Chairperson,
Justice N.K. Jain
(Former Chief Justice
High Court of Madras & Karnataka)

With best Compliments
RSHRC

RAJASTHAN STATE HUMAN RIGHTS COMMISSION
SECRETARIAT

Under the guidance of Hon'ble Mr. Justice N.K. Jain.
(Former Chief Justice of Madras and Karnataka High Court)
Chairperson, RSHRC

Prepared by:- Internship students of various law university and colleges.

Hon'ble Chairperson and Members Of Rajasthan State Human Rights Commission are:
From 06-07-2005

Justice N.K. Jain, Chairperson

Members
Justice Jagat Singh
Shri D.S. Meena
Shri Pukhraj Seervi

Hon'ble Chief Minister Shri Ashok Gehlot

HABEAS CORPUS:
HUMAN RIGHTS, ILLEGAL DETENTION AND WRITS

With kind inspiration & Under Guidance of Hon'ble Mr. Justice Nagendra Kumar Jain,
(Former Chief Justice of Madras and Karnataka High Court)
Chairperson - R.S.H.R.C

Namita Wali
Symbiosis law school
Under:
Justice N. K. Jain
According to the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs, government of India, 5,786 complaints were registered against police personnel in Delhi during 2007. 513 departmental inquiries were instituted but no police personnel was convicted during 2007.
During the period January to May 2008, the Andhra Pradesh State Human Rights Commission (SHRC) received 439 cases of human rights violations against the police. SHRC chairperson Justice B. Subhashan Reddy stated that the SHRC received 5,392 rights violation cases, including 89 cases of custodial torture, during 2007. Of them, 860 cases (15.9%) were filed against the police.

According to the latest figures released by the National Crime Records Bureau (NCRB) 686 complaints were received against the police personnel in Gujarat during 2007. 540 departmental inquiries, two magisterial inquiries and 29 judicial inquiries were instituted to probe the allegations. During 2007, 5 police personnel were convicted, 47 were dismissed from service, 270 awarded major punishment and 743 minor punishment.
On 27 January 2008, 18-year-old Abi Chiru was picked up by the personnel of 24th Assam Rifles posted at Moreh in Chandel district from Gate No. 2 of the international border in Moreh town while he was on a visit to the border town on the suspicion of being a member of a banned outfit. He was allegedly tortured and illegally detained for 23 days. On 20 February 2008, he was released with a warning not to talk about the detention.

On 29 December 2008, Narayan Lal Soni (60) allegedly committed suicide by hanging himself with his dhoti (men’s traditional lower wear) inside the lock-up in Vallabh Nagar police station in Udaypur district. The deceased was arrested on 23 December 2008 in connection with looting and remanded to police custody by the Court.

According to the latest figures released by the National Crime Records Bureau (NCRB) under the Ministry of Home Affairs, 1,237 complaints were registered against police personnel in the state in 2007. Of the 47 police personnel who were sent up for trials only six cases reached verdict in which two were convicted and four acquitted during 2007. During the same period, 248 departmental inquiries, six magisterial inquiries and two judicial inquiries were instituted to probe the allegations of human rights violations.
who is willing to listen?

Who?

The Universal Declaration of Human Rights

- On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."
**PREAMBLE**

whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;  
whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people;  
whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;  
whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom;  
whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms;  
whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge;  

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

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**India: Chronology of Human Rights**

- **1829** - The practice of *sati* was formally abolished by Governor General William Bentick after years of campaigning by Hindu reform movements such as the *Brahmo Samaj* of Ram Mohan Roy against this orthodox Hindu funeral custom of self-immolation of widows after the death of their husbands.

- **1929** - *Child Marriage Restraint Act*, prohibiting marriage of minors under 14 years of age is passed.
1950 - The Constitution of India establishes a sovereign democratic republic with universal adult franchise. Part 3 of the Constitution contains a Bill of Fundamental Rights enforceable by the Supreme Court and the High Courts. It also provides for reservations for previously disadvantaged sections in education, employment and political representation.

1973 - Supreme Court of India rules in Kesavananda Bharati case that the basic structure of the Constitution (including many fundamental rights) is unalterable by a constitutional amendment.

1975-77 - State of Emergency in India - extensive rights violations take place.


1992 - Babri Masjid demolished by Hindu mobs, resulting in riots across the country.

1993 - National Human Rights Commission is established under the Protection of Human Rights Act.

The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality.

Part III - Fundamental Rights is a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India.
The 6 fundamental rights recognized by the constitution

- The right to equality
- The right to freedom
  1. To freedom of speech and expression;
  2. To assemble peaceably and without arms;
  3. To form associations or unions;
  4. To move freely throughout the territory of India;
  5. To reside and settle in any part of the territory of India;
  6. To practice any profession, or to carry on any occupation, trade or business.
- The right to freedom from exploitation
- The right to freedom of religion
- Cultural and educational rights
- The right to constitutional remedies

Power of the judiciary

Illegal detention and writ of habeas corpus

Writs under the constitution

- Writs are extra ordinary remedies in cases where there is either no remedy available under the ordinary law or the remedy available is inadequate.
- Articles 32 and 226 of our Constitution empower anyone, whose rights are violated, to seek writs. Under Article 32, the Supreme Court can be moved for enforcement of fundamental right only. However, under Article 226, High Court can be moved for enforcement of any right including fundamental right.

Types of writs

- Writ of Habeas Corpus
- Writ of Mandamus
- Writ of Prohibition
- Write of Certiorari
- Writ of Quo Warranto
Writ of Habeas Corpus

- The words ‘habeas corpus’ literally mean ‘to have body’.
- It is a remedy available to a person who is confined without legal justification.
- Through this writ, the court lets the person know the reasons for detention of the person and if there is no justification, order the authority concerned to set the person free.
- The writ of habeas corpus, thus, entails the authority to produce the person before the court.
- The applicant of this writ may be the prisoner or any person on his behalf to safeguard his liberty.
- It seeks immediate relief from unlawful detention whether in prison or private custody.

Origin and Philosophy

- The concept of writ essentially originated in England & the issue of appropriate writ was always considered to be a prerogative of the crown. One of such important prerogative writs originated in England is known as the writ of habeas corpus.
- The writ of habeas corpus has always been looked upon as an effective means to ensure release of the detained person from the prison. It must be emphasized that the primary purpose of the writ is & was to inquire into the legality of the detention. However, even when writ of habeas corpus is issued, it does not automatically exonerate the detained person from liability. It merely ensures his release from the prison & it does not have any bearing on his guilt or otherwise.

New Dimensions

- The Supreme Court has given a new dimension to the writ of habeas corpus by its judgment in Sunil Batra I vs. Delhi Administration. While the decision of the Constitution Bench of the Supreme Court in Sunil Batra I vs. Delhi Administration had crystallized the legally enforceable rights of a prisoner, the later decision in Sunil Batra II has radicalized the procedure for the enforcement of the rights of the prisoners.
- The habeas corpus writ was traditionally used for securing the release of a person detained illegally. It is a favored remedy because of its simplicity, non-technicality and the priority which is given to its hearing by courts. Sunil Batra II lays down the important principle of law that a writ of habeas corpus is available not only to secure the release of a prisoner illegally detained but also to regulate the conditions and manner of detention of a person whose detention is lawful. Thus a speedy and simple remedy is available to prisoners to seek redress of their grievances about the manner of their detention.

Illegal Detention

- The act of retaining a person or property, and preventing the removal of such person or property, arrest.
- The detention may be occasioned by accident, e.g., the detention of a ship by calms, or by ice; or it may be hostile, e.g., the detention of persons or ships in a foreign country, by order of the government. In general, the detention of a ship does not change the nature of the contract, and sailors will be entitled to their wages during the time of the detention.
- In some cases, the detention becomes criminal—e.g., if one borrow a horse to ride from A to B and afterwards detain him from the owner after demand, such detention is unlawful, and the owner may either retake his property, or have an action of replevin or detinue. In some cases, the detention becomes criminal although the taking was lawful, as in embezzlement.
**Illegal detention: Procedure of arrest**

- The person arrested shall be informed of the grounds of arrest. - Article 22 of the Constitution and Section 50 CrPc
- Section 50 of the Criminal Procedure code gives a mandatory right to the person arrested.
- Every Police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested. or other grounds for such arrest.
- Where a police officer arrests without warrant any person other a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

1. In case the person arrested wants that the information about his arrest may be conveyed to any relation or friend of his, it shall be conveyed.
2. In case the offence is bailable, he shall be informed that he is entitled for bail as a matter of right and may even be released on his personal bond. - Section 50 CrPc
3. If he is not released on bail, he must be searched and all articles except wearing apparel must be placed in safe custody and a receipt should be issued. (Section 51)
4. If the arrested person is a women, the search should be done by the woman.
5. If the arrested person is in possession of any offensive weapons, they should be seized and delivered to the Court. (Section 52)

6. According to Section53, the accused may be required to undergo medical examination by two medical officers. (or two lady doctors in case the accused is a woman).
7. If the person escapes from custody, the person having custody can pursue and arrest him anywhere in India. (Section 60)
8. No person arrested should be detained in police custody for more than 24 hours unless there is a sufficient reason for it. (Section 57), journey period from the place of arrest to Magistrate’s Court is excluded for the purpose of computing this period of 24 hours.
9. When an officer in charge of police station instructs his subordinate to arrest a person without warrant, shall give an order in writing stating the name and address of the person to be arrested and the offence charged.
10. Every officer in charge of a police station is required to report to the District Magistrate, the cases of persons arrested with warrant and without warrant.

**Rights of the arrested person**

**The Habeas Corpus Case**

- The Rajan case refers to an episode of the human rights movement in Kerala, India. P. Rajan was a student of the Regional Engineering College, Kollam who disappeared after being taken into custody by the police for suspected links with the Naxalites, on March 1, 1976 during the Emergency.
- Rajan, a good student with a good talent for music and drama, was suspected to be a naxalite sympathiser like many of the youth at that time. He was never a hard core naxalite.
- Rajan’s father T.V. Eachar Wankler fought a long battle against the establishment to bring to light the facts behind the disappearance and through that expose atrocities committed by the state.
The habeas corpus petition filed by T. V. Eachara Warrier was the first one to be presented before the court right after the emergency. This petition and subsequent investigations found that Rajan had indeed been taken into custody, and perhaps died when in police custody. His body was not found and due to this many charges against the accused in this case had to be dropped. The accused included the then chief of the Crime Branch wing of Kerala Police, DIG Jayaram Padikkal. K. Karunakaran was the Home Minister during the emergency. He resigned from the post of the Chief Minister of Kerala in 1978 due to adverse judgement in the case. The media in some instances, like the Malayala Manorama newspaper and others wrecked Prof. Warrier’s efforts by publishing reports that tarnished Rajan and Prof. Warrier’s reputation.

**DUTIES WITH RIGHTS: RAJASTHAN STATE HUMAN RIGHTS COMISSION**

**RAJASTHAN STATE HUMAN RIGHTS COMISSION (R.H.R.C.)**

**AWARENESS AND MASS MOVEMENT**

- Under the chairmanship of Justice N.K. Jain, Rajasthan Human Rights Commission has focused on Awareness of not only more rights but also duties of the citizen.
- Justice Jain has written about 31 booklets on various legal issues which simplify law for the masses.
- News articles on regular basis have been published by RHRC in various newspapers for awareness of Human Rights among people including circulation of pamphlets, calendars etc.
- Various Campaign and programs have been organized in schools, colleges, Institutes to motivate Youth regarding their rights as well as duties.
How the Duties can Protect Illegal Detention

- Duties and rights are related to each other.
- Duties of a person is Rights of other.
- If duties are discharged in best possible way with full devotion then the cases of illegal detention can controlled.
- If police officer behave with more responsibility and friendly manner to protect the rights of citizen.
- Judicial System and procedure can't do anything unless everybody should discharge their duties with devotion and sincerity.

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Justice is the constant and perpetual will to allot to every man his due…

Dovitus Ulpian (100 AD - 228 AD)
Role of R.S.H.R.C.

- Justice N.K. Jain Chairperson of Rajasthan Human Rights Commission have created Awareness by issuing pamphlets, calendars etc.
- For the awareness of the human rights in public at large, Justice Jain has wrote about 31 booklets of various legal issues
- News on regular basis are published in various newspapers for Human Rights of people
- Various Campaign and programs have been organized in schools, colleges, Institutes to motivate Youth regarding their duties.

Legal Awareness Programmes

- For the awareness of the human rights in public at large, Justice Jain has wrote about 31 booklets of various legal issues. Out of these booklets 18 booklets have been published by the R.S.H.R.C. Many other organizations, District Legal Aid Authorities, Departments, Schools, Colleges etc. has also published some booklets like Women, Children, Dalits, Arrest, HIV/AIDS, Human Rights etc. by the permission of the Commission. They have distributed these booklets in 80000 in numbers.
- Some of these booklets are available on Commission’s website www.rshrc.nic.in and justicenagendrakjain.com. English translation of Some books are also available on a German website herenow4u.de.
- These books are:

  31 booklet have been written by Justice Nagendra Jain (Chairperson RSFRC, Jaipur) on different legal and important issues

  - These books are kept in the Libraries of different schools and colleges for awareness of students as well as the teaching and ministerial staff. Some books are even kept in the UN-Congress Library at New Delhi.
  - Teachers of various school are interacting with the students on these issues in zero hours.
  - About legal aid committees, NGO’s / Educational Institutions above 55, and some Newspapers have re-printed/Published these booklets as intimated and about 80,000 booklets titled on women, child rights, dalits, arrest, human rights and HIV have been published and distributed free of cost among the general public to create awareness.
In addition to that in legal literacy and awareness program, chairman motivated students and even general public to recite the pledge as mentioned in article 51(A) of Constitution of India. It is good sign that so many schools have started taking prayer as per instructions of different concerned authorities as per the request of the commission. Some of them are as follows:
Students reciting the pledge.

Rajasthan State Human Rights Commission

“BEWARE OF YOUR RIGHTS AND DISCHARGE DUTY WITH DEVOTION”
Chairperson : Justice N.K. Jain

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I have prepared the respective project during my internship under Rajasthan State Human Rights commission, Jaipur.

Project has been prepared as per the material from constitution, booklet and the material obtained from different other sources.

The Project can be exhibited in School/Colleges/University and other places under legal literacy and awareness programme to the general public to know the remedy against the illegal detention i.e. Article 226 of the constitution.

Namita Wali