



## A critical appraisal of implementation of law relating to human rights with special reference to enforcement system in India

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### Abstract

The concept of human rights is absolutely worthless or meaningless without its enforcement system or implementation in pursuance, furtherance, compliance and respect of Rule of Law in “sovereign, socialist, secular, democratic & republic India”<sup>[1]</sup>, subjecting to equity, justice, good faith, good conscience and morality. In spite of existence of enforcement system, human rights are not being implemented in accordance with time, requirements, necessities and circumstances as required. Now a days it is found very commonly that people or masses are being deprived from their life & personal liberty openly and broad day light. The human right of life, personal liberty & security is in aforesaid condition which is parents of all human rights hence now nothing can be said about other human rights or guaranteed fundamental rights. The same is the consequences or effects of the enforcement system or implementation of human rights. The condition & implementation of human rights are the worst and extremely miserable but it also cannot be denied that the human rights are having its own specific place, importance and significance in India. All the human rights & its law are implemented by medium of its enforcement system under Rule of law, subjecting to all justified exceptions and in the light of principle of natural justice but in present scenario, the enforcement system is not being or being able to function, process, enforce or implement or do the needful which is as required as per necessities, legitimate expectations or requirements according to time & circumstances for the protection, betterment, preservation, development, promotion, respect, accessibility of people or masses upto Enforcement System and other things connected also of human rights & its law hence keeping in aforesaid special views this research paper has been emphasized or focused on the implementation of Law Relating to Human Rights with Special Reference to Enforcement System in India, appraising critically which is useful & helpful for research scholars, students, Professors, teachers, institutions or organizations or establishments, commissions, governments, NGOs, trusts, Colleges, Universities, person individually or group, society and other required persons pertaining to conduct research & do the needful in accordance with requirements, time & circumstances.

**Keywords:** human rights, sovereign, socialist, secular, democratic & republic India

### Introduction

Implementation is the process of putting a decision or plan into effect; execution<sup>[1]</sup>. Implementation is a procedure by which all the things are provided to all members of human family on the name of human rights or its law which are compulsory and essential for life, personal liberty & security of human & their property to ensure or make ensure existence or keep ensuring or keep making ensure existence of human life by a competent court or officer or authority which is having power to enforce or implement or make enforce or implement the law relating to human rights according to requirements, time & circumstances. It is relevant to mention over here that “Enforcement system means a compelling procedure with the compliance of Law, organizing something with a specific way or method for doing something on the bases of principles or processes. The body or institution or officer or authority or agency or person or any other similar things which are having the power or authority to compel someone with a systematic way or method for doing something on the basis of Law; keeping in view of consequences of the same that is the Enforcement system. The Enforcement system includes courts, tribunals, commissions and other required systems<sup>[2]</sup>.”

Human rights are basic, natural, indispensable, inalienable rights which of the existence of human including basically life, personal liberty, security, inherent dignity, fundamental

freedoms, peace, leisure, property, education health and etc. A general or common or particular or minimum standard is ensured or made create with the help of human rights for the existence of human which are required as per time & circumstances for the welfare of people or masses and living creatures. Some important provisions relating to enforcement system of human rights law by which implementation is done or make do are as follows: - Everyone has the right to recognition everywhere as a person before the law<sup>[3]</sup>. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination<sup>[4]</sup>. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law<sup>[5]</sup>. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him<sup>[6]</sup>. Articles 32, 139, 136, 137, 226 and 227 of Constitution of India. The National Human Rights Commission, State Human Rights Commissions, Human Rights courts under the Protection of Human Rights Act 1993 and other also as commissions, organizations etc covered under enforcement system. In today’s context the implementation of human rights

& its law is the most controversial and burning issue which is also the prime question before us to solve at the earliest.

**A Critical Appraisal**

It is well settled that enforcement or implementation of human rights & its law only possible by the enforcement system provided by law. The concept of human rights & its law can only be successful by the enforcement or implementation of human rights & its law. The power of enforcement or implementation of human rights & its law have been vested in hon'ble Supreme Court of India under article 32 which has been guaranteed and also by hon'ble High courts for the states under article 226 of Constitution of India which is strongest

and the most powerful enforcement system of India but now a days the larger pendency of petitions, cases, suits or others is its own extreme level which is one of the major obstacle on the path of justice. The population of India is “According to the provisional reports released on 31 March 2011, the Indian population increased to 121 crore with a decadal growth of 17.64%. Adult literacy rate increased to 74.04% with a decadal growth of 9.21%. The motto of census 2011 was 'Our Census, Our future' [7].” “Provisional data from the census was released on 31 March 2011 (and was updated on 20 May 2013). Transgender population was counted in population census in India for first time in 2011. The official count of the third gender in India is 4.9 lakh

**Table 1**

<b>Population</b>	Total	1,210,854,977
	Males	623,724,248
	Females	586,469,174
<b>Literacy</b>	Total	74%
	Males	82.10%
	Females	65.50%
<b>Density of population</b>	per km <sup>2</sup>	382
<b>Sex ratio</b>	per 1000 males	940 females
<b>Child sex ratio (0–6 age group)</b>	per 1000 males	919” [8]

As per census 2011, India is second the largest country in the world after China therefore in proportion to aforesaid population, Courts, Benches, judges, justices, officers, judicial officers, staffs are not available. Governments of India are not paying the most required specific attention on the same due to this life of humans have been destructed further more are being destroyed constantly which against absolutely human & humanity. Indian Judicial service has not been constituted so far from the date of enforcement of the constitution of India as per the constitution of India or Articles 312 and 236 of constitution of India. The concept of time bound delivery of justice is not found in certain cases as per requirements with respect to aforesaid the Code of Criminal Procedure 1973 and the Code of Civil Procedure 1908 is highly required to amend in accordance with instant time & circumstances in this respect it is well established that Law is the instrument of social change hence due to the procedures too much time is wasted or destroyed unnecessary which is very fiercely, grave, the most serious irreparable violation of human rights & its law because spent time never come back also no one or none can return or revert in worldwide. Now the questions or questionnaires are demanding or seeking their own replies or answers but no effect of the same. Now who is, was and shall be responsible, liable, accountable or otherwise for the same. How far the destruction, detrimental, impairment, derogation, violation, contravention, infringement of human rights & its law shall be continued or up to what limit or extension in India. Who or how or when will wake up our slept governments with this respect. In this connection, the foundation of reposed confidence in to the heart people or masses is on the brink of ending which is not for anyone.

The Protection of Human Rights Act 1993 has also not been implemented till now completely about some certain cases or matters as the state Human Rights Commissions have not been established so far in some states. The vacant posts have also not been fulfilled in some state Human Rights Commissions, with the name as Human Rights Courts specially have not been

established as required by the act. The better protection of human rights and other connected matters of it are not being done in the spirit of the act. Some relevant data in relation to human rights is as under:-

**Table 2:** “Complaints received/processed in February, 2017 (As per an early estimate)

Number of fresh complaints received	5464
Number of cases disposed of (Fresh + Old)	8413
Number of cases under consideration (Fresh + Old)	32506” [9]

With this regard, Person or one or citizen or whoever in India means male, female, transgender/ third gender/hijras namely human In National Human Rights Commission vs. State of Arunachal Pradesh (AIR 1996 SC 1234), This Court observed: “We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws.” but the required things which must have been or must be given or provided to transgender/ third gender/hijras by us, governments or others also but have not been provided still are not being given as required under time & circumstances. They have highly been suffered directly, indirectly and substantially. In this relation, a writ petition (civil) no 400 of 2012 with also writ petition (civil) no 604 of 2013 National Legal Services Authority v. Union of India & others filed hence humble Supreme court of India held “Third Gender” on dated 15 April, 2014 by humble Justices K.S. Radhakrishnan and A.K. Skirl before it only two options were available as male and female but after it now three options are available as male, female & Third gender or transgender. Some important contents of the heretofore contained judgment are being reproduced over here in text as follows:-“129. We, therefore, declare:-

1. Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the

Parliament and the State Legislature.

2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
  3. We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
  4. Centre and State Governments are directed to operate separate HIV Sero-surveillance Centers since Hijras/Transgender face several sexual health issues.
  5. Centre and State Governments should seriously address the problems being faced by Hijras/Transgender such as fear, shame, gender dysphonia, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for
  6. SRS for declaring one's gender is immoral and illegal. Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
  7. Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
  8. Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
  9. Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.
130. We are informed an Expert Committee has already been constituted to make an in-depth study of the problems faced by the Transgender community and suggest measures that can be taken by the Government to ameliorate their problems and to submit its report with recommendations within three months of its constitution. Let the recommendations be examined based on the legal declaration made in this Judgment and implemented within six months.

131. Writ Petitions are, accordingly, allowed, as above.

.....”<sup>[10]</sup>

In this relation, before it the human rights of Third gender/Trangender/Hijras pertaining to their recognition, identity, health, education, freedoms, dignity, equality, respect and etc have been violated. They still are highly required to our help, support, sympathy, sacred feeling, abstracts, opinion, suggestion, morality, acts of welfare, their interest and others also. They are

the integral part of human family hence they must not be deprived from their life, personal liberty and security. Human Rights are available for all including them as part and parcel of our society. The enforcement or implementation of human rights must be ensured at the earliest or as expeditiously as possible according to requirements, time & circumstances for the of human and living creatures.

### Remedies and Suggestions

“The Remedies and Suggestions in relation to promotion, education, research, literacy, respect, honor, Enforcement, implementation, protection, preservation, development and other required facts or things according to requirements, time

and circumstances of Human Rights & its Law in the interest & welfare of world human and living creatures which are as under:-

1. Education is the process which is having the supreme goal of knowledge hence the systems, machineries & mechanisms of education must be reformed & which is required to alter, amend and vary at the earliest & first of all as primary, middle, higher, doctoral, post-doctoral and others.
2. Spread Human Rights Literacy among various sections of society and promote awareness of the safeguards available for the protection & preservation of these rights through publications the media and other available means. The accessibility of knowledge, literacy with minimum good standard atmosphere must be reached to all people.
3. Human Rights, its Law & Enforcement's education must be imparted to all section of people and also must be included in syllabus of schools, colleges, universities level.
4. All section of people must be aware with various mediums as- Seminars, Conferences, workshops, campaigns, camps and etc.
5. The strongest steps, measures and remedies must be taken, adopted against malicious litigation, false cases, abuse the judicial procedures and the system for the same strict laws must be adopted, enacted in public and justice interest.
6. Encourage the efforts of Non-Governmental organization and institutions working in the field of Human Rights & its Law.
7. Police & jail system, remand homes, establishments and others institutions where persons are kept, custody, detained or lodged for the purpose of treatment, reformation, protection must be reformed and Human Rights Law Officers must be posted in the same for the protection and preservation of Human rights & its Law in accordance with time and circumstances.
8. Study centers for education and research of Human rights & its laws must be established, reformed, and promoted separately.
9. Vacated or vacant post of judges or judicial officers in respect of Indian judiciary must be filled as a result large pendency of cases must be decreased and ended which is one of major obstacles in path of justice in judicial process.
10. Indian Judicial service (IJS) must be initiated in the interest and welfare of people which has not been constituted so far from the date of the enforcement of Constitution of India.
11. Our judicial system is required to amend reform, alter and vary in accordance with time and circumstances.
12. The State Human Rights Commissions have not been established in the States must be established without delay.
13. The National Human Rights Commission & the State Human Rights Commissions must be more empowered.
14. Human Rights Courts must be established separately at the earliest.
15. The protection of Human Rights Act 1993 must be amended, implemented and reformed from time to time.
16. Vacated or vacant posts in Human Rights Commissions must be filled.
17. The accessibility of Human Rights & its Law with Human Rights Commissions must be for all and to each person without any discrimination.

18. The procedure in connection with filing complaints to Human Rights Commissions are required to reform and amend suitably & effectively and must be easiest in accordance with the facility of people but subject to Law and preventive abuse of process.
19. The question in respect of large pendency in the Courts must be solved which is one of major obstacles in the path of law, justice and Enforcement System.
20. Speedy justice must be delivered without having violations of Human Rights and its Law with respect to aforesaid slept Governments must be wake up now with vigilance mandatorily because sovereignty is found in people for welfare of people.
21. No one must be deprived from his life & personal liberty and precious time of Human life by the system, procedures, people, governments and laws while abusing the laws with malafide.
22. The Code of Criminal Procedure 1973 & The Code of Civil Procedure 1908 and other procedures must be amended and reformed and time bound delivery of justice must be ensured in the interest & welfare of people with immediate effect. Now the same is need of hour.
23. Limitation for delivery of justice must be made or ensured in accordance with time and circumstances.
24. To prevent the violation of Human Rights & its Law the philosophical, psychological, moral and other required reformatory measures & remedies must be taken applying with the help of respective specialists, society and persons.
25. The special attention must be paid, in respect of the training of Advocates and Advocate training centers must be established, reformed, advanced, protected, preserved and promoted with the most effective way at the earliest; The Bar Council of India & The State Bar Councils must be taken the strongest reformatory steps with relation to above for interest & welfare of Advocates and people.
26. Injustice, atrocities, exploitations crimes, offences, and other acts against Human & Humanity and living creatures must not be favoured and tolerated.
27. Collective efforts for the protection & preservation of Human Rights & its Law must be made by us with co-ordination of governments, other institutions and establishments in the interest and welfare of world human & living creatures.
28. Human Rights Law Officers must be engaged, appointed, employed & recruited by the National Human Rights Commission and The State Human Rights Commissions for inquiry, investigation or for other works with respect to it, awareness, literacy, promotion, protection and preservation of Human Rights & its Law.
29. Abuse of systems, procedures, laws and other connected things must be prevented strictly under Rule of Law and subjecting to the Principle of Natural Justice.
30. Our system is mainly based on evidences, witnesses, which may be planed, premeditated, tempered, tutored, and false & fabricated in consequence of all, must be reformed and preventive and required measures or remedies must be taken in accordance with requirements, subjecting to time & circumstances.
31. Merely death penalty cannot prevent the violation of Human Rights & its Law in aforesaid connection, when all reformatory steps, measures, possibilities, remedies, other connected things, incidental facts, facts and etc. with respect to above are closed, failed and ended absolutely, wholly, exclusively, entirely and exhaustively in consequences of all, in case of rarest of rare, exceptional, extraordinary, the most exceptional, & extraordinary, the death penalty must be imposed, punished, awarded and sentenced in the interest & welfare of world human and living creatures subjecting to all required things or facts.
32. The National Human Rights Commission and the State Human Rights Commissions must be empowered for punishment, penal sentence in only petty cases.
33. Furthermore Human Rights Law Officers must be posted in Jails, Police Stations, other such institutions and establishments for promotion, education, research, literacy, protection and preservation of Human Rights & its Law.
34. With such other incidental or required things, amended, inserted, substituted and required or other functions and acts which are expedient, necessary, compulsory, essential & mandatory in accordance with social change, time & circumstances for promotion, education, research, literacy, protection and preservation of Human Rights & its Law in the interest of world people and living creatures must be made, subjecting to Law, Equity, good conscious, morality, adopting the principle of Natural Justice & other required relevant things in the light of time & circumstances.
35. The Vigilance Department separately of Human Rights & its Law must be established, reformed, advanced, protected and preserved with the requirements under time and circumstances.
36. The National Human Rights Commission and States Human Rights Commissions, Indian Judiciary, other Institutions, and agencies must be more vigilant, watchful sentinel for Protection and preservation of Human Rights & its Law.
37. Media must be more effectively co-operative with co-ordination of people collectively to assist of all section of people without having any kind of discriminations with veracity, truthiness for Protection and preservation of Human Rights & its Law.
38. Direct Recruitment for the post of Independent Human Rights Law Officer as Specialist must be started in India under Central Government with the establishment of Institution for Human Rights & it Law. Further more Human Rights Law Officers must be posted in Jails, Police Stations, other such institutions or organizations or establishments for promotion, education, research, literacy, protection and preservation of Human Rights & its Law.
39. Human Rights & its Law must be included in the syllabus as compulsory subject of Schools, Colleges, Universities and in other required institutions or organizations or establishments and Human Rights & its Law must be taught or imparted education, knowledge and literacy as well as above also to Employees, workers and all persons from time to time. The same is the most required at the highest level.
40. The strongest steps must be taken by the governments to provide the required livelihood or to all in India.
41. The implementation of human rights & its law must be ensured strictly, subjecting to time and circumstances which is highly required now a day <sup>[11]</sup>.”
42. The reposed confidence or believe of people or masses is highly required to protect, preserve and save at the earliest

- with respect to human rights Law, implementation, justice and its enforcement system.
43. The pension system must be restarted or resumed as the same was earlier for all subjecting to required or suitable amendments, varied, alter, changes, modifications, alterations and other things connected also as per time & circumstances. The National Pension System (NPS) must be reformed, altered, amended, varied and other things connected at the earliest.
  44. Third Gender/ Transgender/ Hijras must be empowered in accordance with time & circumstances at the earliest.
  45. Pious, sacred or desireless thinking, feelings, abstract, beliefs, morality and other related things must be promoted, developed, respected and preserved by us for all and specially Third Gender/ Transgender/ Hijras.
  46. Morality must be protected, preserved, saved, enhanced and included also in our education or academic system.
  47. We must collectively & constantly strive to protect, preserve, promote, develop, respect, educate, impart knowledge and honor for human rights & its Law for welfare of people & living creatures being member of human family for all beyond all kinds of biases and discriminations.
  48. Now a days the education has been become a trade or business with malafide which is very fatal, dangerous the, most serious controversial and burning issue or matter hence the same must be abolished, prevented and done the needful as early as possible or at the earliest because the education is the major procedure to impart knowledge and welfare of human & living creatures.

“To sum up Law is the means or instrument of social change hence we want to get the goal of justice with help of Law with collective efforts, co-ordination, equity, good faith, good conscious, justice and co-operation with humanity, morality and other required things of society, governments, agencies, institutions, establishments and us; the aforesaid remedies and suggestions are not exhaustive; all are subject to change, amend, alter, substitute & vary in accordance with time & circumstances for the interest & welfare of world human and living creatures <sup>[12]</sup>.

### Conclusion

In a nut shell, it can be concluded that the enforcement or implementation of human rights & its Law must be ensured with immediate effect to maintain, protect & preserve the law and order, society country & also for the credibility in human towards enforcement system. The conception of human rights & its law can be succeeded only by enforcement system or implementation human rights & its Law as required according to requirements, time & circumstances.

In the light of all the aforesaid things; Many reasons or causes are behind all the same as under: social, economic, political, moral, spiritual, scientific, psychological, technical, cultural, traditional & custom and usage, lack of knowledge, awareness, literacy, accessibility to people, life style, living standard, culture, thoughts, mind, attitude, human abstract, reasoning, logics, curiosity atmosphere, misunderstanding, misinterpretation, misguidance, ill feelings, malafide, misadministration, bureaucracy, illegal unconstitutional autocracy, tyranny, practice of people of India & other connected things therewith.

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