures to avert the breach of such rights. Former Chairman of the National Human Rights Commission, Justice J.S. Verma, while participating in the Human Rights Day celebrations for the year 2000, had aptly observed, "Not only must the violation of human rights be taken care of, prevention of such violation was equally if not more important".

In fact to prevent the violation of human rights there is nothing better to put forth than the observations of the Committee on Petitions of the Council of States which received a petition in 1977 from residents of small town in Orissa for protection of human life and environment in the area from air and water pollution caused by a factory which produced caustic soda and chlorine. The Committee after thoroughly examining the petition expressed its anguish that the Central and State Governments had not taken adequate steps to ensure the healthy environment of locality in which the industry had been permitted to function nor did they consider it desirable to take any follow up action for ensuring healthy environment of the locality after a licence was issued to the industry. In fact to prevent pollution of environment and protect people's fundamental human right to life, the Committee made a historic observation by stating "The legislation

on prevention of air pollution is already overdue" and recommended that such measures might be considered with priority. It also asked the Central Board for the Prevention and Control of Water Pollution to collect, compile and publish technical data relating to water pollution and take measures for its effective prevention and control. Besides, it asked the Board to prepare manuals, codes or guides relating to treatment and disposal of sewage and industrial effluents and disseminate information about them. More significantly the Committee recommended the Board to plan and implement a nation wide programme for the prevention, control or abatement of water pollution. To further prevent violation of human rights the Committee asked the Government to lay down the law that expenditure incurred by the industries to check pollution be mentioned in the annual accounts of the factory under a separate head and any violation thereof be deemed to be a contravention of the precondition imposed in the industrial licence.

Such concerns expressed by the Committee on Petitions of the Council of States are indicative of the Parliament's considered and carefully studied approach to deal with human rights violations in a much more broader context. There are several such examples that can be adduced from the reports of the Committee on Petitions

concerning the protection of human rights of the physically challenged people, migrant labourers, mentally handicapped persons and other sections of society struggling to protect their life and liberties.

In fact the Council of States has issued advertisements to encourage people, NGOs and others concerned to submit petitions highlighting the problems they confront as citizens of India. Such a pro-active approach on the part of Parliament has resulted in a heart-warming response. So far almost three hundred petitions have been received and they are under various stages of consideration. One of the petitions received regarding the enactment of special legislation to improve the conditions of construction workers and to ban the use of asbestos ended with the observation that forty million are deprived of the enjoyment of human rights and a lacuna exists in the situation which requires to be remedied.

Like the Committee on Petitions, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes and the Committee on Empowerment of Women seek, among other things, to protect and promote human rights of the weaker sections of society. Besides, the Parliamentary Standing Committee on Home

Affairs, which deals with, *inter alia*, law enforcement agencies, also looks into violations of human rights. In fact the Committee thoroughly examined the Protection of Human Rights Bill, 1993 and recommended suitable changes in it. The constitution of the National Human Rights Commission in the original Bill was heavily loaded in favour of bureaucrats. But the Standing Committee felt that it would be good for the Commission if it had more people with judicial background. Accordingly the composition of the Commission emerging out of such a vital legislation underwent change for better.

It is thus evident that a legislation even if moved by the Government remain subject to alteration by the Parliament. Often a legislation introduced in the House is referred to the Select Committee or the concerned Department related Standing Committee for an in-depth study and report. The House then takes up the report to further consider the concerned legislation. Thus before a legislation is passed by Parliament it is examined thoroughly at various levels by people's representatives.

National Human Rights Commission

The NHRC was created under the protection of the Human Rights Commission Bill, 1993. Its role in promoting the human rights of our people and even innovatively interpreting them have earned it worldwide recognition. It takes *suo moto* action to protect human rights of people who suffer natural or man made disaster or any arbitrary action taken by the Government agencies to violate an individual's human rights. The Commission comes forward to take *suo moto* action in favour of the victims of natural and man made disasters. During occurrence of many natural calamities the Commission on its own took cognizance of the right of the victims to compensation and other assistance and their right to know their entitlements to various forms of relief.

The Commission is a statutory body and submits an annual report and on some occasions a special report on any urgent matter. According to the provisions of the Act the Central Government and the Government of each State shall lay down the reports of the Commission on the table of each House of Parliament or the State Legislature, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. The Commission now wants the Act to be amended so as to enable it to make its annual reports public in

case the Government did not lay them in Parliament within three months of their submission.

Women's Rights are Human Rights

Empowerment of women remains one of the historical challenges before humanity. Beijing Declaration adopted at the Fourth World Conference on Women held in September, 1995 stated that women's rights are human rights. To promote human rights of women Indian Parliament has taken important initiatives. Apart from adopting progressive legislations, which accorded equal status to women along with men, the Parliament through 73rd and 74th Constitution (Amendment) Acts has reserved 33% of seats for women at the grassroots democratic institutions at the panchayat, block and district levels. Already one million women have been elected to such bodies. Such affirmative action has been described as the greatest social experiment of our age and constitutes an important step for empowerment of ordinary women of our country. It is said that "Denial of empowerment to sections of society is a denial of basic human rights". To address the empowerment of women a Committee of Parliament on

Empowerment of Women has been set up. A Bill providing for 33% reservation of seats for women in national and States legislatures has been introduced in Parliament. Parliamentary Standing Committee on Human Resource Development is currently examining the issue of making our budget more sensitive to women's issues. Such steps when implemented will go a long way to underline the economic basis of women's rights. Our quest for gender justice anchored on protection of human rights of women has created many landmarks of which India is justly proud.

Right to Information as a human right

It is said that free and untainted information is a basic human right. A campaign for right to information launched by ordinary people of country has assumed momentum the effect of which has been felt inside the legislatures. In response to such movements many legislatures of our States have passed legislation guaranteeing right to information. At the national level the enactment of Freedom of Information law testifies to the role of our Parliament in empowering people to use their right for better scrutiny of government work which, as earlier stated, constitutes the bottom line requirement for good governance and ensuring human rights to the citizens.

Staff Required to Scrutinise human rights legislation

As far as the staffing provided to scrutinize human rights legislation is concerned, it is done at two levels – at the government level and at parliamentary level. Initially, constitutional and legal experts in the government prepare the draft law in consultation with experts on the issues involved. The second stage begins when the draft legislation is placed before the Houses of Parliament for discussion and approval. If the legislation is referred to a Committee for scrutiny, the officials of the Committee Secretariat having experience in legislative scrutiny help the Committee in this exercise and prepare the draft Report. Members of the House then discuss it threadbare and move amendments if any, before it is passed. Then, the law as passed by Parliament goes to the President of India for his assent.

Links between independent national human rights bodies and legislators.

It may be mentioned here that Indian Parliament does have links with these human rights bodies in many ways. Besides, being

created under the Acts passed by Parliament, important links between these are given below:-

The Chairman and Members of the National Human Rights Commission (NHRC) are appointed by the President of India on the recommendations of a Committee which consists, among others, of the Speaker, Lok Sabha, the Leaders of the Opposition of both the Houses, and the Deputy Chairman, Rajya Sabha. Besides, the Annual Reports or a special report on any matter which, in the Commission's opinion is urgent and important are required to be laid before each House of Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendation, if any. Most important, the demands for grants in respect of the NHRC are presented to and approved by Parliament every year.

Indian Constitution thus has adequate provisions to ensure justice to the aggrieved. Thus, there is no provision for the right of individual petition to international adjudicative bodies.

Unofficial lobbying with the parliamentarians is not unknown for the extension of human rights. Lobbyists as individuals or as a

group do approach parliamentarians but they are yet not given an official status in the Indian Parliament. NGO etc. working in the area, however, are invited to give their opinion before the Committees on the issues related to human rights whenever felt necessary. Committees also receive written memoranda by activists/groups *suo moto* whenever any issue is before them.

In the arena of Human rights issues, non-governmental organisations are playing a vital role in India. Many interest groups are active and raise issues related to human rights violations of people. If the Government is not responsive to those issues, then the Courts are always receptive to it. Public Interest Litigation (PIL) is one such route through which the Courts in the country have taken up the issues of human rights violations. Fundamental rights being part of the basic structure of our Constitution Courts have an obligation to see that these are not violated. The Courts themselves are generally very sensitive about human right violations in India and the recent judicial pronouncements to safeguard the rights of the victims of communal riots augurs well for India's commitment to democracy and freedom.