UNPACKAGING HUMAN RIGHTS: CONCEPTS, CAMPAIGNS & CONCERNS

Saumya Uma
UNPACKAGING HUMAN RIGHTS:
CONCEPTS, CAMPAIGNS & CONCERNS

Edited by
Saumya Uma
UNPACKAGING HUMAN RIGHTS:
CONCEPTS, CAMPAIGNS & CONCERNS

Edited by
Saumya Uma

Jointly published by
WRAG & DRTC
Mumbai
Unpackaging Human Rights: Concepts, Campaigns & Concerns

Edited by: Ms Saumya Uma

Material contained in this document maybe reproduced freely for educational, campaigning and non-commercial purposes, and for protecting and promoting human rights, with due acknowledgment to the author and publishers.

First Published: June 2009

Published by

Women's Research & Action Group (WRAG)
Registered Office: 101, Zaithun Villa, Opposite Airview Building, Near Vakola Market, Santacruz (E), Mumbai 400055
Email: wrag2009@gmail.com
Website: www.wragindia.org

In collaboration with

Documentation Research & Training Centre (DRTC)
St. Pius College, Arrey Road, Goregaon (E), Mumbai 400063
Phone: 28756953 / 28749023

Cover Graphics Courtesy: Clearspark Design

Printed by
Sudhir Joglekar, Omega Publications, 2 & 3 Emerald Corner, Maratha Colony, Tilakwadi, Belgaum 590 006

Suggested contribution: Rs. 200/-

This initiative was made possible by a grant from J.R.D. & Thelma J. Tata Trust.
## Contents

Foreword  ................................................................. 4  
– Allwyn D’Silva  

Acknowledgments  ....................................................... 6  

Abbreviations  ............................................................ 7  

Glossary  ................................................................. 8  

UNPACKAGING HUMAN RIGHTS: AN INTRODUCTION  ........... 12  
– Saumya Uma  

1. HUMAN RIGHTS: A BIRD’S EYE VIEW  ......................... 18  
– Arvind Tiwari  

2. HUMAN RIGHTS & THE INDIAN CONSTITUTION ............. 35  
– Anthony Kunnath  

3. LAWS TO PROTECT HUMAN RIGHTS  .......................... 51  
– Shweta Shalini  

4. REPRESSIVE LAWS IN INDIA  ..................................... 72  
– Saumya Uma  

5. MECHANISMS TO PROTECT & PROMOTE HUMAN RIGHTS . 89  
– Arvind Tiwari  

6. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN  
   PROTECTING & PROMOTING HUMAN RIGHTS ............... 109  
– Kamayani Bali Mahabal  

7. INTERNATIONAL TREATIES ON HUMAN RIGHTS .......... 132  
– Saumya Uma  

8. STUDENTS AS HUMAN RIGHTS DEFENDERS ................... 160  
– Bella Das  

DID YOU KNOW? ....................................................... 179  
– Kamayani Bali Mahabal  

Contributors  ............................................................ 181  

Publishers  ............................................................... 184  

Photographs of Human Rights Campaigns ......................... i-viii
Foreword

“Education makes a people easy to lead, but difficult to drive; easy to govern but impossible to enslave.” – Henry, Baron Brougham (1778-1868)

In common parlance education is regarded as synonymous with school and college instruction. But it is not true. Schooling is just one part of the whole process of education, the aim of which is to prepare the child for the future so that s/he acquires the necessary equipment to discharge her/his responsibilities successfully. According to Sidney Hook, “Education is the one that plays a certain integrative role within its culture and in this sense a good education will formally be the same in every culture.”

Education is basically a social process which is concerned with how the student develops as an individual and in group relations. Its objective is to prepare the individual for participation in society, and it serves as a vehicle by which the culture of the group can be transmitted and perpetuated.

Education is preparation for life. Education is experience. The individual continues to increase her/his store of experience through contact with the environment; throughout her/his life, s/he receives some education in one form or another.

The word education has sometimes been used in a very broad sense to designate the total sum of influences that nature or other men and women are able to exercise on our intelligence or on our will. Hence, education’s place in the study of human rights violations is particularly important because of its potential role as either a negative or positive factor with strong multiplier effects in either case.

In a country like India where the whole social structure is based on institutionalized inequality, it is hard to “teach” human rights as a subject. The entire environment, and the social and cultural influences arising from it, is geared to ensuring that every child accepts inequality as normal. Inequalities are income-based, gender-based, caste-based and region-based (people from the North East being considered inferior to someone from a more “mainstream” state, for example). In such a scenario, the whole premise of human rights, viz. that all human beings are born equal, is on a practical level absurd and can only be appreciated on an intellectual level, most of the time not even then.

Furthermore, to argue that the rag picker is on some front equal to the public school student is farfetched, to say the least. The two are so obviously unequal. In a household where girls are discriminated against, to argue that the girls are equal to the boys is unrealistic. Not only the boys, but even the girls accept the inequality. They see it in the way their family behaves, in how their mothers and sisters do chores, which are not expected from the men folk of the family. On the caste front, certain castes are considered worth our attention. They are derogatorily called the “SCs”, if the child is in an urban environment or “chamar” if the setting is rural, and treated with utter contempt.

Unpackaging Human Rights
On the ground, daily life in India is all about inequality. And inequality is anathema to human rights. Today the term “human rights” is treated with contempt by many educated people who claim to have some understanding of the subject. This is the context in which we must have any discussion on human rights education.

However, the worst human rights violation in India today is illiteracy which stands at more than 50% and about which no concrete steps are being taken by any organization, either public or private. Thus, any human rights education that is introduced will at best be addressing less than 50% of the total school-going age population given that not even 50% of our children go to school. If we take into account the inefficiencies of our school system we can safely assume that not more than 15% of the total children in this country will be actual, effective recipients of any new course.

Also, the percentage of teenagers going to college is even lower. The fact that our education system is designed merely to ensure that a certain percentage of marks are obtained, and it doesn’t matter if the student retains anything after the examination is over, has contributed to a negative phenomenon, that of cynicism and resentment against this system. All further discussion, therefore, will be against this backdrop.

Which brings us to the question, why do we need to introduce human rights education?

The purpose of introducing human rights education in schools and colleges is to bring about a change in the mindset of the recipients and thus eventually generate a positive and healthy attitude towards human rights. I will quote from a UN document on this subject: “Human rights education (is) aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes which are directed towards the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups”.

If the purpose of teaching human rights is to achieve the above objective, then it is obvious that it must be taught to every child in the country. However, given the fact that over 50% of our children do not go to school, how is this to be made possible? The answer lies in the fact that human rights must be taught in a manner that the recipient of this education is able to effectively disseminate it further.

In this context, I would like to congratulate the initiative taken through this publication, which will benefit both college students and professors. The topics have been chosen according to the syllabus introduced for college students. The authors are well known professors and activists in the sphere of human rights and their knowledge is not only theoretical but based on practical experiences. Besides, this publication will also be a practical guide for the students themselves.

– Fr Allwyn D’Silva
Vice President - International Human Rights Education Consortium (IHREC), and Director - Documentation, Research and Training Centre (DRTC)
Acknowledgments

A multitude of people stimulated and contributed to this work. In particular, a group of academics and activists showed their willingness to contribute to this publication, despite an extremely short deadline that was given to them. I gratefully acknowledge their commitment and passion to this project, particularly as they had to allocate time to writing their respective chapters from their other, routine professional commitments. Their patience and persistence is also to be acknowledged for promptly providing me several modified drafts, and responding to various queries with regard to their manuscripts – including on citations, references, statistics and other data, case law and statutes - in order that the output may be enhanced.

Acknowledgments are also due to the students of Mumbai-based colleges who took part in a survey conducted on students’ perspective on human rights. The outcome of this survey has been compiled and presented in Chapter 8: Students as Human Rights Defenders. In particular, we are grateful to the three students – Dominic, Sheetal and Harish – who shared their personal journeys into the world of human rights. We are sure that their sharing would motivate and inspire many more students to associate themselves with human rights.

Acknowledgment is also due to the libraries (and the staff of the libraries) of Tata Institute for Social Sciences, Bhavan’s college and the Thane District Court. Their assistance in helping the contributors access the appropriate books, journals and other reading material required for their respective chapters has been invaluable.

We specially thank Kamayani Bali Mahabal, Minal Mehta, Henri Tiphagne and People’s Watch, Jon Matthews, Nandini Sundar and Campaign for Justice and Peace in Chhattisgarh, Anjuman Ara Begum and other human rights defenders, campaigns and organizations that have generously permitted our use of their photographs for this publication. Inclusion of photographs of campaigns and movements in this publication would not have been possible without their active support.

We are also grateful to the publishers – DRTC and WRAG – for understanding the imperative nature of this publication, and for assuming responsibility for its joint publication. In particular, the role of trustees of WRAG – Vahida Nainar, Nasreen Mohammed, Vibhuti Patel, Varsha Berry and Noorjehan Safia Niaz, and Fr. Allwyn D’Silva of DRTC has been particularly encouraging. The staff of both the organizations have extended logistical and administrative support to this project, which has been imperative for its implementation.

The publishers are extremely grateful to Jasmin Pavri and J.R.D. & Thelma J. Tata Trust, whose generous financial support has made this publication possible. Acknowledgment is also due to A.R.Das and Reliance Capital Asset Management Ltd. for their financial contribution to this publication.
## Abbreviations

1. **AIR**  
   All India Reporter

2. **AFSPA**  
   Armed Forces (Special Powers) Act

3. **Art**  
   Article

4. **ATR**  
   Action Taken Report

5. **CAT**  
   Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

6. **CEDAW**  

7. **CERD**  
   International Convention on Elimination of All Forms of Racial Discrimination, 1965

8. **COFEPOSA**  
   Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

9. **CPD**  

10. **CRC**  

11. **Cr.PC**  
    Criminal Procedure Code, 1973

12. **CRI LJ**  
    Criminal Law Journal

13. **CRY**  
    ‘Child Relief and You’

14. **DGP**  
    Director General of Police

15. **DPRK**  
    Democratic People’s Republic of Korea

16. **DV Act**  
    The Protection of Women from Domestic Violence Act, 2005

17. **ECOSOC**  
    Economic and Social Council of the United Nations

18. **HRD**  
    Human rights defender

19. **HRE**  
    Human rights education

20. **ICC**  
    International Criminal Court

21. **ICCPR**  
    International Covenant on Civil and Political Rights, 1966

22. **ICDS**  
    Integrated Child Development Services

23. **ICESCR**  
    International Covenant on Social, Economic and Cultural Rights, 1966

24. **ICJ**  
    International Court of Justice

25. **IGP**  
    Inspector General of Police
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>26.</td>
<td>IPC</td>
</tr>
<tr>
<td>27.</td>
<td>JT</td>
</tr>
<tr>
<td>28.</td>
<td>LGBT</td>
</tr>
<tr>
<td>29.</td>
<td>MCOCA</td>
</tr>
<tr>
<td>30.</td>
<td>MIHRE</td>
</tr>
<tr>
<td>31.</td>
<td>MISA</td>
</tr>
<tr>
<td>32.</td>
<td>MWC</td>
</tr>
<tr>
<td>33.</td>
<td>NCERT</td>
</tr>
<tr>
<td>34.</td>
<td>NCM</td>
</tr>
<tr>
<td>35.</td>
<td>NCRWC</td>
</tr>
<tr>
<td>36.</td>
<td>NCTE</td>
</tr>
<tr>
<td>37.</td>
<td>NCW</td>
</tr>
<tr>
<td>38.</td>
<td>NGO</td>
</tr>
<tr>
<td>39.</td>
<td>NHRC</td>
</tr>
<tr>
<td>40.</td>
<td>NHRI</td>
</tr>
<tr>
<td>41.</td>
<td>NPO</td>
</tr>
<tr>
<td>42.</td>
<td>NSA</td>
</tr>
<tr>
<td>43.</td>
<td>NSS</td>
</tr>
<tr>
<td>44.</td>
<td>OHCHR</td>
</tr>
<tr>
<td>45.</td>
<td>OPCAT</td>
</tr>
<tr>
<td>46.</td>
<td>OSA</td>
</tr>
<tr>
<td>47.</td>
<td>PCR Act</td>
</tr>
<tr>
<td>48.</td>
<td>PHRA</td>
</tr>
<tr>
<td>49.</td>
<td>PIL</td>
</tr>
<tr>
<td>50.</td>
<td>PNDT Act</td>
</tr>
<tr>
<td>51.</td>
<td>POA</td>
</tr>
<tr>
<td>52.</td>
<td>PUCL</td>
</tr>
<tr>
<td>53.</td>
<td>RTI</td>
</tr>
<tr>
<td>54.</td>
<td>SC</td>
</tr>
<tr>
<td>55.</td>
<td>SCC</td>
</tr>
</tbody>
</table>

*Unpackaging Human Rights*
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>56.</td>
<td>SCR</td>
<td>Supreme Court Reporter</td>
</tr>
<tr>
<td>58.</td>
<td>SEZ</td>
<td>Special Economic Zone</td>
</tr>
<tr>
<td>59.</td>
<td>SHRCs</td>
<td>State Human Rights Commissions</td>
</tr>
<tr>
<td>60.</td>
<td>TADA</td>
<td>Terrorist and Disruptive Activities (Prevention) Act, 1987</td>
</tr>
<tr>
<td>61.</td>
<td>TISS</td>
<td>Tata Institute for Social Sciences</td>
</tr>
<tr>
<td>62.</td>
<td>UAPA</td>
<td>Unlawful Activities (Prevention) Act</td>
</tr>
<tr>
<td>63.</td>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
</tr>
<tr>
<td>64.</td>
<td>UGC</td>
<td>University Grants Commission</td>
</tr>
<tr>
<td>65.</td>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>66.</td>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>67.</td>
<td>UNIFEM</td>
<td>United Nations Development Fund for Women</td>
</tr>
<tr>
<td>68.</td>
<td>UPA</td>
<td>United Progressive Alliance</td>
</tr>
<tr>
<td>69.</td>
<td>UPR</td>
<td>Universal Periodic Review</td>
</tr>
<tr>
<td>70.</td>
<td>WCAR</td>
<td>U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001.</td>
</tr>
</tbody>
</table>

*Abbreviations*
## Glossary

1. **Adivasi**
   Literally means “original dwellers / inhabitants” and refers to indigenous people

2. **Akshaya Tritiya**
   A religious day in the Hindu calendar, falling in the month of April; is associated usually with purchase of gold and other jewellery, but is also associated with the custom of child marriages.

3. **Anganwadi**
   Literally means “court yards”, anganwadi workers are employed by the Department of Social Welfare to distribute nutrition supplements to pregnant women and children, and to provide non-formal education for children upto 6 years of age, under the Integrated Child Development Scheme (ICDS).

4. **Balwadi**
   Pre-school child care centre / crèche for young children

5. **Certiorari**
   A legal remedy that can be sought to quash order of the lower court by the High Court or Supreme Court.

6. **Dalit**
   The term means “broken people” and refers to persons belonging to a category at the lower end of the caste system, who are considered “untouchables” and treated in an inhumane manner.

7. **De facto**
   In fact / reality

8. **De jure**
   In law

9. **Devadasi**
   Literally means “female servants of god”, is a Hindu religious practice by which girls are “married” and dedicated to a deity

10. **Dharna**
    The practice of exacting justice / compliance with a just demand by sitting and fasting at the doorstep of the offender until the demand is granted; a democratic means of protest.

11. **Dowry**
    Money or property that the bride’s family gifts to the bride, bridegroom and his family before, at the time of or subsequent to marriage, in connection with the marriage; property that is often extorted from the bride’s family in the guise of gifts

12. **Fatwa**
    Advisory opinion concerning a religious law or edict, issued usually by a religious authority

13. **Habeus corpus**
    Literally means “produce the body”; it is a legal remedy to secure the release of a person where the order or the law under which the detention has been made violates a fundamental right
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>14.</td>
<td>Inter alia</td>
<td>Among other things</td>
</tr>
<tr>
<td>15.</td>
<td>Interim</td>
<td>An interval of time between one event, process or period and another.</td>
</tr>
<tr>
<td>16.</td>
<td>Locus standi</td>
<td>The right to address a court on a matter before it; a legitimate claim for legal action</td>
</tr>
<tr>
<td>17.</td>
<td>Lok Sabha</td>
<td>House of the People; Lower House in the Indian Parliament</td>
</tr>
<tr>
<td>18.</td>
<td>Mandamus</td>
<td>Is a legal remedy to restrain the government or other executive authority meant to discharge a public duty, from enforcing the law, upon finding that it is unconstitutional. It is used to cancel an order of an administrative / statutory authority / government where it violates a fundamental right.</td>
</tr>
<tr>
<td>19.</td>
<td>Morcha</td>
<td>Peaceful resistance by groups to assert their rights, through mass mobilization, meetings, rallies and demonstrations</td>
</tr>
<tr>
<td>20.</td>
<td>Panwala</td>
<td>Shopkeeper who sells betel leaves and nuts</td>
</tr>
<tr>
<td>21.</td>
<td>Quo Warranto</td>
<td>Literally means “what is your authority?”; is a legal remedy where a holder of an office is called upon to show the court under what authority she / he holds the office. This remedy is used to prevent a person to hold an office, which he / she is not legally entitled.</td>
</tr>
<tr>
<td>22.</td>
<td>Rajya Sabha</td>
<td>House of Representatives; Upper House in the Indian Parliament</td>
</tr>
<tr>
<td>23.</td>
<td>Safai Karamchari</td>
<td>Manual scavengers</td>
</tr>
<tr>
<td>24.</td>
<td>Sati</td>
<td>the act of burning a widow / woman alive on the funeral pyre of her husband; is also a Sanskrit term indicating a ‘chaste’ woman</td>
</tr>
<tr>
<td>25.</td>
<td>Stridhan</td>
<td>Literally means “property of the woman”; given to the bride in connection with marriage, with full ownership of the property vesting with her</td>
</tr>
<tr>
<td>26.</td>
<td>Suo motu</td>
<td>On its own initiative</td>
</tr>
</tbody>
</table>

*Glossary*
UNPACKAGING HUMAN RIGHTS:
AN INTRODUCTION

– Saumya Uma

The importance of having a comprehensive reference material on human rights, that combines theory, concepts, debates and discourses with ground realities, concerns, campaigns, movements and advocacy initiatives, cannot be better understood than by a student of human rights who has felt its dire need. Many students of human rights, including I, have had to resort to making our own notes in preparation for academic courses on human rights. The genesis for this publication lies in such experiences. While this book is not intended to be a stand-alone reference material either for students or teachers, it is certainly intended to be a significant source.

Many human rights publications produced by human rights groups / non-profit organizations are not treated on par with those publications brought out by academic institutions. Conversely, those published by academic institutions are often considered by human rights activists to be theoretical with only a minimum content of ground realities. This publication therefore combines the expertise of academics, lawyers and activists to provide a narrative that is hopefully multi-dimensional.

The publication has been prepared keeping in mind the syllabus prescribed for a foundation course in human rights, for Second Year B.A. / B. Com among colleges in Maharashtra. It is meant as an aid for both students and educators. The two chapters which do not feature in the syllabus, but have been included in this publication are those on international human rights treaties, and students as human rights defenders, as it was felt strongly that a course in human rights would be more comprehensive and complete with an inclusion of these topics. Each chapter draws from / refers to illustrative examples in the context of Maharashtra. However, this would not preclude its use in other states, or by civil society groups in their non-formal training programmes on human rights.

The contents of this book have been prepared in a democratic, participatory and transparent manner. Rather than sending each chapter to an external expert for feedback and suggestions, each version of each chapter was circulated among all the contributors of this publication for peer review. Hence, in the process of shaping this book, the critical inputs, feedback and suggestions that the contributors have given to each other’s chapters, have played a crucial role. It has been my privilege to share an excellent professional rapport with all the contributors of this book through a common forum in which all of us are members - Mumbai Initiative for Human Rights Education (MIHRE) – a network of individuals and organizations working on promoting human rights education in Mumbai and elsewhere.

Each chapter focuses on concepts and definitions, human rights norms (as laid down by laws, rules, principles and guidelines), debates and concerns in human rights
discourse, illustrative examples from existing campaigns on human rights in India, and challenges to enjoyment of human rights. Hence, the book attempts to present a multi-dimensional view on the realm of human rights. It provides not only a narrative, but also suggested activities in the form of group work, in order to further enhance the learning process. Photographs, statistics and information in tabular formats complement the information disseminated through chapters of this publication.

In the first chapter, Dr. Arvind Tiwari provides a bird’s eye view of human rights. This chapter introduces the readers to the concept, definition and importance of human rights, debates and approaches in human rights, international and domestic law related to human rights, Indian authorities with human rights jurisdiction and the crucial right to constitutional remedies. Two significant aspects dealt with in this chapter are the concept of rule of law, and ‘business and human rights’. Consistent with its function as an introductory chapter to the publication, this chapter refrains from discussing aspects in any great depth or detail, except the parts that refer to the Indian Constitution, which the author considers crucial to this chapter. Due to paucity of space, an issue that unfortunately could not be included in this chapter is that on ‘media and human rights’.

The second chapter, authored by Prof. Anthony Kunnath, focuses more squarely on the embodiment of human rights in the Constitution of India. In many ways, it complements the discussion on this aspect dealt with in the first chapter and takes it some steps further, particularly through an elaborate and in-depth analysis on each fundamental right guaranteed by the Indian Constitution, and how the fundamental rights function in action. This last aspect makes a crucial link between human rights norms laid down by the Indian Constitution and their exercise in reality.

India’s social demography reads as follows:

- Approximately half of India’s population of over 1,129,000,000 consists of women;¹
- India has atleast 375 million children – more than any other country in the world;²
- over 166 million people in India are *dalits*, known officially as persons belonging to Scheduled Castes and Scheduled Tribes;³
- atleast 70 million people are physically / mentally challenged;⁴

---

religious minorities account for almost 20% of the population – including over 138 million Muslims and 24 million Christians;

atleast 25% of the total population lives below the poverty line;

divasis (indigenous people / tribals) account for another 84 million;

atleast 2.4 million people are living with HIV/AIDS in India, as per the 2007 statistics;

approximately 500,000 persons are internally displaced, due to internal armed conflict, ethnic, communal and other forms of violence;

the total migrants, according to the 2001 population, is 315 million, a majority of whom are migrant labourers;

a very conservative estimate indicates that the gay, lesbian and bisexual population in India constitutes about 10% of the total population – that is, atleast 100 million; no conclusive statistics exist on the number of transgendered and transsexual persons.

Human rights violations of vulnerable groups in contemporary India are the result of a complex nexus between the politics of identity, exclusion, inclusion and segregation, rooted in history, cultural ethos, politics and economics. Given the social demography of India in this context, the third chapter, authored by Ms. Shweta Shalini, deals with laws to protect human rights. This chapter was perhaps one of the most challenging chapters to write because of its wide ambit – as protective laws exist on many issues and for many groups of people. The author and the editor had to address the dilemma of how comprehensive should this chapter be, and how a balance would be maintained between giving the reader an in-depth analysis on some crucial aspects, and an overview of various other aspects of laws to protect human rights, given the paucity of space. The dilemma was resolved through an elaborate discussion on laws protecting rights of children, women, dalits and persons with disabilities, and enumerating, in the conclusion, the existence of other issues and groups for whom protective laws have been enacted. Though the chapter outlines, at great length, on laws protecting women’s human rights, it is also pertinent to acknowledge the persistence of debates on government policies and laws that curb women’s freedom in the name of protecting their rights. Rights of children and women enumerated in labour laws, discussed in this chapter, ought to be read in the context of economic liberalization and its impact on an increasing number of children and women entering the informal / unorganized sector where there are fewer safeguards to protect their rights.

6 http://www.indexmundi.com/india/population_below_poverty_line.html (accessed on 25 January 2009)
7 Dalit International Foundation, supra note 3
9 http://www.internal-displacement.org/countries/INDIA. (accessed on 25 January 2009)
The succeeding chapter on repressive laws, authoured by me, discusses an issue that is becoming central to impunity for human rights violations, justice and accountability, rule of law, good governance and democratic functioning of the country. Although the syllabus prescribes “protective and repressive laws” in the same breath, for the purposes of this publication, it was felt that both these aspects merit detailed discussion and ought not to be combined as a single chapter. The ‘repressive laws’ chapter focuses on typical characteristics of repressive laws, laws related to preventive detention, anti-terror laws, security and other stringent laws, and highlights (but does not discuss) other repressive laws and policies. A discussion on campaigns on repressive laws and the role of the judiciary, dealt with in this chapter, is intended to give the readers a feel of the ground realities, and the challenges faced by civil society with regard to such laws and their negative impact on human rights. While arguing that draconian / stringent laws negatively impact the enjoyment of human rights both through objectionable provisions as well as their misuse, the chapter presents both sides of arguments on issues that are currently crucial in public discourse. These include whether stringent laws would counter terrorism, and whether the Armed Forces (Special Powers) Act is a necessary measure. A discussion on anti-poor laws has been included in this chapter in order to bring to the fore the existence of such laws and their repercussions on human rights. It bespeaks an attempt to place and present socio-economic and cultural rights pertaining to marginalized, underprivileged sections of society on par with civil and political rights that are predominant in human rights discourse on repressive laws.

An enjoyment of human rights transcends beyond constitutional obligations and human rights norms / standards. Through the next chapter on mechanisms to protect and promote human rights, Dr. Arvind Tiwari blends a theoretical perspective with his extensive practical experience of working with the National Human Rights Commission and state commissions. The merits of this chapter lie not only in a discussion and critique of the NHRC and state commissions, but in extending beyond and elaborating other mechanisms which are equally crucial but are little discussed - such as human rights cell in police headquarters, district complaint authorities and human rights courts. The chapter elaborates on the Paris Principles as the foundation for establishment of National Human Rights Institutions (NHRIs) in the country. The discussion on role and functioning of the NHRC in protecting and promoting human rights and its relationship with courts of law present before the reader the complementary aspects of the two mechanisms.

Ms. Kamayani Bali Mahabal’s ‘Role of Non-governmental Organizations in Protecting and Promoting Human Rights’ has been enriched by her experience of actively associating with various human rights organizations in the country for more than a decade. While retaining the term ‘Non-governmental organizations’ in the title of the chapter so as not to confuse students and educators who may have the syllabus as the point of reference, the author argues, at the outset, as to why the term ‘non-profit organization’ (NPO) is better-suited to the present discussion. This chapter explores aspects such as the role of NPOs vis-à-vis the human rights movement and characteristics and functioning of human rights NPOs in India. Criticism of international and Indian
human rights NPOs and a comparison between the two add depth and new dimensions to this chapter. The chapter reconstructs human rights initiatives taken in India. By drawing illustrative examples from the women’s movement, right to information campaign, right to food campaign, the dalit rights movement and the campaign for the release of Dr. Binayak Sen, the author overwhelmingly demands attention to the role of NPOs in the Indian human rights context.

The penultimate chapter of the book, authored by me, deals with international treaties on human rights. It provides an overview of international human rights norms and the dynamic relationship they share with domestic laws and standards. It includes a discussion on international treaties on human rights, how a human rights standard becomes a law and how international conventions are enforced. A clarification of key concepts such as signature, ratification, accession, reservation, declaration, optional protocol, periodic reports and shadow reports help demystify legal jargon related to international human rights. The chapter includes a compilation of information on major conventions, declarations, optional protocols and principles on human rights, in a tabular format, providing the reader with a bird’s eye view of the standards set by international human rights law. The chapter’s discussion on India’s engagement with major human rights treaties, and annexures (in a tabular format) on major conventions signed / ratified by India and details of reservations and declarations forwarded by the Indian government, would be interesting not only to students and educators in formal educational institutions, but also to human rights activists and defenders engaged in advocacy initiatives. A table compiling the outstanding requests from international human rights bodies for visiting India provides an overview of the extent of resistance of the Indian government for international scrutiny on its human rights situation. In its compilation of international treaties and analysis of India’s engagement with international treaties, this chapter also includes treaties pertaining to international humanitarian law and international criminal law, in order to give the students a broader perspective, without explaining the distinctions between these schools of international law.

The final chapter of this book, written by Ms. Bella Das, focuses on students as human rights defenders. This chapter challenges the student reader’s role as a passive recipient of information on human rights, and motivates students to engage actively in the human rights movement, thereby transcending the immediate academic parameters set before them. After establishing a foundation through a discussion of definition, characteristics and needs for human rights defenders, nature of their work and the UN Declaration on Human Rights Defenders, the chapter discusses and outlines opportunities for students of human rights. A discussion on human rights education was found warranted as a first step into the making of a human rights defender. While acknowledging human rights education through non-formal processes such as trainings and workshops conducted by human rights organizations, the chapter elaborates on human rights education in Indian universities. This section of the chapter breathes life into Prof. Upendra Baxi’s articulation of human rights education itself as a human right A field survey on perception of Mumbai-based students on human rights, and the personal journeys of students into the world of human rights, adds a practical and personal touch to the chapter, with the hope that these aspects would encourage more students to become human rights defenders.
Due to the dynamic nature of human rights, it is perhaps inevitable that a book on this subject will contain a few errors, and some information may be outdated. The contents of this book were prepared within a span of four months, and their production at such a pace could have further contributed to a few inaccuracies. I have tried my very best to check, cross-check, verify and update all information and citations provided in this publication. Any errors that remain are purely inadvertent, for which I assume full responsibility.
HUMAN RIGHTS: A BIRD’S EYE VIEW

– Arvind Tiwari

The value system manifested in human rights is not specifically a modern one or an imported concept from west; it is not something alien to our culture but found in all major cultures and religions worldwide. Human life, dignity, freedom, equality and property were posted by moral commandments. From the Vedic literature we have evidence highlighting the duties of the King and rights of the citizens. The duties were focused to achieve welfare, equity and justice by maintaining human dignity.¹

1.1 WHAT ARE HUMAN RIGHTS?

The concept of human rights has two basic meanings. The first refers to the inherent and inalienable rights due to man/woman simply by virtue of his/her existence as a human being. These are moral rights, and they aim at ensuring his/her dignity as a human being. The second sense is that of legal rights which are established through the law-creating processes of societies, both national and international. It is generally believed that the state is the guarantor and protector of human rights. Human rights, as the term is most commonly used, are the rights which every human being is entitled to enjoy and to have protected. The underlying idea of such rights - fundamental principles that should be respected in the treatment of all men, women and children - exists in some forms in all cultures and societies.

Human rights are not the gift or bounty of any political superior. The laws are meant to reaffirm and recognize human rights and to provide mechanisms for their enforcement. The upholding of rights is essential for maintaining human dignity. Louis Henkin regarded rights as ‘claims’ rather than appeals to charity. Ronald Dworkin regards them as ‘trumps’ that set limits on state action whenever it encroached upon individual liberty. Jack Donnelly pointed out that human rights are the new standard of civilization. ‘All human rights for all’ is the goal of the century and the aim is to ensure that human rights are universally accepted and respected.² The seven essential freedoms are:

- Freedom from discrimination – by gender, race, ethnicity, national origin or religion;
- Freedom from want – to enjoy a decent standard of living;

Freedom to develop and realize one’s human potential;

Freedom from fear – of threats to personal security, from torture, arbitrary arrest and other violent acts;

Freedom from injustice and violations of the rule of law;

Freedom of thought and speech and to participate in decision-making and form associations; and

Freedom from decent work without exploitation.

Human rights are indivisible, inter-dependent and inter-related having a clear linkage with human development; and both share a common vision with a common purpose. The emphasis on human dignity is laid in the Charter of the United Nations (UN Charter), Universal Declaration of Human Rights (UDHR) and several international covenants. Same is the emphasis in the Constitution of India which assures dignity of the individual as a core value in its Preamble. The Constitution of India was drafted nearly at the same time as the UDHR and contains similar provisions. Part-III of the Constitution containing the fundamental rights correspond to Articles 21 of the UDHR and the Directive Principles of State Policy in Part-IV of the Constitution correspond to Articles 22-28 of the UDHR. The International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social and Cultural Rights (ICESCR), both of 1966 3 are a further elaboration of these rights.

1.2 DEFINITION

According to Section 2(d) of the Protection of Human Rights Act (PHRA), 1993, human rights are defined as under: Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International covenants and enforcement by courts in India.

The words “International Covenants” occurring in this definition mean, as per Section 2(f) of the Act, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly on 16th December 1963. It is well known that these two Covenants were adopted by the UN General Assembly with a view to provide legal enforceability to various rights embodied in the Universal Declaration on Human Rights adopted by the UN General Assembly on 10th December 1948. It is therefore apparent that the Parliament, while enacting the Act, wanted to protect not only fundamental rights enshrined in the Constitution but also civil, political, economic, social and cultural rights embodied in the two covenants to the extent that they were enforceable through law courts and hence treats all of them as “Human Rights”. This may indicate that the definition is comprehensive and would include all rights that may be necessary to make life meaningful, complete and worth living. It also indicates that liberty, equality and dignity are basic human rights necessary to make life meaningful and complete.4

---

3 Amended vide Protection of Human Rights (Amendment) Act, 2006 (No.43 of 2006) as (and such other covenant or convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify)

Since human rights are enumerated / elaborated not only in the two covenants, but through many more Conventions and treaties that India is a party to, the definition of human rights, stated in PHRA, ought to be broadened to include the development of human rights through conventions and treaties beyond 1966 when the two covenants came into force. This is more so as some human rights have been developed subsequent to 1966, and whose recognition is imperative. The rights of the disabled, resulting in the Convention on the Rights of Persons with Disabilities, 2007, ratified by India, is a case in point.

1.3 UNIVERSALITY OF HUMAN RIGHTS

The conventional wisdom has been that human rights are indivisible, meaning that respect for civil and political rights cannot be divorced from the enjoyment of economic, social and cultural Rights. Expressed the other way round, authentic economic and social development cannot exist without the political freedom to participate in that process, including the freedom to dissent.5

Vienna Declaration, 1993 reaffirmed the universality of human rights. ‘The universal nature of these rights is beyond question,’ says the final Declaration. The entire spectrum of human rights was endorsed without division. ‘All human rights are universal, indivisible, and interdependent and interrelated’ the Declaration says. Human rights were reaffirmed as including both civil and political rights and the broader range of economic, social and cultural rights, as well as the right to development. This full conception recognizes, in the words of the Final Declaration, that ‘the human person is the centre subject of development.’

Universality of human rights is the ideological basis of the development perspective. Recognizing the primacy of individual rights and entitlements, it maintains that the State has ultimate responsibility to build a social, economic and political environment in which all human beings, irrespective of their age, class, gender, caste, race, ethnicity, legal and political status, are able to fully enjoy their rights. Hence, it demands an interventionist state and an active civil society willing to intervene in situations of injustice and violation of rights. The market and the private sector have responsibility in defending and honouring the rights of the people. Grassroots organizations, peoples’ movements and human rights activists lead its current thinking and practice.6

1.4 HUMAN RIGHTS DEBATES AND APPROACHES

How are human rights defined? The traditional view limits them to civil and political rights. Included among these are the right to life, liberty and security; the right not to be discriminated against on the basis of race, colour, sex, language, religion, social class or political opinion; the right to vote, freedom of speech and freedom of press; the right to be free from arbitrary invasion of privacy, family or home; and legal rights such as the right to due process of law and the presumption of innocence until proven guilty.

---

6 For details see Harsh Mander & others, Good Governance: Resource Book (Bangalore: Books for Change, 2004) at p.19
Increasingly, however, this traditional view is being challenged. Some say that it is too limited in scope and that a more multi-dimensional and holistic approach must be taken. Thus to basic civil and political rights are added crucial social, economic and cultural rights, including the right to an adequate standard of living, the right to education, the right to work and to equal pay for equal work, and the right of minorities to enjoy their own culture, religion and language. Of particular importance to this view is the protection and advancement of the rights of disadvantaged and minority groups (such as women, children and indigenous peoples). The United Nations (UN) has adopted this holistic approach in determining what human rights are, and the international community has repeatedly affirmed the interdependence of both sets of rights.7

What is the best way to ensure the progressive realization of human rights? Progressive realization of rights indicates that all human rights are fundamental in the governance in the country and the State is supposed to facilitate realization of these rights through appropriate legislative measures. One way is the “violations approach,” whereby human rights are closely monitored to publicize abuses and hold States accountable for upholding the law and implementing their international human rights commitments. The second way, which can often complement the first, emphasizes a comprehensive view of human rights, stressing both the protection and promotion of rights. Thus, while ensuring that the rule and enforcement of law are crucial, so too are adopting measures that enable people to exercise their rights under the law. For example, promoting women’s rights means not only changing and enforcing legal codes on gender equality and property rights, but also increasing women’s access to para-legal services and local land and property title registration services. Sustainable human development is consistent with such a comprehensive approach.8

1.5 WHY ARE HUMAN RIGHTS IMPORTANT?

Human rights are important because they recognize that each person is special with his / her own individual talents and abilities and that no one is inferior or superior to another. At the heart of the idea of human rights is the notion that all people are born free and equal. Everyone is entitled to live with dignity and no one, including the State, community, family and society, has any right to discriminate or treat anyone unfairly or unjustly. The international system of human rights and the Indian Constitution insist that it is the duty of the State to promote respect for all the human rights of all people equally.9

1.6 HUMAN RIGHTS – INTERNATIONAL AND DOMESTIC LAW

India had representatives in the drafting committee of the UDHR and is bound by the provisions of the two International Covenants viz. International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural

---

7 UNDP, Integrating Human Rights with Sustainable Human Development – A UNDP Policy (UNDP, 1998) at p. 1
8 Ibid at p. 2
Rights (ICESCR). The Constitution of India guarantees almost the entire gamut of civil and political rights. Through Chapter IV of the Indian Constitution that deals with the Directive Principles of State Policy, the Government is mandated to promote a variety of social and economic rights that would lead to an equitable social order and betterment of the quality of life of all sections of society. The rights or obligations, which flow from the International Covenants to which India is a signatory, can have meaning and substance only if they are included in the Constitution or other domestic laws. In this context, the format of Indian Constitution in respect of human rights is remarkable as it has sought to achieve a delicate balance between what has been termed as civil and political rights, on the one hand, and social, economic and cultural rights on the other. The Constitution-makers believed in giving equal importance to the two sets of rights as a cardinal tenet of the philosophy underlying it. While the civil and political rights are made fundamental and judicially enforceable even though subject to reasonable restrictions, the economic and social rights are also made basic to the governance of the country and have to be progressively realized through administrative action and legislative acts.

1.7 ENFORCEABLE HUMAN RIGHTS IN THE CONSTITUTION AND LAW

It is said that a Constitution is basically a people’s covenant, their charter of freedom and the blueprint for their future. As it is, the Indian Constitution is envisaged to be an instrument for economic growth and social change. The achievement of social and economic democracy, as much as political democracy, has been one of the cardinal concerns of the Indian Constitution. The fundamental rights and directive principles of state policy are key elements of the overriding concern. Dr. B. R. Ambedkar, in his concluding address, stated as follows in the Constituent Assembly:

“Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorced one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the same supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things.”

Salient provisions of fundamental rights and other legislations are as given below:

**CONSTITUTION OF INDIA**

Art.14 Equality before laws  
Art.17 Abolition of untouchability

---

10 *Report on Fifty years of Indian Parliamentary Democracy* published (New Delhi: Lok Sabha Secretariat, 1997) at p. 3

*Unpackaging Human Rights*
Art.19  Fundamental freedoms
Art.20(1) Protection against conviction / enhanced punishment under *ex post facto* law
Art.20(2) Protection against double jeopardy
Art.20(3) Protection against self-incrimination
Art.21 Protection of life and personal liberty
Art.22 Right against arbitrary or illegal arrest
Art.23(1) Abolition of bonded labour
Art.32 & 226 Right to remedies for enforcement of human rights
Art.46 Promotion of interests of weaker sections
Art.39A Free legal aid to the poor

**CRIMINAL PROCEDURE CODE**

Sec.57,41,151,46,49 Right against arbitrary or illegal arrest
Sec.50 Right to be released on bail
Sec.47,51,100 Right against arbitrary or unreasonable searches and seizure
Sec.54,162,164 & 176 Protection against cruel or inhuman treatment during investigation
Sec.53 & 54 Detainees should have the right to a medical examination
Sec.160 Women and children should not be taken to police stations for purposes of investigation
Sec.300 Protection against double jeopardy
Sec.161 Protection against self-incrimination

**INDIAN EVIDENCE ACT**

Sec.24,25 & 26 Protection against cruel or inhuman treatment during investigation
Sec.101 to 104 Right to benefit of doubt
Sec.113-A,113-B & 114-A Protection of women against certain crimes

**INDIAN PENAL CODE (IPC)**

Sec.330 & 331 Protection against cruel or inhuman treatment during investigation
Sec.376 & 304-B Protection of women against certain crimes

**CODE OF CONDUCT FOR THE POLICE**

Clause 1,3 & 4 Protection of Human Rights
Clause 7 Code of Behaviour for Police Officers

Above all, the Constitution clearly states that the State shall not make any law which takes away or abridges the rights conferred and that any law made in contravention of the clause, shall, to the extent of contravention, be void.
1.8 DIRECTIVE PRINCIPLES OF STATE POLICY AND
THE PRACTICE OF WELFARE STATE MODEL

The Directive Principles of State Policy are essentially in the nature of certain directions to the state while making laws. The Constitution provides that the directive principles are not enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in the making of the laws. Essentially, the directive principles enshrine the ideal of social and economic democracy and are humanitarian in social precepts which aim at the realization of a welfare state. In crux, the directive principles are intended to ensure the dignity of human life and pursuit of happiness. In this regard, several legislative measures have been taken both by Parliament and State Legislatures to secure these objectives.

At one stage the judicial thinking was that fundamental rights had primacy over directive principles. Subsequent judicial thinking was that fundamental and directive principles complement each other and together they form the core and conscience of our Constitution. The present judicial trend is that in determining the reasonableness of restrictions imposed on the fundamental rights the court can take into consideration the relevant directive principle. A seven judge Bench of the Supreme Court by majority in the case of State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat\textsuperscript{11} held that “judging reasonability of restrictions imposed on fundamental rights, relevant consideration are not only those as stated in Article 19 itself or in Part III; Directive principles stated in Part IV are also relevant – Implementation of directive principles in within the expression ‘restriction in the interest of general public’ in Article 19(6)-A restriction placed on any fundamental right, aimed at securing one or more of directive principles will be held as reasonable, and hence intra vires, subject to two restrictions: (1) that it does not run in clear conflict with the fundamental right, and (2) it has been enacted within the legislative competence of enacting legislature under Part XI chapter I”

In the words of Soli Sorabjee, directive principles, in substance, article the goals which a truly welfare state aims to achieve. They are intended to ensure distributive justice for the removal of inequalities and disabilities and to achieve a fair division of wealth amongst members of the society. Directive principles comprise of social and economic rights such as right to health, the right to shelter, right to living wage, right to food, right to work, protection and improvement of environment and safeguarding of forests and wild life. Our Supreme Court has, by judicial craftsmanship, incorporated some directive principles in fundamental rights and thus expanded their scope and ambit.\textsuperscript{12}

A striking instance of expansive judicial interpretation is the Supreme Court’s decision in Francis Coralie’s case.\textsuperscript{13} The Court ruled that the expression “life” in Article 21 does

\textsuperscript{11} 2005(8) SCC 534
\textsuperscript{13} Francis Coralie Mullin vs, Union Territory of Delhi & others AIR 1981, SC 746: 1981(1) Scc 608: 1981(2) SCR 516.
not connote merely physical or animal existence but embraces something more. It further opined: “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head”.

Based on this expansive interpretation the Supreme Court has appreciably contributed to environmental protection. It has ruled that the right to live with human dignity encompasses within its ambit, the protection and preservation of an environment free from pollution of air and water. It has ruled that hygienic environment is an integral facet of right to healthy life and accordingly right to health and sanitation fall within the ambit of Article 21.

For example:

(i) The right to compulsory primary education which is referred to in Art. 13(2)(a) of the ICESCR (J.P. Unikrishnan vs. State of A.P.)

(ii) The right to health which referred to in Art.12 (1) (a) of the ICESCR (State of Punjab vs. Mohinder Singh Chawla)

(iii) The right to shelter which is referred to in Art.11(1) of the ICESCR (U.P. Awas Avam Vikas Parishad vs. Friends Coperative Housing Society Ltd)

(iv) The right to food which is again referred to in Art. 11(1) of the ICESCR (Madhu Kishwar vs. State of Bihar)

(v) The right equal pay for equal work which is referred on in Art. 7 (a)(1) of the ICESCR (Randhir vs. Union of India)

(vi) Right to legal aid (Madhav vs State of Maharashtra).

The National Commission to Review the Working of the Constitution (NCRWC) in its report recommended that certain socio-economic rights be included in Part III of the Constitution as fundamental rights. For example, every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation. The NCRWC recommended that the following rights to be incorporated in the fundamental rights part namely, every person shall have the right (a) to safe drinking water; (b) to an environment that is not harmful to one’s health or well-being; and (c) to have the environment protected, for the benefit of present and future generations so as to (i) prevent pollution and ecological degradation; (ii) promote

---

14 AIR 1993 SC 2178
15 AIR 1997 SC 1225
16 AIR 1996 SC 114
17 1996(5) SCC 125
18 AIR 1982 SC 879
19 AIR 1978 SC 1548
20 See Report (3 volumes) of the National Commission to Review the Working of the Constitution, March 2002
conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Two directive principles need special attention. The first is Article 39(b) which provides that the State should direct its policy towards securing that the ownership and control of material resources of the community are so distributed as best to subserve the common good. Next is Article 39(c) which mandates that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These, along with other directive principles, make it clear that social justice which is reflected in the preamble to the Indian Constitution is the signature tune of our Constitution.21

The National Commission to Review the Working of Constitution headed by Mr. Justice M. N. Venkatachaliah, Former Chief Justice of India and Chairperson, NHRC, in its report submitted to the Government of India in March 2002 recommended the establishment of a body of high status which first reviews the state of the level of implementation of the directive principles, in particular (i) The Right to Work, (ii) The Right to Health, (iii) The Right to Food, Clothing and Shelter, (iv) Right to Education up to and beyond the 14th year, and (v) The Right to Culture. The report also enumerated various steps to be taken for ensuring that the Directive Principles of State Policy are realized more effectively.22

1.9 FUNDAMENTAL DUTIES

The proliferation of rights and dilution of corresponding duties has been a cause for concern. One response was the Forty Second Constitutional Amendment which incorporated certain fundamental duties of citizens in Article 51 – A of the Constitution which are:23

- Conformity to the Constitution, its ideals and institutions,
- Respect for the national flag and the national anthem;
- Cherishing ideals of freedom, fighters;
- Protection of sovereignty, unity and integrity of the country;
- Defense of the country and performance of national service , when called for;
- Harmony amongst people, cutting across religious, linguistic and regional diversities and upholding the dignity women;
- Preservation of heritage and composite culture;
- Protection of environment;
- Development of scientific temper;

22 See supra n. 21 at 14, para 3.35.1 to 3.35.3
23 Adapted from Report on Fifty years of Indian Parliamentary Democracy published (New Delhi: Lok Sabha Secretariat, 1997), at p. 19

Unpackaging Human Rights
- Safeguarding public property and abjuring violence; and
- Striving for all round excellence, individually and collectively.

At present, when fanaticism and bigotry stalk our land, utmost importance should be given to the fundamental duties. Intolerance stems from an invincible assumption of the wisdom and infallibility of one’s beliefs and the mind set which regards any questioning of these cherished beliefs as pernicious and subversive. We talk eloquently about freedom of speech and expression but freedom for the thought we hate is noticeably absent. Freedom to dissent which is a pre-requisite of democracy is under siege. Religious strife and communal disharmony are generated by propagating stereotypes and prejudices. Ancient historical events are resurrected for that purpose.

Our people are steeped in superstition. Irrational beliefs, practices and customs are pervasive. Priests, pujaris and soothsayers thrive on superstition. Rational dispassionate thinking and the spirit of inquiry has taken a back seat. These phenomena need to be countered by implementing the fundamental duty listed in Article 51-A(e) of developing a scientific temper and the spirit of inquiry and reform.

It is debatable whether fundamental duties by themselves are justiciable and can be directly enforced in a court of law. The Supreme Court may, by innovative interpretation, make certain duties partly justiciable by infusing them into directive principles and gradually incorporating them in fundamental rights. But that is “a perpetual possibility only in a world of speculation.”

What is urgently needed is the creation of a citizenry conscious of their rights and duties. Measures must be adopted by the Union and state governments to promote an awareness of constitutional rights and responsibilities among citizens and to sensitize them to the values embodied in our constitution. The Justice Verma Committee on Fundamental Duties of Citizens has rightly observed that “The desired enforceability can be better achieved by providing not merely for legal sanctions but also combining it with social sanctions and to facilitate the performance of the task through exemplary role models. The real task, therefore, is to devise methods which are a combination of these aspects to ensure a ready acceptance of the programme by the general citizenry and the youth, in particular.”

1.10 THE EMBODIMENT OF HUMAN RIGHTS IN INDIA

Universal adult franchise as a democratic form of government envisaged by the Constitution provides guarantees against violation of human rights. Ultimately, democracy, public opinion and awareness of one’s own rights are the best guarantees for protection of human values and basic freedoms. The human rights and freedoms recognized by the Indian Constitution and relevant laws are being enforced by the legislature, executive and the judiciary.

---

24 Sorabji, Soli, ‘Rights have Duties’ The Indian Express, Mumbai, 27 September 2004 at p. 8
In view of this, the embodiment of human rights in India falls into four categories;

(a) The rights that are recognized under the Indian Constitution;
(b) The rights that are recognized under the other laws;
(c) Expansion / clarification of these rights by the Indian judiciary; and
(d) Human rights jurisprudence that has emerged through work of the Human Rights Commissions.

1.11 AUTHORITIES WITH HUMAN RIGHTS JURISDICTION

The Indian Parliament has the power to legislate on matters relating to human rights which are embodied in the Indian Constitution as fundamental rights, directive principles or other constitutional rights. The judiciary, particularly, the Supreme Court of India, under Article 32 of the Constitution and the High Courts of various states, under Article 226 of the Constitution, have jurisdiction to give appropriate relief for violation of any of the fundamental rights. In addition to these courts, the criminal courts at different levels have jurisdiction with respect to certain human rights involving criminal charges. The administrative tribunals also deal with matters falling within their jurisdiction. For instance, the labour tribunals deal with matters affecting the rights of the labourers. This aside, the Government of India has also taken several other measures to strengthen available safeguards for the observance, promotion and protection of human rights by regular monitoring, evaluation and channeling of complaints of human rights violations, through the establishment of institutional mechanisms. These measures include the establishment of a National Human Rights Commission, the National Commission for Women, the National Commission for Minorities, the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, the National Commission for Safai Karmacharis and the National Commission for Child Rights. Many such commissions have been created at the state level as well. These Commissions examine laws, policies and their implementations in their core areas and make recommendations to the Government of India for initiating appropriate actions.

The formation of the National Human Rights Commission in 1993 and subsequently state human rights commissions and human rights courts undoubtedly mark the hope for a possible avenue to address human rights concerns domestically. The Human Rights Commissions shape states’ human rights policies independently of the fulfilment of social expectations or unfulfilled promises for victims of human rights violations. Work of the human rights commissions, state and central governments, the judiciary, non-profit organizations and the civil society in general is a continuously evolving activity.

27 Ibid
1.12 RULE OF LAW

The quintessence of our Constitution is the rule of law. The executive officers of the State cannot interfere with the rights of individuals unless they can point to some specific rule of law which authorizes their acts. It is one of the primary responsibilities of the state to build a democratic and just society. For this, rule of law is the most essential ingredient. Rule of law is an established legal framework that should be fair and enforced impartially, particularly the laws on human rights. Rule of law entails equal protection of human rights of individuals and groups, as well as equal punishment under the law. It reigns over governments and protects citizens against arbitrary state action. It ensures that all citizens are treated equally and are subject to the law rather than to the whims of the powerful. The law should also afford vulnerable groups protection against exploitation and abuse.

The rule of law has two main dimensions: the instrumental, which concentrates on the formal elements necessary for a system of law to exist; and the substantive, which refers to the content of the law and concepts such as justice (for example, due process) fairness (the principles of equality) and liberty (civil and political rights). It suggests that the formal dimension needs to be complemented by substantive principles of the rule of law to create a ‘fair’ legal system. Rule of law is a basic feature of the Constitution of India and is hence indestructible.

In conclusion, there has to be a distinction made between law and justice. Rule of law and due process are important, but not sufficient. Apartheid, persecution of Jews by the Nazis, encroachment of Palestinian territory by Israeli ‘settlers’, ‘honour’ killing of women, denial of water and medicine to those who cannot pay, forcible eviction of indigenous people for development projects – all these acts are done according to the ‘rule of law’ in the respective states and societies. But they are gross violations of basic human rights. Good governance must ensure that the basic rights and needs of the weakest are secured, and improve to the highest possible levels. Securing the interests of investments by rule of law should not entail violation of basic rights of the people.

1.13 RIGHT TO CONSTITUTIONAL REMEDIES

Fundamental rights are judicially enforceable. Any law, which is violative of the fundamental rights, is void (Article 13 (1) and (2) of the Constitution). The right to approach the Supreme Court directly for enforcement of fundamental rights is guaranteed as a fundamental right by Article 32 of the Constitution. This right was described by Dr. Ambedkar as the heart and soul of the Constitution. Enforcement of fundamental rights has provided great protection and given relief to our people. For a realization of fundamental rights, the following remedies are available to the citizens:

28 Rule of Law, Prog for Governance in Arab Region, UNDP, available at http://www.undp-pogar.org/
themes/ruleoflaw.html.
29 Good Governance and Sustainable Human Development, UNDP Policy Document, pp.2
30 For details see Harsh Mander & others, Good Governance: Resource Book (Bangalore: Books for Change, 2004) at p. 92-95
(i) **Habeas Corpus**: It is a remedy to secure the release of a person where the order or the law under which the detention has been made violates a fundamental right, such as the right to life or the right to equality before the law. *Habeas corpus* literally means “produce the body” and is a relief that is often resorted to in cases of torture or ill-treatment of convicts in prisons, and of under-trials. It is also used against arbitrary detention of an individual by public officials. Through judicial intervention, it is a means for family members and relatives of the detained person to find out his / her whereabouts. The Supreme court has stated that the burden of showing that the detention is in accordance with the procedure established by law is always upon the detaining authority.\(^{32}\)

(ii) **Mandamus**: Where the executive seeks to enforce a law against an individual, that affects his / her fundamental right, the person may move for a writ of *Mandamus* to restrain the Government or other executive authority meant to discharge a public duty, from enforcing the law, upon finding that it is unconstitutional. It is used to cancel an order of an administrative / statutory authority / government where it violates a fundamental right.

(iii) **Prohibition and Certiorari**: Where a lower court or a quasi-judicial tribunal proceeds to act under a law which is alleged to be unconstitutional, the aggrieved party may apply for a writ of *Prohibition* to prohibit the tribunal from proceeding further, or if the tribunal has already given its decision, the party may move for the writ of *certiorari* to quash that decision. The *writ of prohibition* has much in common with *certiorari*. Both the writs are issued with the object of restraining the lower courts from exceeding their jurisdiction. The only difference is that the *prohibition* will stop the proceedings, while the *writ of certiorari* will be sought to quash order of the lower court by the High Court or Supreme Court. No writ of certiorari can be issued by the Supreme Court against a decision of the High Court.\(^ {33}\)

(iv) **The term Quo-Warranto** means, ‘What is your authority? By the writ a holder of an office is called upon to show the court under what authority he holds the office. The object of the *writ of Quo-Warranto* is to prevent a person to hold an office, which she / he is not legally entitled.

---

\(^{32}\) *Icchu vs. Union of India* AIR 1980 SC 1983 (paras 4-5)

\(^{33}\) *Naresh vs. State of Maharashtra* AIR 1967 SC 1 (paras 11-12, 15, 17)
The writs of habeas corpus and mandamus are effective instruments to prevent the abuse of power and protect the human rights. In case of the violation of Article 15(2), 17, 21, and 23 of the Constitution writ can be issued against a private person in case of untouchability, social discrimination and employment of bonded labour. The aggrieved person can move the court on the above grounds as violation of his/her fundamental rights. Under the doctrine of locus standi, a person can maintain a petition for a constitutional remedy before the High Court or the Supreme Court only if he / she has been personally affected by infringement of his / her right by the law or order complained of. The Supreme Court, by liberalizing the doctrine, has allowed any member of an organization having a special interest in the subject matter, to bring such a petition. Such cases have been called as public interest litigations.

1.14 BUSINESS AND HUMAN RIGHTS

Do private companies have a responsibility to respect human rights? This question, once marginal, is becoming a matter of concern to companies as well as governments, inter- governmental and non-governmental organizations, investors and consumers. Of course, it is not novel to argue that companies should behave ethically. On protection of the environment or workers’ rights, companies have long been subject to regulation by government as well as lobbying by advocacy organizations. It is new, however, to say that companies may have a legal duty to respect human rights. Human rights advocates, who have traditionally focused on government accountability, are beginning to look hard at the conduct of private actors, including business houses.

1.15 CONCLUSION

What is now needed for protection and promotion of human rights is a concerted effort to create a nation-wide awareness of the need for systematic reforms to ensure good quality governance. The reforms may include decentralization of power to grass-roots levels planning and polity building from the base, disciplining our political parties and politicians, streamlining criminal justice administration aiming to adhere to rule of law and participation of citizens in day-to-day governance. Last but not least, the important task for protection and promotion of human rights would be educating the people regarding their rights and obligations.

In many ways the Protection of Human Rights Act 1993 under which the NHRC and SHRCs have been set up, symbolizes the concerns and aspirations of the country. It underscores the commitment of the nation to bring into practice the provisions of international human rights instruments to which India is a party; above all, it represents the effort to bring all the players- the executive arm of the Government, the judiciary, political parties, academicians, researchers, non-government organizations, human right defenders and religious leaders together to work towards a better realization of the country’s commitment to uphold the

---

34 See Seshiah, S.: Power of the Course and Human Rights. Course material for PG Diploma in Human Rights, Course 413, University of Hyderabad.
dignity of its citizens and to protect their rights. Given the country’s diversity and range of problems, this is an immense task.

The endeavor should be to work towards a just and fair world socio-economic order and to encourage countries to move gradually towards universal norms of human rights. Ultimately, the preservation of human rights is not a question of only legislation or special mechanisms. It is the duty of the society as a whole to itself.

**SUGGESTED ACTIVITY**

Form a group and prepare a journal on human rights in India. The journal could consist of pictures, statistics, quotes from eminent persons, landmark judgments of Indian and other courts, excerpts from Indian and other laws. The journal is intended at presenting ‘Human Rights in India’ in a nutshell. The journal could cover the following, among other aspects:

1. What do you understand by ‘Human Rights’?
2. How are fundamental rights different from directive principles of state policy?
3. What measures have been taken by the Government of India to promote human rights education in India?
4. What is rule of law? How it is different from rule of justice? Give illustrations.
5. Does the corporate sector also have some social responsibility? Discuss with illustrations.
BIBLIOGRAPHY

Books

2. Democracy and Human Rights (New Delhi: Rajiv Gandhi Institute for Contemporary Research, Project No.8, 1995)
3. Hand Book on Human Rights for Judicial Officers (Bangalore: National Law School of India University, 2001)

Articles from Journals


**Reports**


6. Reports published by NHRC:
   - Quality Assurance in Mental Hospital, 1999.
   - Proceeding of the NHRC on the situation in Gujarat, March 1 July 2002.
   - Professional Policing – 2002
The end of the Second World War ushered in a new era. Two of the momentous events that followed it were the formation of the United Nations Organisation and the process of decolonization in many parts of the world, including India. The Charter of the United Nations emphasized its determination “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women…”¹ The Commission on Human Rights worked on the draft of the Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly of the United Nations on 10th December 1948.

The Indian Constituent Assembly in the meanwhile was debating on incorporating a list of rights in the Constitution. Much of that debate was over by the time the UDHR was proclaimed, though the principles had already been accepted. Thus the UDHR and the Fundamental Rights in the Indian Constitution (adopted on 26th November 1949 and became effective on 26th January 1950) came to be formulated at about the same time, and the hope expressed in the declaration that “human rights so proclaimed as a common standard of achievement for all people and all nations” will find “universal and effective recognition and observance” met its initial fulfilment in the Indian Constitution.

The UDHR has been a true reflection of the universal aspiration of the time. In the aftermath of war, genocide, and totalitarianism, the world longed for peace and freedom. Freedom from fear and freedom from want, as formulated by Franklin Delano Roosevelt in the context of the great depression of the 1930's, not merely gave expression to American aspirations, but that of the entire humanity, especially of the vast populations suffering under the burden of colonialism and the oppression of traditional social system.

In India the longing for freedom and equality began to take root from the time of the Indian renaissance in the 19th century. The national movement not merely gave expression to the desire for independence; freedom from foreign rule was meant to achieve socio-economic transformation and the betterment of the people. Reports of various committees enunciated these aspirations in clear terms. It is in this background that debates in the Constituent Assembly took place.

¹ Preamble to the Charter of the United Nations, 1945
As in the Commission on Human Rights, so too in the Constituent Assembly there were demands to include not only what was traditionally called civil and political rights in the list of rights to be enumerated, but also those that came to be called social, economic and cultural rights. It was possible to include all these in the UDHR because it was a proclamation of principles not legally binding. At the time these were translated into legally binding documents (in 1966), two separate covenants were made. (International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.) Basically the same ideas and process can be witnessed in the drafting of the Indian Constitution.

I. JUSTICIALE AND NON-JUSTICIALE RIGHTS

In the Indian Constitution we can see all the rights listed in the UDHR. But a distinction has been made. What is called civil and political rights and a few cultural rights come under Part III of the Constitution titled Fundamental Rights. Most of the economic, social and cultural rights are listed in Part IV under the heading of the Directive Principles of State Policy. The fundamental rights are justiciable while the directive principles are non-justiciable. What this means is that fundamental rights are legally enforceable rights. The government is duty-bound to protect and guarantee these rights, through the following provision. “The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.” If the fundamental rights are violated by the State itself, persons can approach the courts which will enforce these rights. However, this privilege is not extended to the rights enumerated in the Directive Principles of State Policy. The Constitution states: “The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be duty of the State to apply these principles in making laws.”

II. FUNDAMENTAL RIGHTS

With these preliminary observations, now, we can undertake a detailed analysis of the fundamental rights enshrined in the Constitution. Fundamental rights occupy a very special niche in the Constitution of India – they are sacrosanct. Though they can be amended by Parliament, they cannot altogether be abrogated. As already mentioned, all laws made by Parliament or State legislatures in India must be in

2 Article 13(2) of the Indian Constitution
3 Article 37 of the Indian Constitution
consonance with the fundamental rights and any law that is inconsistent with or abridges these rights can be declared null and void by the courts.

**Fundamental Rights**

(Articles 14-32)

1. Right to equality
2. Right to freedom.
3. Right against exploitation.
4. Right to freedom of religion.
5. Cultural and educational rights.
6. Right to constitutional remedies.

Classical formulations of rights emphasized the primacy of “life, liberty and property”\(^4\) or “life, liberty and the pursuit of happiness.”

The long struggle to establish these rights was basically a fight against despotism and the absolutism of the State. Thus the fundamental rights can be seen primarily as rights against the State, though violations against these rights can originate from other individuals or groups. The fundamental rights are, therefore, the citizen’s bulwark against arbitrary, authoritarian and unconstitutional acts of governments.

Originally, Indian citizens had seven fundamental rights. The right to property was guaranteed by Article 31. However, from the beginning the right to property was very controversial. The first amendment enacted in 1951 adding Article 31A restricted this right. That did not end the controversy and finally the right to property was repealed by the 44th Constitutional amendment enacted in 1978. Yet, the right to property is an ordinary legal right enjoyed by the Indian citizen.

### III. RIGHT TO EQUALITY

Right to Equality.


Article 15. Prohibition of discrimination.


Article 17. Abolition of untouchability.

Article 18. Abolition of titles.

Articles of the UDHR: 1, 2, 4, 6, 7, 20.

It cannot be denied that the most basic of all human rights after the right to life itself, is the right to equality, in the absence of which all others lose their meaning. “All human beings are born free and equal in dignity and rights”, proclaims the first article

\(^4\) The French Declaration of the Rights of Man and the Citizen, 1789

\(^5\) The American Declaration of Independence, 1776
of the UDHR. But the concept of equality is also most controversial. Is equality possible? What is the nature and extent of equality? Can social and economic equality be established without violating other rights, especially the right to freedom?

Yet, equality was the long felt aspiration of the Indian people, suppressed as we were by centuries of inequality and social, economic and political oppression. If economic equality would be a distant dream, social and political equality was an achievable goal and is recognized as a fundamental right by the Constitution.

III A. Equality Before Law

Article 14 states: “The State shall not deny to any person equality before law or the equal protection of laws.” Constitutional government and democracy rests on the principle of the rule of law. As Dicey explained it, equality before law is a corollary of this principle. The law recognizes everyone equal in status. No one is above the law and all are equally subject to the ordinary laws of the land. According to Basu, though ‘equality before law’ and ‘equal protection of laws’ may seem identical, they mean different things. While equality before law is somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law, equal protection of laws is a more positive concept, implying equality of treatment in equal circumstances.

If all are equal before the law and the law protects everyone equally, is differential treatment justified? What about the question of ‘reservation’ for the socially or economically backward who have been subject to millennia of inequality and injustice? Does the Constitution contradict itself when it sanctions reservation? Should the rich and poor pay equal taxes? Equality before law assumes an equality in fact. Equality before law allows reasonable classification and differential treatment. But everyone falling under the same classification ought to be treated equally.

III B. Non-discrimination

Non-discrimination is an important aspect of equality. The social fact in India was centuries of discrimination and inequality of treatment. Therefore the Constitution prohibits discrimination based “on grounds only of religion, race, caste, sex, place of birth or any of them” and citizens are not to be subjected “to any disability, liability, restriction or condition with regard (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partially out of state funds or dedicated to the use of general public.” We must keep in mind not only the vast diversity in racial or ethnic, religious, linguistic, caste or other considerations that we encounter in India but also the discrimination that was practised and continues to be practised on

---

6 Albert Venn Dicey propounded the principle of ‘equality before the law’ in his book - The Law of the Constitution, 1885
8 Article 15 of the Indian Constitution
the basis of sex, caste, religion or social status to appreciate this prohibition of
discrimination. Discrimination in present day will lead to social conflicts and the
elimination of all forms of discrimination is essential to foster social harmony and to
protect all other human rights. However, the Constitution also provides for what has
come to be called “positive discrimination” in favour of women and children and “for
the advancement of any socially and educationally backward classes of citizens or for
the Scheduled Castes and Scheduled Tribes....”9

III C. Equality of Opportunity

Availability of opportunity is the most essential condition to promote and achieve
equality in society. It takes great effort to provide this condition – universal education
and adequate employment avenues. The State may not be in a position to provide this
to all its citizens. Thus the Constitution limits equality of opportunity to matters of
public employment.10 Discrimination on grounds only of religion, race, caste, sex,
descent, place of birth or any of them is not permitted in public employment
(employment in relation to central, state or local governments, or enterprises run by
the government). Merit alone is the criterion in the selection of candidates for public
employment. However, laws laying down domicile or residence within a state for
employment under the State or local bodies are justified11. Similarly, reservations in
favour of any backward class of citizens are also permitted.12

III D. Abolition of Untouchability

What Gandhi described as “a sin against God and man” was the greatest evil in Indian
society, denigrating the human dignity of the untouchables and depriving them of
equality in society. Article 17 abolishes untouchability, prohibits its practice and makes
the enforcement of any disability or discrimination a criminal offence. This provision
has empowered the previously “untouchable” classes, recognized their right to equality
of status and restored their human dignity.

III E. Abolition of Titles

Titles were part of the old world social hierarchy. In a genuine democracy based on the
principle of equality there is no room for titles. The Constitution (Article 18) abolishes
all titles whether of the colonial era or of the princely regime. The Indian state shall not
award any titles. Bharat Ratna, the Padma Bhushan and other such awards are not
titles and citizens are not supposed to prefix such awards to their names. Nor are Indian
citizens permitted to accept titles from any foreign country.

IV. RIGHT TO FREEDOM

Freedom of speech, expression, etc. - Article 19.
Protection of life and personal liberty. – Articles – 20, 21, 22.
UDHR – Articles: 1, 2, 3, 4, 5, 8, 9, 10, 11,12, 13, 18, 19, 20

9 Article 15(3) and (4) of the Indian Constitution
10 Article 16 (1) and (2) of the Indian Constitution
11 Article 16(3) of the Indian Constitution
12 Article 16 (4A) of the Indian Constitution
In the history of the struggle to establish rights, life and liberty were considered the most sacrosanct. Life, after all, is the most precious right. Thomas Hobbes postulated that individuals give up all their rights in entering into a civil society, except that of life. But many other thinkers considered life to be without its salt in the absence of liberty. Rousseau exclaimed: “man was born free, and he is everywhere in chains.” To Locke the very purpose of government was to secure life and liberty. The Indian national movement fought for independence so that all Indians can enjoy the fullness of civil and political rights. Fundamental rights guarantee these freedoms. The Indian Constitution guarantees what is called the six freedoms. These freedoms constitute the true essence of a democratic society. Right to vote and majority rule are mere mechanisms, while these freedoms impart vitality to democracy.

The Six Freedoms.
(Article 19)

All citizens shall have the right to –

1. freedom of speech and expression;
2. assemble peaceably without arms;
3. form associations and unions;
4. move freely throughout the territory of India;
5. reside and settle in any part of the territory of India;
6. practise any profession, or carry on any occupation, trade or business.

IV A. Right to Freedom of Speech and Expression.

Freedom of thought finds manifestation in the freedom of speech and expression. This is the first necessary freedom in the fight against tyranny, oppression and arbitrary use of authority. It includes the right to persuade others to one’s own views and opinions. Freedom of expression is vast in scope. One’s ideas and opinions can be conveyed verbally or in written form, through a variety of media – print, theatre, films, radio, television, internet etc. Though originally the expression ‘freedom of the press’ was used, in contemporary society it includes the whole of mass media. ‘The press’ is considered the fourth estate, is one of the pillars of democracy and is necessary to defend all the rights and freedoms. Freedom of speech and expression necessarily includes the freedom to criticize the government and point out its failures and mistakes. Excessive censorship leads to authoritarianism. Censorship as a curtailment of the freedom of speech and expression was the first casualty of totalitarianism.

14 Stated in Jean-Jacques Rousseau’s important work - The Social Contract – published in 1762
15 John Locke stated this in his social contract theory, in The Two Treatises of Government, Chapter 2, This work was published by him anonymously in 1689
16 Article 19 of the Indian Constitution
expression need not always be exercised by the government. The fatwas against Salman Rushdie, Taslima Nasreen or the agitation against the Danish cartoonist, the biographer of Shivaji or against certain films that deal with religious, caste or other forms of discrimination / exploitation can also hinder the exercise of this right.

IV B. Right to Assemble Peaceably and Without Arms

This is an extension of the right to freedom of speech and expression. To hold public meetings, rallies and demonstrations is a fundamental right. People need ways and means especially to show their dissent or disenchantment with the government. However, in recent times, the call to ‘bandhs’ have tended to disrupt public life and infringe the right to work or study. Courts have disapproved the tendency to call bandhs and have imposed fines on the organisers of such bandhs.

IV C. Right To Form Associations or Unions

This is another important democratic right. Individuals need to associate with others to further common objectives. It is necessary to foster socio-cultural diversity and an open society. Authoritarian societies tend to restrict this right, thereby forcing people to promote secret or underground organizations and disruptive activities. Further, this right is necessary to protect the interests of the working class by organizing trade unions for collective bargaining or other collective action. Though the proliferation of political parties may be frowned upon by some, it is important in a democracy for every shade of opinion or any social, economic or political interest to organize and mobilize for the cause of that ideology or interest.

IV D. Right to Move Freely Throughout the Territory Of India

Unlike the U.S.A. where there are two citizenships – of the federation and the State – India has single citizenship. This is all the more reason why there must be freedom to move throughout the territory of India. Besides, in the contemporary setting, it is an economic and social necessity for people to move freely throughout the country. However certain restrictions are placed on free movement, as for example inner line permit is required to visit certain areas in north-eastern states. With the growth of internal tourism and its potential for economic development, there have been demands to do away with such permits. This right has the potential to promote national integration.

IV E. Right to Reside and Settle in Any Part of the Territory of India

A corollary of the right to move freely is the right to settle in any part of the territory of India. With the expansion of industry and services, and the need to maintain a modicum of equality of opportunity in matters of employment, it is imperative that citizens can reside and settle in any part of India. It promotes national integration too. Migration has become not merely a national, but a global phenomenon. However, there have been movements in certain parts of the country advocating the rights of the ‘sons of the
Attacks on persons from U.P. and Bihar, who had settled down in Mumbai for the past several years due to their livelihood, is a case in point. While the local people need to have opportunities for employment, equal opportunities for ‘outsiders’ cannot be denied as the right to reside and settle in any part of the country, as it stands today, is a fundamental right. When India advocates the movement of labour across the borders at the World Trade Organization, it would be anachronism to restrict this right within its own borders.

IV F. Right to Practise Any Profession, or to Carry on Any Occupation, Trade or Business

In the present times we may take it for granted that an individual can choose any profession or occupation. In fact, parents often encourage children to choose an occupation different from their own, in the hope of improving the economic condition. But at the time the Constitution was framed, and even today for a large group of people who lack educational and professional qualifications, caste-based occupation remains the only source of livelihood. The social pressure to continue with the traditional occupation continues to be a reality in India. That is why this right assumes its crucial importance. It provides an opportunity for the individual to break out of the traditional mould and launch on a career suited to one’s personality or tastes.

IV G. Reasonable Restrictions

All freedoms discussed above are subject to reasonable restrictions. Certain restrictions relate to specific items in the list. In general, these restrictions pertain to the interests of sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence or ‘in the interests of the general public’. Legislatures can pass laws restricting the six freedoms on account of any of the reasons cited.

V. RIGHT TO LIFE & PERSONAL LIBERTY

When, how and why can a person be deprived of his / her life and liberty? The answer to this lies in the rule of law. Practically all states have believed in the right of the state to deprive a person of his / her right to life and have practised / continue to practise the same. However, many advocates of human rights today believe that the state has no right to take away a person’s life. Many States have abolished death penalty. In India capital punishment is still legally valid though campaigns exist for its abolition.

V A. Deprivation of Life and Liberty

The Indian Constitution states: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court, 17 Article 21
through various judgments, has interpreted the right to life to include various human rights, particularly socio-economic rights, which are otherwise non-justiciable and cannot be enforced in courts of law. These include the right to live with human dignity; right to a healthy environment - which includes pollution free air and water and protection against hazardous industries; free education up to 14 years of age; right to privacy; right to shelter; right to livelihood; right to free legal aid; right to health; right to food and nutrition; and the right to fair and speedy trial. For further details on this issue, please see Chapter 1 – “1.8: Directive Principles of State Policy and the Practice of the Welfare State Model’.

The Constitution itself has laid down certain fundamental norms and procedures for deprivation of personal liberty. Other contexts for deprivation can be legislated upon by the Parliament; but are subject to judicial review.

Norms Laid Down for Punishment of a Crime (Article 20)

There has to be a law prior to the commission of the crime, which categorizes the act as a criminal offence.

- Penalty (punishment) cannot be greater than what the law prescribed at the time the offence was committed. For example, capital punishment cannot be awarded for a crime, if the law at the time of commission of the offence did not prescribe it.

- No person can be prosecuted and punished for the offence more than once. This is called the right against ‘double jeopardy’.

- No person accused of any offence shall be compelled to be a witness against himself / herself.

Confession made in police custody is not admissible in courts; only voluntary confessions made before a magistrate have legal validity. This clause is intended to prevent and deter custodial torture, though it continues even today.

Safeguards & Procedure for Arrest & Detention (Article 22)

- Detainees have a right to know why they are arrested, so that they can defend themselves.

- An arrested person has the right to consult a lawyer while in custody. Everyone accused of an offence has a right to be defended by a lawyer of his / her choice. Right to legal aid is a fundamental right. If a person does not have the means to hire a lawyer, free legal aid (at the state’s expense) must be given to the person. Even Ajmal Kasab, accused of terrorist acts in Mumbai on 26 November 2008, has a right to be defended by a lawyer. It would be a travesty of the spirit and letter of the Constitution, if no lawyer comes forward to defend an accused, no matter how grave a crime he / she may be accused of.
Every person who is arrested and detained in custody has to be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate. This provision is intended to prevent illegal and arbitrary arrests and detention, by providing for judicial supervision in all such contexts. The exceptions to this rule are if the arrested person is an “enemy alien” or has been arrested under any law providing for preventive detention.

**Rules Related to Preventive Detention (Article 22)**

Preventive detention is a controversial issue in human rights discourse, and was a subject of heated debate and discussion at the Constituent Assembly as well. It is a legacy of colonialism, having been in existence since 1818. Though there were strong voices against this provision in the Constituent Assembly, the prevailing social unrest led to its retention and the Constitution laid down the rules for enactment of legislation for the purpose of preventive detention. A summary of these rules is as follows:

1. A person cannot be detained for a period longer than 3 months, unless detained under the provisions of Article 22 (discussed above) or when an advisory board consisting of sitting or retired judges of High Courts or persons qualified to be such judges reviews the case and reports that there is sufficient cause to continue detention before the expiry of three months.

2. The authority making preventive detention has to communicate to the detainee at the earliest, the reasons for the detention so that he / she can make representation against the order.

3. If the detaining authority considers the disclosure of facts to be against public interest, it shall not be required to disclose the same.

4. The Parliament can make laws under which:
   a) the advisory body can be dispensed with under certain circumstances to detain a person beyond three months;
   b) Maximum period of preventive detention is determined; and
   c) The procedure to be followed by the advisory body is determined.

At various times, various draconian and repressive laws have existed which have enabled the government to use preventive detention. However, there have been abuses of such laws too. Due to this, under public demand, such laws have been repealed. But there has also been demand from some sections of society for the reintroduction of such laws. In the aftermath of the Mumbai terrorist attacks of 26 November 2008, the law of preventive detention is being given a new lease. While such measures may be necessary temporarily, it must be realized that preventive detention goes against fundamental rights of persons to have their life and liberty. For more discussion on preventive detention and how it violates human rights, please see discussion under Chapter 4 – I: Laws Related to Preventive Detention.
VI RIGHT AGAINST EXPLOITATION

Exploitation of a person by other persons has been a universal feature in human history. Slavery was a blatant form of it. Besides untouchability, various other forms of human exploitation exist in India. Women, children and weaker sections of society are often the victims of such exploitation. The Indian Constitution bans two such forms of exploitation – 1) traffic in human beings; and 2) beggar and other forms of forced labour. Practice of such forms of exploitation is a punishable offence. Bonded and other forms of forced labour continue to exist in spite of the Constitutional ban. Similarly, notwithstanding the Constitutional prescription that bans employment of children below the age of fourteen in hazardous employment, child labour continues to be rampant. Parliament has enacted enabling legislation to implement these bans. It is up to the government and society to enforce these bans and remove the exploitation of vulnerable sections of society. For further discussion on laws preventing exploitation, please see Chapter 3: Laws to Protect Human Rights.

VII. RIGHT TO FREEDOM OF RELIGION

India has been described as a land of spirituality and the home of world religions. Many religions have originated in India and others that came beyond the borders centuries ago have found adherents here. This country provided asylum to the Jews, Parsis and other persecuted religious groups. In spite of this tradition, there has also been bigotry and the country was partitioned due to intransigence based on religious ideology. In Europe religious intolerance had to give way to mutual co-existence. To build a humane, prosperous modern society, it is imperative that religious harmony is maintained. The wise leadership of the country did not succumb to the demand to proclaim India a Hindu theocracy; instead it established through the Constitution a secular republic nation that was not against religions but one that respects all religions equally.

Religious freedom is enshrined in the Constitution as a fundamental right. The key provision is Article 25, which states: “Subject to public order, morality and health and to the provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.” Freedom of religion cannot be used to infringe other personal freedoms guaranteed by the Constitution. Similarly, social evils prevalent under the garb of religion such as sati, child marriage, preventing widows from remarrying, devadasi system, certain practices that go against health or hygiene and refusal to take modern medicine for diseases etc., cannot be tolerated. Religion cannot be used to create social disharmony or public disorder. Neither should religion stand in the way of social reform. Subject to these limitations, every person has a right to freedom of conscience and the right to freely profess, practise and propagate religion.

Religion is a collective social phenomenon and every religion has a set of dogmas and rules of conduct. Every person has a right to believe in the doctrines of the religion he

---

18 Prescribed by Article 23 of the Indian Constitution
19 Prescribed by Article 24 of the Indian Constitution
she is born into, practise its rituals and follow its rules. A person also has the right to dissent from its doctrines and practices, forsake it and embrace another religion. Freedom of religion includes the right to be an agnostic, an atheist or to follow no religion. Likewise, this right includes not only to profess and practise a religion of one’s own choice, but also to propagate the same. Certain religions such as Judaism or Zoroastrianism are based on ethnicity and do not accept converts. For others such as Islam and Christianity, propagation of religion is an essential tenet of their belief. This has become a contentious issue. Certain Hindu religious and political groups oppose the idea of conversion and claim that force, fraud and inducements are used to convert people belonging to the scheduled castes, tribes or other weaker sections of society. On the other hand Christian organizations attest that they work among such groups of people only to promote their social and economic progress and if conversions do occur, they are voluntary. In Stanislaus v State of Madhya Pradesh the Supreme Court has observed that the right to propagate religion does not include a right to forcible conversions. The Rajasthan State Assembly passed an anti-conversion law in March 2008 which was reserved by the Governor for the assent of the President. According to a newspaper report, the Attorney General of India had opined that the law violates Articles 25 (1) and 26 of the Constitution.

Freedom of religion also includes the right to manage the religious affairs subject to the conditionalities already cited. These include a) to establish and maintain institutions for religious purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law. However, the State can make laws “regulating and restricting any economic, financial, political or other secular activity which may be associated with religious practice.”

**VIII. CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES**

A misconception has arisen in the minds of some people in India that religious rights are a part of rights of minorities. Right to freedom of conscience and religion is a right of every citizen, whether he / she belongs to a majority or a minority community. It is basically an individual right. What are commonly called minority rights are classified by the Constitution as cultural and educational rights. These are basically group or social rights.

India is not merely a multi-religious country; it is multi-ethnic, multi-lingual and multicultural. In fact a majority of the people can claim to be members of one minority community or other. To protect the cultural and educational rights of diverse social groups in India, and to preserve their identity, the Constitution provides for right to conservation of culture and language. One of the best ways to preserve culture and

---

20 AIR 1977 SC 908
22 Article 26 of the Indian Constitution
23 Article 29(1) states: “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.”
language is to establish and administer educational institutions – a right that is guaranteed by the Constitution. 

The protection of minorities was one of the major concerns of the Constituent Assembly. This became urgent in the aftermath of Partition and the communal carnage associated with it. The guarantees of fundamental rights recognizing freedom of religion and cultural and educational rights should be seen in this perspective. India has prided itself in its secular character and the protection it affords to all its minorities. Given this background, the communal violence in Gujarat in 2002 aroused great anxiety in India as well as the world over, particularly due to state complicity in the same.

The attacks on Christians in Kandhamal, Orissa have also generated much concern. Thousands of people have remained in refugee camps for months, afraid to go back to their homes. The State government has been accused of inactivity in protecting the life and property of these people. According to a recent report, one of the three judges of the Supreme Court bench hearing a petition on the matter observed: “We are a secular country. And (we) cannot allow the persecution of minorities. It is the duty of the State government to protect the minority community.”

IX. RIGHT TO CONSTITUTIONAL REMEDIES

Recognition of rights by the Constitution and laws is important. However, that does not prevent the violations of rights. Nearly sixty years after the constitutional order became a reality, violations of rights continue by state agencies, individuals and groups. How do we deal with this and safeguard the enjoyment of rights? This is where the last of the fundamental rights comes into play. Both India and the world recognized the remedy. UDHR, in Article 8, prescribed that “Everyone has the right to an effective remedy by the national tribunals for acts violating the fundamental rights granted to him by the constitution or law.” This prescription is translated into a fundamental right to legal remedies for violation of fundamental rights, by the Indian Constitution. Dr. Ambedkar described this provision “as the very soul of the Constitution and the very heart of it.” It mandates the judiciary as the guardian and defender of fundamental rights. High Courts too share the same power under Article 226 of the Constitution. Thus the higher judiciary in India has the power to issue writs and aggrieved persons can approach the courts for the enforcement of fundamental rights. For more details on writs, please see Chapter 1 – 1.13: Right to Constitutional Remedies.

---

24 Article 30(1) states: “All minorities, whether based on religion or language, shall have the right to establish and administer educational institutional institutions of their choice.” Article 30 (2) goes on to state that the State in granting aid shall not discriminate “against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.”

25 ‘Resign If You Can’t Protect Minorities, SC to Orissa Government’, The Indian Express, 6 January 2009

26 According to Article 32 clause (1), “The right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this Part is guaranteed.” And clause (2) provides that: “The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate for the enforcement of any of the rights conferred by this Part.”

27 Dr. B.R.Ambedkar stated so during the Constituent Assembly debates on Article 32.
X. FUNDAMENTAL RIGHTS IN ACTION

No country could have been more symbolic than India to represent both the age-old oppressions, inequalities, fellers individual and collective, as well as the longing, aspiration and struggle to throw away colonial oppression and obtain political freedom. Simultaneously, the struggle for individual freedoms and social and economic liberation was going on. It was like the giant awakening from the long slumber dreaming of a new dawn. As the world set forth its new vision through the UDHR, India too gave concrete shape to translate that vision into reality – by framing a noble Constitution. Practically all the rights mentioned in the Universal Declaration are visible in the Constitution. But, just as two separate covenants were made by the United Nations after the Declaration, India too made two lists. The more readily attainable rights were listed in the Fundamental Rights and those which required more economic resources for realization, in the Directive Principles of State Policy.

Sixty years have elapsed since those halcyon days. The excitement of the Declaration and the euphoria of independence and constitution making in India have faded. New generations have peopled the world and India. What has happened to the proclamations and the promises we made to ourselves? India today is hailed as the world’s largest democracy. Sceptics were aplenty when India advocated universal franchise, obviously one of the components of the Universal Declaration. (Article 21.3) How could the illiterate, ignorant, poor people understand and exercise franchise wisely? Other nations with similar conditions fell by the wayside. But India stood still, and marched on. The illiterate, ignorant, poor people were able to shake off the shackles of authoritarian Emergency. How could a people who have been kept voiceless and submissive under an oppressive social system for centuries become as assertive and strident as witnessed in contemporary times?

The answer, obviously, cannot be pinpointed to just one cause alone. But among the many, one stands out. That is the incorporation of fundamental rights in the Constitution. Democratic system and governance is important. But what are structures without the soul? What the Bill of Rights did to the American people, the Fundamental Rights did to Indians. Once a people cherish their freedom, it is not easy to shackle them. For the first time equality and liberty were enshrined in the hearts of Indians legally.

Our experience with the working of the Constitution and more specifically with fundamental rights has not always been satisfactory. Right to property is no more listed as a fundamental right. Of course, property right in India was always contentious. Where property was always an instrument of oppression, its incorporation as a fundamental right was bound to be used as an instrument in the continuation of inequities. It was bound to frustrate the efforts in achieving social and economic transformation. Consequently, constitutional amendments were effected which in turn tended to jeopardize not merely the right to property, but the concept of fundamental right itself. Hence by a final constitutional amendment right to property was deleted from the list of fundamental rights. In the meanwhile the doctrine of ‘the basic structure’ of the Constitution came into effect through judicial review which pronounced that individual fundamental rights are subject to constitutional amendments, but the concept of fundamental rights are basic to the constitutional structure and altogether cannot be done away with.
While recognizing the setbacks to fundamental rights in certain areas, we must nevertheless not lose sight of the significant gains in others. The judiciary in India, in general, has performed its role as the guardian of fundamental rights with distinction, barring the Emergency phase of 1975. It has played a vital role in broadening the understanding and interpretation of rights. The right to property may have been deleted from fundamental rights, but the right to live with dignity has been emphasized by judicial pronouncements. While the Constitution defines the right to life mainly in negative terms, courts have tried to interpret its positive content. Right to livelihood, shelter, health, education, etc. have emerged as positive interpretations of the right to life. Similarly, legal aid is today recognized as a right and has led to legislation on free legal aid.

Civil society too has played an active role in broadening our vision of fundamental rights and promoting their enjoyment. Public interest litigation (PIL) and the right to information (RTI) have emerged in public consciousness due to the ardent espousal of the same by civil society supported by judicial pronouncements. For more details on RTI, please see Chapter 6 – H II: The Right to Information Campaign.

Thus, the last six decades have witnessed significant progress in the understanding and enjoyment of fundamental rights in the Constitution. But that is not the end of the story. Millions of people are still not in the ambit of full enjoyment of fundamental rights. Many more that the Universal Declaration recognised as basic to human dignity, particularly the social and economic rights, need to be converted to legal and hence, justiciable rights. And those that we do enjoy need to be guarded against encroachments.

**SUGGESTED ACTIVITY**

The activities outlined below are to be done in groups, facilitated by the concerned trainer / educator.

1. Make a chart listing out all the fundamental rights and directive principles stated in the Indian Constitution, and their corresponding provisions in the UDHR. Highlight any difference in wordings or ambit of the right stated. Compare the chart of your group with those made by other groups, and discuss the outcome.

2. Make a chart listing out all the fundamental rights guaranteed by the Indian Constitution. In one column, list the rights included under each such provision – for example, the right to life provision would include “right to life with dignity, right to health, right to livelihood” etc. Make another column stating the rights which ought to be included but have not been. Make a third column in which you comment on the exercise of this right in reality. Compare the chart of your group with those made by other groups, and discuss the outcome.

3. Form six groups to discuss the six freedoms stated in the Constitution. Each group should depict the relevant freedom in the form of a skit, and present the same. The skit could also contain situations that challenge / threaten the exercise of the freedoms.
BIBLIOGRAPHY


LAWS TO PROTECT HUMAN RIGHTS

– Shweta Shalini

India is a modern democratic state. It has a written Constitution, which lays down three pillars of the government - the executive, legislative and judiciary, with their respective roles and functions. The Constitution also guarantees the rights of its citizens just as the Universal Declaration of Human Rights does, including the right to life, the right to freedom of speech, the right to equality and the equal protection of the law. India has an established legal system geared towards providing justice to all, with a clearly defined hierarchy of courts. Powers are vested in the Supreme Court and the High Courts to protect the fundamental rights of the people.

In India, there are many marginalized groups whose members have been systematically discriminated against. These include women, children, dalits, religious and linguistic minorities, physically / mentally challenged persons, adivasis, migrant labourers, refugees, internally displaced persons, persons with HIV/AIDS, persons with alternative sexuality and persons living below the poverty line. These and other similar groups experience violence, discrimination, oppression and social exclusion on a daily basis. Since such persons are vulnerable to a violation of their human rights, it is logical that laws to protect human rights would have to keep in mind the experiences and special needs of such groups, as well as the socio-economic, legal and political obstacles faced by them in enjoying their human rights in reality.

Constitutional Basis for Laws to Protect Human Rights

The Indian Constitution came into force in January 1950. The Preamble, fundamental rights, directive principles of state policy and fundamental duties constitute the human rights framework in our Constitution. Civil and political rights were included largely into the Fundamental Rights chapter, which could be enforced judicially, while a large number of social, economic and cultural rights were included in the chapter on Directive Principles, which are not judicially enforceable. One of the founding principles in the chapter on Fundamental Rights is the concept of equality and non-discrimination. The equality principle implies that

a) among equals, the law should be equal and equally administered; and
b) unequals cannot be treated as equals.

Two kinds of equality exist—de jure (formal) and de facto (actual) equality. The Constitution-makers formulated special provisions for protecting and furthering the rights of vulnerable groups, in order that members of such groups would not only enjoy formal equality, but also enjoy equality in reality. In order to overcome obstacles posed by several centuries of
discrimination and oppression against such groups, and a loss of opportunity for their self-development, special provisions were made to provide equal opportunity in public employment. Groups identified and specified in the Constitution include women, children, schedule castes and tribes, “backward classes” and minorities.

I. LAWS PROTECTING WOMEN

I A. The Indian Constitution

Fundamental rights and directive principles of state policy are two chapters in the Indian Constitution which form the backbone for protective legislation for women. The Constitution of India guarantees equality of sexes and in fact grants special provisions for women, including:

- The government shall not deny to any person equality before law or the equal protection of the laws;¹
- The Government shall not discriminate against any citizen on the ground of sex;²
- To make special provision enabling the State to make affirmative discriminations in favour of women. Moreover, the government can pass special laws in favour of women;³
- Guarantees that no citizen shall be discriminated against in matters of public employment on the grounds of sex;⁴ and
- Directs the State to make provision for ensuring just and humane conditions of work and maternity relief.⁵

Above all, the Constitution imposes a fundamental duty on every citizen to denounce practices derogatory to the dignity of women.⁶

In CB Muthamma IFS vs. Union of India,⁷ the Supreme Court held provisions of the Indian Foreign Service rules that discriminated against married women to be unconstitutional. The petitioner came before the court challenging the rules of the Indian Foreign Service that prohibited the appointment of married women. In Air India vs. Nergesh Meerza,⁸ the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it found the same to be arbitrary and abhorrent to notions of a civilized society.

¹ Article 14
² Article 15
³ Article 15 (3)
⁴ Article 16
⁵ Article 42
⁶ Articles 15 (A) (e)
⁷ (1979) 4 SCC 260
⁸ AIR 1981 SCJ 348
The apex court said that the Air India employees service regulations providing that the air hostesses have to retire at the age of 30 or on marriage, whichever occurs earlier, was discriminatory because none of these conditions applied to the male stewards. In *Gita Hariharan vs. Reserve Bank of India*⁹, the Supreme Court, through a beneficial interpretation, held that under the Hindu Minority and Guardianship Act 1956, the mother could act as the natural guardian of the minor during the father’s lifetime if the father was not in charge of the affairs of the minor. In *Vishaka and others vs. State of Rajasthan*,¹⁰ the Supreme Court held that sexual harassment of working women at their place of an employment amounts to violation of the right to gender equality and right to life and liberty, and clearly violated fundamental rights guaranteed under the Indian Constitution. In *Apparel Export Promotion Council vs. A.K. Chopra*,¹¹ the Supreme Court reiterated its judgment in *Vishaka’s case*, and stated that sexual harassment of women at the workplace resulted in a violation of the fundamental right to gender equality enshrined in the Indian Constitution. The Court further stated that international instruments such as the CEDAW casts responsibility on the state to take appropriate measures to prevent such violations.

The Constitutional provisions on protection and promotion of women’s rights indicate a keenness on the part of the Constitution-makers to establish an egalitarian society. In addition to the Constitutional provisions, a number of laws have been enacted. However, a patriarchal mindset, an unfavourable social environment, illiteracy of women and a lack of awareness of their rights coupled with other socio-economic factors such as oppressive traditions, have posed obstacles to the actual enjoyment of human rights by women.

I B. The Sati Prevention Act, 1987

The law prohibiting *sati*¹² is the outcome of intense public action and debate that rose after Roop Kanwar, an 18-year-old widow, was burnt to death on her husband - Maal Singh Shekhawat’s funeral pyre in Rajasthan in 1987. This incident had been followed by a number of congregations, ceremonies and festivals, and attempts were made to collect funds for the construction of a temple at the site where the incident took place, by way of glorifying the crime. Concerned members and organizations of civil society had called Roop Kanwar’s burning a murder and demanded a stringent Central law not only to stamp out the oppressive practice of *sati*, but also to deter its glorification.¹³ Such a law was passed in 1987.¹⁴

---

⁹ 1999 2 SCC 228  
¹⁰ AIR 1997 SC 3011  
¹¹ AIR 1999 SC 625  
¹² The legal definition of *sati* is the act of burning alive of a widow or a woman on the funeral pyre of the husband. S. 2 (c) of The Commission of Sati (Prevention) Act, 1987  
¹³ For more details of the women’s movement’s engagement with the issue, please see Nandita Gandhi & Nandita Shah, *The Issues at Stake: Theory and Practice in the Contemporary Women’s Movement in India* (New Delhi: Kali for Women, 1992) at pp. 222-224  
Sixteen years after the incident, in January 2004, a special court acquitted all 11 persons accused of glorifying sati in Roop Kanwar’s case, for lack of evidence, after many witness turned hostile. In the absence of any specific law dealing with sati at the time of the incident, the accused were booked under provisions related to murder under the Indian Penal Code.\(^\text{15}\) The inadequate response of the legal system is evident as in Roop Kanwar’s case the trial started after 15 years of incident. There are many criticisms against the law and amendments are still awaited for improving the effectiveness of this law.\(^\text{16}\) The law reverses the burden of proof on to the accused,\(^\text{17}\) making an exception to the general rule of presumption of innocence until proven guilty. Another provision makes the concerned woman punishable for the crime, without taking into consideration that in reality, women are forced to commit sati by the community and are therefore victims.

**IC. Dowry Prohibition Act, 1961**

The Dowry Prohibition Act was passed in 1961, and applies to all the communities in India. The Act defines dowry as any property or valuable security given or agreed to be given either directly or indirectly by one party to the marriage to another or by the parents or by any other person to either party to marriage. To attract the legal definition of dowry, the property should be given at the time of, before or any time after marriage, but has to be in connection with the marriage. The women’s movement started a campaign against dowry harassment and deaths in the late 1970s and early 1980s, when women’s deaths by fire were put down as suicides by the police, and even these suicides were rarely seen as being due to dowry harassment.\(^\text{18}\)

The Dowry Prohibition Act was amended in the year 1984 and again in the year 1986 to make the Act stricter than before and also to make its implementation effective. At present, under criminal law, the following provisions exist as a response to the menace of dowry and the consequent harassment to women:

- Criminalizes giving and taking of dowry (Dowry Prohibition Act, 1961)
- Provides punishment for ‘dowry death’ (S. 304B of the Indian Penal Code)
- A general provision on abetment to suicide; also applicable in a situation of a woman committing suicide due to dowry harassment (S. 306 of the Indian Penal Code)


\(^{16}\) For details of recommendations made by the National Commission for Women in amending this law, please see [http://ncw.nic.in/page2.htm](http://ncw.nic.in/page2.htm) (accessed on 27 January 2009)

\(^{17}\) Section 16

\(^{18}\) Some incidents around which the campaign rallied included the killings of Tarvinder Kaur (Delhi), Kanchan Chopra (Delhi), Debjani Bhaukek (Kolkata), Nivedita Dutta (Kolkata), Manjushree Sarda (Pune), Sudha Goel (Delhi) and Vibha Shukla (Mumbai) by their husbands / husband’s family members in relation to dowry. For more details, see Radha Kumar, *The History of Doing: The Women’s Movement in India* (New Delhi: Verso and Kali for Women, 1993) at pp. 115-126 and Nandita Gandhi & Nandita Shah, *The Issues at Stake: Theory and Practice in the Contemporary Women’s Movement in India* (New Delhi: Kali for Women, 1992) at pp. 52-61 and 217-220.
Criminalizes harassment to wife by husband and relatives in relation to dowry (S. 498A of the Indian Penal Code)

Makes it mandatory for the police officer to send the body for post-mortem examination if the death of the woman occurred with in seven years of marriage as a result of suicide or under other suspicious circumstances. (S.174 of the Criminal Procedure Code)

The burden of proof in dowry deaths is reversed, according to which the Court has to presume that a dowry death was caused by the person who is shown to have subjected the woman to cruelty or harassment soon before her death. (S. 113B of the Indian Evidence Act)

In addition, under civil law, dowry harassment is an act that constitutes cruelty, based on which remedies under matrimonial law may be sought.

One of the landmark judgments is Pratibha Rani’s case. In this case, the Supreme Court said that property gifted to the woman (clothes, jewellery, valuables etc.) was meant for the exclusive use of the wife, and was only entrusted to the husband or his relatives for safekeeping. If they failed to return her property on demand, they would be prosecuted for the offence of criminal breach of trust under S. 406 of the Indian Penal Code.

The law that prohibits dowry has been in existence since 1961. However, till date, the practice of giving and taking dowry has not been abolished. Legislative and judicial efforts to eradicate the evil system of dowry have failed to make any dent on the alarming rise of incidence of dowry-related harassment and death system. The ineffectiveness of dowry-related laws indicates that success of a law rests in a simultaneous change in social attitudes, and an awareness of legal rights among women.

ID. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1996 (PNDT)

Son preference is one of the most evident manifestations of gender discrimination in our society. Sex- selection has become a common practice and the technologies that are misused for this purpose are becoming more sophisticated. By indulging in the practice of sex-selective abortions, the perpetrators not only violate the law but also the code of ethics and conduct of medical professionals. Sex-selective abortions / female feticide constitutes a violation of human rights of the girl child and women to life, right to equality and non-discrimination on the ground of sex.

In response to the phenomenon of sex-selective abortion, a campaign was commenced in 1986, initiated by a cross-section of society including women’s groups and health

---

19 Pratibha Rani vs. Suraj Kumar 1985 (2) SCC 628
20 Though S. 406 is not specifically intended for situations concerning dowry, the Supreme Court applied it to situations of dowry-related harassment, keeping in mind the plight of married women.
activists. The campaign resulted in a state enactment in Maharashtra, followed by a central legislation - the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PNDT) Act 1994, which is applicable to the entire country. This law provides for the regulation of the use of pre-natal diagnostic (PND) techniques for the purpose of detecting genetic abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex-determination leading to female foeticide.22

It prohibits the use of prenatal diagnostic test to determine sex of the foetus, and abortion of healthy female fetuses. The law also bans advertising of PND techniques, and has provisions for suspending registrations of laboratories and clinics, investigation of complaints, and punishment for various offences under the law.

Although the law has been in existence since 1994, the 2001 census indicates a sharp decline in the number of girls per 1000 boys in the 0-6 age group, as shown in Table 1 below. This is a clear illustration of the ineffectiveness of the law in curbing sex-selective abortions. Maharashtra, Punjab, Haryana, Himachal Pradesh, Gujarat and Tamil Nadu have steeper declines in the sex ratio as compared to other states. Within Maharashtra economically better off districts such as Aurangabad, Sangli and those on the ‘sugar belt’ show the most adverse sex ratios.23

<table>
<thead>
<tr>
<th>Year</th>
<th>Sex Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1961</td>
<td>976</td>
</tr>
<tr>
<td>1971</td>
<td>964</td>
</tr>
<tr>
<td>1981</td>
<td>962</td>
</tr>
<tr>
<td>1991</td>
<td>945</td>
</tr>
<tr>
<td>2001</td>
<td>927</td>
</tr>
</tbody>
</table>

Source: 2001 Census

A public interest litigation was filed by two organizations - CEHAT and MASUM and an individual activist – Sabu George in 2000, seeking to activate the central and state governments for rigorous implementation of the central legislation. In 2003, the Supreme Court issued orders and elaborate guidelines for an effective implementation of the PNDT Act.

I E. Labour Laws & Women

Issues pertaining to women’s rights at the work place have rallied around improving the safety, health and welfare of women in factories and other places of work, minimum

23 For further details of district-wise break up of sex ratios in Maharashtra, please see http://www.cehat.org/pndt.html (accessed on 27 January 2009)
wages, equal pay for equal work, maternity benefits, child care facilities, provisions for adequate rest and leisure, prevention of discrimination and sexual harassment at the workplace. Central legislations in place include:

- **The Equal Remuneration Act, 1976** - To provide equal remuneration to men and women workers for same work or similar work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law.

- **Maternity Benefit Act, 1961** – to provide maternity leave and benefit in order to protect the dignity of motherhood and gender justice. Recent judgment empowers the Central Government to revise the medical bonus after every three years.

- **The Factories Act, 1948** - The Act has many provisions protecting women at the workplace, including issues pertaining to occupational safety, provision of sanitation and creche facilities.

- **The Mines Act, 1952** - prohibits the employment of women underground, and provides for restricted timings of work for women employed above the ground (between 6 a.m. and 7 p.m.)


A crucial issue related to safety of women at workplaces is the issue of sexual harassment at the workplace. Sexual harassment is an expression of male power over women that sustain patriarchal relations. Sexual harassment at work is an extension of violence in everyday life and is discriminatory and exploitative. Studies conducted by National Commission for Women show that about 47% of working women in India have experienced some form of sexual harassment over the course of their work. Yet it is still not viewed as a crucial problem affecting women’s enjoyment of their human rights. No codified law exists on the issue at present, although there are ongoing efforts at formulating a law on the issue. The Supreme Court pronounced a landmark judgment on sexual harassment of working women in 1997. In this judgment, the court stated that sexual harassment of working women amounts to violation of rights of gender

24 See Ss.19, 22(2), 27, 42(1)(b), 48, 66, 79(1) and 114
27 Vishaka & others vs. State of Rajasthan AIR 1997 SC 3011
equality. As a consequence it also amounts to violation of the right to practice any profession, occupation and trade. The Court laid down the definition of sexual harassment\(^{28}\) as well as provided guidelines for employers to redress and prevent sexual harassment at workplace. The ruling puts the onus on the employer or management to ensure discrimination-free working environment for the women employee. In this judgment, the Supreme Court relied upon the Convention for Elimination of All Forms of Discrimination against Women (CEDAW)- an international treaty that India has ratified and is hence bound by.

A survey conducted by Sakshi – a women’s organization – in 2001 indicates the prevalence of sexual harassment at workplace and the lack of awareness with regard to the Supreme Court guidelines.\(^{29}\) Despite a steady increase in the number of women in the labour force, only a handful of companies have appointed sexual harassment committees in conformity with the Supreme Court judgment. Many companies fear that awareness and prevention programmes in sexual harassment may lead to a surge in complaints and litigation, and an apprehension that baseless allegations of sexual harassment may be made against the colleagues / higher-ups, adversely affecting team work and productivity.

### I F. The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956, makes trafficking and sexual exploitation of persons for commercial purpose a punishable offence. The Act was passed to implement provisions of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, ratified by India on 9 January 1953. Although the Act was amended twice (1978 and 1986), it did not prove to be an effective deterrent to trafficking or sexual exploitation for commercial purposes. A proposed law - The Immoral Traffic (Prevention) Amendment Bill 2006 - aims to punish traffickers and provide for stringent punishment to offenders. This Bill provides for prosecution of clients; it defines the term “trafficking in persons” and provides for penalties; it also constitutes authorities at the central and state level to combat trafficking. The purpose is to check sexual exploitation and abuse of women and children and punish immoral trafficking and traffickers. The Bill also has provisions on rescue of victims of flesh trade and rehabilitative machinery.\(^{30}\)

The Bill has been controversial, as there exists a bone of contention between the Department of Women and Child on one hand, and sex workers’ associations, a section

\(^{28}\) According to the definition, sexual exploitation includes “such un-welcome sexually determined behavior (whether directly or by implication) as physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography, any other un-welcome, physical, verbal or non verbal conduct of sexual nature.”

\(^{29}\) According to the survey, while 80% women confirmed that sexual harassment existed at their workplace, only 23% women were aware of the Supreme Court guidelines on the subject; 66% of them said that the institutions had not effectively implemented the guidelines. For further details, see Mala Ramanathan & others, ‘Sexual Harassment in the Workplace: Lessons from a Web-based Survey’, *Indian Journal of Medical Ethics*, April-June 2005 (2), available at [http://www.issuesinmedicalethics.org/132oa047.html](http://www.issuesinmedicalethics.org/132oa047.html) (accessed on 27 January 2009)

\(^{30}\) For a comparative analysis of existing provisions and provisions in the proposed law, please see Department of Women and Child, [http://www.wcd.nic.in/proamendment.htm](http://www.wcd.nic.in/proamendment.htm) (accessed on 27 January 2009)
of the women’s movement and civil liberty groups on the other hand, on whether or not prostitution should be decriminalized. The different approaches – decriminalization and legalization - are based on differing perspectives on whether women are forced into or exercise a choice in sex work. National Commission for Women has suggested amendments to the Bill pertaining to welfare of the concerned women, including inclusion of their names in the voters’ list, introduction of a group insurance scheme, providing free education to the women through non-formal means, and schemes for vocational training for providing alternative sources of livelihood to those women who wish to opt out of prostitution.

I G. The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act (known as the DV Act) was enacted in 2005 after many years of intensive campaign by women’s organizations and other like-minded organizations and individuals. It acknowledges that domestic violence is a widely prevalent and universal problem of power relationships, more than the culture specific phenomenon called ‘dowry death’. More importantly, it marks a departure from the penal provisions, which hinged on stringent punishments, to positive civil rights of protection and injunction.

The DV Act defines violence as including physical, mental, economic and sexual violence. Its significant achievement lies in extending protection not only to wives, but also to sisters, mothers and widows and women in informal relationships in the nature of marriage, who face the threat of dispossession by the male members in their family. Aged women, unmarried girls and widows can now seek protection from their male relatives. Most importantly, it gives a woman a right to reside in the household even in cases where she does not own the home, based on the fact of being in a relationship and living in a shared household. The implementation of the Act is through protection officers who would act liaison between the woman, service-providers (such as medical professionals, counselors, shelter homes and the police) and courts of law. Concerned citizens, including women’s rights activists, maybe appointed as protection officers. The Act provides for speedy justice and further prescribes that the first hearing should be held within 3 days of the complaint filed in the court and must be disposed of with a period of sixty days of the first hearing.

Bulk of the litigation under this Act takes place in the magistrates’ courts. A report that studied how the Protection of Women from Domestic Violence Act was being implemented two years after it came into force, finds that much of the infrastructure, budgetary allocation and interaction between various departments is still lacking.

32 Further details of the amendments suggested by the National Commission for Women are available at http://ncw.nic.in/page3.htm. (accessed on 27 January 2009)
34 Section 12
### Women’s Rights under Criminal Laws

Provisions under the Indian Penal Code (IPC), dealing with protection of women’s rights, are summarized in the table below. There are many other provisions in other criminal law in India for protection of women’s rights.

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Section under the Indian Penal Code</th>
<th>Contents</th>
<th>Classification</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>294</td>
<td>Obscene acts and songs</td>
<td>Cognizable and Bailable</td>
<td>3 months or fine or both</td>
</tr>
<tr>
<td>2</td>
<td>304 – B</td>
<td>Dowry death</td>
<td>Cognizable and Non-Bailable</td>
<td>Not less than seven years</td>
</tr>
<tr>
<td>3</td>
<td>354</td>
<td>Assault or criminal force women with intent to: outrage her modesty</td>
<td>Cognizable and Bailable</td>
<td>2 years or fine or to Both</td>
</tr>
<tr>
<td>4</td>
<td>372 – 373</td>
<td>Selling and buying minor for purpose of prostitution</td>
<td>Cognizable and Non-Bailable</td>
<td>10 years and fine</td>
</tr>
<tr>
<td>5</td>
<td>375</td>
<td>Rape</td>
<td>Cognizable and Non-Bailable</td>
<td>Not less than seven years</td>
</tr>
<tr>
<td>6</td>
<td>494</td>
<td>Bigamy: marrying again during lifetime of husband or wife</td>
<td>Non-Cognizable and Bailable</td>
<td>Seven years and fine</td>
</tr>
<tr>
<td>7</td>
<td>497</td>
<td>Adultery</td>
<td>Non-Cognizable and Bailable</td>
<td>Five years or fine or both</td>
</tr>
<tr>
<td>8</td>
<td>498 – A</td>
<td>Husband or relative of husband of a woman subjecting her to cruelty</td>
<td>Cognizable and Non-Bailable</td>
<td>Three years and fine</td>
</tr>
<tr>
<td>9</td>
<td>509</td>
<td>Word, Gesture or act intended to insult the modesty of a woman</td>
<td>Cognizable and Bailable</td>
<td>One year or fine or both</td>
</tr>
</tbody>
</table>

The Supreme Court has given a number of significant judgments on women’s rights in relation to criminal law. In *Vishal Jeet vs. Union of India*, the court issued directions to all state governments and union territories to eradicate child prostitution, *devadasi* and *jogin* trade houses, and rehabilitation of the victims rescued.\(^{36}\) In *Upendra Baxi vs. State of Uttar Pradesh*, the Supreme court ordered authorities of protective homes to protect the health of inmates without conflicting with the interests of human rights and dignity of women.\(^{37}\) In *Delhi Domestic Working Women’s Forum vs. Union of India*, which involved sexual assault of four

---

\(^{36}\) AIR 1990 SC 1412  
\(^{37}\) 1983 2 SCC 308
poor tribal women who were domestic workers, by seven army officers in a train, the
Supreme Court laid down a number of guidelines pertaining to the victim’s access to
legal processes for justice. It also asked the National Commission for Women to devise
guidelines for compensation and rehabilitation of rape victims. In Sheela Barse vs. State of
Maharashtra, the Supreme Court held that female suspects must be kept in a separate lock
up in the police station and not kept where male suspects are detained.

II. PROTECTIVE LAWS RELATED TO CHILDREN

II A. Policy & Institutional Framework Related to Children’s Rights

The Constitution of India, National Policy for Children and many other policies and
legislations have been drafted to protect children’s rights in India. The Government of
Accordingly, the government is taking action to review the national and state legislation
and bring it in line with the provisions of the Convention. It has also developed
appropriate monitoring procedures to assess progress in implementing the Convention,
involved all relevant government/ministries/departments, international agencies,
non-governmental organizations, and the legal profession in the implementation and
reporting process, publicized the Convention, and sought public inputs for frank and
transparent reporting. India is also a signatory to the World Declaration on the Survival,
Protection and Development of Children. In pursuance of the commitment made at the
World Summit, the Department of Women and Child Development under the Ministry
of Human Resource Development has formulated a National Plan of Action for Children.
Most of the recommendations of the World Summit Action Plan are reflected in India’s
National Plan of Action.

India adopted the National Policy on Children in 1974. The policy reaffirmed the
constitutional provisions and stated “it shall be the policy of the State to provide
adequate services to children, both before and after birth and through the period of
growth to ensure their full physical, mental and social development. The State shall
progressively increase the scope of such services so that within a reasonable time all
children in the country enjoy optimum conditions for their balanced growth.” The
Integrated Child Development Services (ICDS) has set up balwadis, day care centres
and state-run pre-primary schools.

The sex ratio for children has steadily declined, and is largely attributed to son
preference and discrimination against the girl child leading to a lower female literacy.
For more details, see I D above. The slogan of the Indian government for the girl child
campaign was “A Happy Girl is the Future of our Country”. A sustained educational
campaign by the government and the NGOs has been started to ensure that baseless
discrimination against the girl child is eliminated.

In India, 90% of street children are working children with regular family ties who live
with their families, but are on the streets due to poverty and their parents'
unemployment. The remaining 10% are either working children with few family ties who view the streets as their homes or abandoned and neglected children with no family ties. The National Policy for Children 1974, emphasizes the provision of equal opportunities for the development to all children during their growing years. Policy stresses programs to maintain, educate, and train destitute children and orphans. Policy is also to protect children against neglect, cruelty, and exploitation, but this is only on paper. Various other schemes have been planned by the Union Welfare Ministry in association with UNICEF. Extending extra health facilities, establishing nutrition programs, providing vocational training, protecting children from abuse, distributing dry-food polypacks, providing night shelters, providing ration cards, and creating bathing and toilet facilities would go far in improving the quality of life and the future of street children in India 40.

II B. Indian Constitution and Child Rights

The following are Constitutional provisions related to child rights:

**Fundamental rights**

The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.41

No Child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.42

**Directive Principles**

Indian Constitution specified that the State to direct its policy.43

The State shall, in particular, direct its policy towards securing:-

(e) That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessary to enter avocations unsuited to their age or strength.44

The judiciary has actively safeguarded the rights and interests of children. In a 1993 judgment, it was held that the right to life enshrined in Article 21 of the Constitution guarantees a fundamental right to education.45 Many years later, Article 21A was inserted by the 86th Amendment Act providing free primary education to all.46 In *M.C.Mehta vs. State of Tamil Nadu* 47 the Supreme Court issued guidelines for improving the conditions of children working in match factories – including safety, recreation, medical care, insurance and diet. In *Bandhua Mukti Morcha vs. Union of India* 48 the

41 Article – 21 A
42 Article 24
43 Article 39
44 Article 39
45 Unni Krishnan vs. State of AP, AIR 1993 SC 217
46 Article 21A states: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.
47 AIR 1997 SC 699.
48 AIR 1984 SC 802
court emphasized that forced labour, including children held in bondage, was a violation of fundamental rights. In *Neerja Chaudhary vs. State of Madhya Pradesh*[^49] the Supreme Court emphasized on identifying, releasing and rehabilitating bonded labourers, including children, and stated that the government’s failure to do so would be violative of fundamental rights guaranteed by the Indian Constitution.

II C. The Child Marriage Restraint Act 1929

To eradicate the evil of child marriage, the Child Marriage Restraint Act was passed in 1929. Due to consistent public demand for changes in the Child Marriage Restraint Act, 1929, the Prohibition of Child Marriage Act was enacted in 2006. This law prohibits solemnization of child marriages, making it an offence punishable under the Act. ‘Child’ under this law refers to a male younger than twenty-one, or a female younger than eighteen. Those who perform, conduct or direct any child marriage are punished under the law. Unlike the earlier legislation, in the newer legislation, the child who has been married has the option to go to the court of appropriate jurisdiction (district court or family court, as the case may be) and get his/her marriage declared cancelled. Provisions exist for maintenance and residence of female children who are parties to the child marriage.[^50] The Act has been criticized on several issues including for failing to create accountability on government officials in whose areas child marriages are solemnized, as they turn a blind eye to the practice.[^51]

The auspicious occasion of *Akshay Tritiya* in the Hindu calendar, is associated with the custom of child marriage. This occasion is known as Child Marriage Day in a few states, usually in utter ignorance of changing social conditions and disregard for legal norms. In some Indian states, a law has been passed making it compulsory to register all marriages, thereby compelling the parties to prove that they are not minors. However, even in those states, the law is not being enforced, and every year, thousands of children are illegally married. Majority of Indians live in villages and smaller towns where family, caste and community pressures are more effective than any law prohibiting child marriages.

While child marriages also has an impact on the boy, it curtails the educational opportunities of girl children, adversely impacts their health, mental and emotional well-being and makes them more vulnerable to domestic and sexual violence. Hence, child marriage is a clear violation of human rights. In April 2003, the Forum for Fact finding Documentation and Advocacy (FFDA), a human rights organization, filed a public interest litigation seeking a strict implementation of the Child Marriage Restraint Act of 1929. The petition states that of the 4.5 million marriages that take place in India every year, 3 million involve girls in the age group of 15-19 years. It further stated that

[^49]: 1984 (3) SCC 243.
child marriage was merely a camouflage for servitude and child sexual abuse of the girl child, which is violative of her rights to life under Article 21 and constitutes bondage…within the meaning of Article 23. 52

The Maharashtra State Commission for Women has suggested amendments to make the law more effective, including that those who had undergone child marriage should be debarred from government and public sector service, and that the parents of those who had undergone child marriage, should be debarred from other benefits under government welfare scheme.53 Whether the Commission’s former suggestion would lead to further victimization of those already victimized through a child marriage, is a debateable issue.

II D. Law Related to Juvenile Justice

The first central legislation on Juvenile Justice was passed in 1986, by the Union Parliament, to provide a uniform law on juvenile justice for India. Prior to this law each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems. A new law titled The Juvenile Justice (Care and Protection of children) Act was enacted in 2000. It is the primary law for children in need of care and protection and children in conflict with law, enacted to bring uniformity in the juvenile justice system throughout India. The law has provisions prescribing punishment for cruelty to juveniles. It also prohibits any juvenile from being sentenced to death. A Juvenile Justice Board has been created for adjudication of cases related to juveniles in conflict with law. The law provides for the child’s residence in an observation home during the pendency of case. The law has been criticized for failing to completely engage with crucial conceptual questions related to juvenile justice, for refusing to engage with law reforms in other parts of the world, and failing to comply with existing international human rights standards – such as the provisions of Convention on the Rights of the Child and UN Rules for Juveniles Deprived of their Liberty.54

II E. Law on Child Labour

Child labour is an outcome of poverty, economic deprivation and widespread illiteracy. The government has addressed the issue of child labour and has given due consideration to the need to protect children from exploitation and from being subjected to work in hazardous conditions which endangers the physical and mental development of the children. Through the Child Labour (Prohibition and Regulation) Act 1986, the government banned employment of children below the age of fourteen years in factories, mines and hazardous employment and regulated the working conditions of

children in other employment. Through a notification dated May 26, 1993, the working conditions of children have been regulated in all employments that are not prohibited under the Child Labour (Prohibition and Regulation) Act. Following up on a preliminary notification issued on October 5, 1993, the government also prohibited employment of children in occupation processes like abattoirs /slaughter houses, printing, cashewnut descaling and processing, and soldering. In 2006, the Ministry of Labour issued a notification banning children below 14 years of age from working in residences and the hospitality sector (including hotels and restaurants).

The prohibition was brought into force from 10th October 2006. In a landmark judgment in a public interest litigation\(^{55}\), the court said that the children below 14 years cannot be employed in any factory or mine or hazardous work and that they must be given education as mandated by Article 45 of the Indian Constitution.

The Indian government estimates that about 12 million children under 14 are employed; children’s advocates say the figure could be closer to 60 million. Given the opaque nature of the trade, it is unclear how many of these children are working as maids.\(^{56}\)

**II F. Child Rights in Family Laws**

The Supreme Court gave directions and laid down elaborate guidelines for adoption within the country and for inter-country adoptions, in cases including *Laxmikant Pandey vs. Union of India*.\(^{57}\) However, there is no statutory right of adoption to Muslims, Christians and Parsis. In dealing with the consequences of a divorce, the Supreme Court has, time and again, reiterated that the best interests and welfare of the child would be the guiding factors for determining custody of the child.\(^{58}\)

**II G. Present Status of Children**

Child Relief and You (CRY) – an international organization working on child rights, has compiled statistics on status of children in India, some of which are as follows:\(^{59}\)

- 40% of India’s population is below the age of 18 years which at 400 million is the world’s largest child population.
- Less than half of India’s children between the age 6 and 14 go to school.
- 70 in every 1000 children born in India, do not see their first birthday.
- Amongst married women in India today, 75% were under age at the time of their marriages.

---

\(^{55}\) *M.C. Mehta vs. State of Tamil Nadu and others* AIR 1997 SC 699


\(^{57}\) AIR 1984 SC 469, AIR 1987 SC 232

\(^{58}\) See for example *Elizabeth Dinshaw vs. Arvind Dinshaw* AIR 1987 SC3

- More than 50% of India’s children are malnourished.
- 1 out of 4 girls is sexually abused before the age of 4.
- Death rate among girls below the age of 4 years is higher than that of boys. Even if she escapes infanticide or foeticide, a girl child is less likely to receive immunization, nutrition or medical treatment compared to a male child.
- 17 million children in India work as per official estimates.
- A study found that children were sent to work by compulsion and not by choice, mostly by parents, but with recruiter playing a crucial role in influencing decision.
- 25% of the victims of commercial sexual exploitation in India are below 18 years of age.
- There are approximately 2 million child commercial sex workers between the age of 5 and 15 years and about 3.3 million between 15 and 18 years.
- 3% of India’s children are mentally/physically challenged; girls who are physically / mentally challenged are at a particular risk of violence and abuse.

Needless to say, laws play a limited role in protecting and promoting child rights, even if they were properly implemented, unless they are coupled with economic empowerment, social reform and a change in the attitudes towards children.

### III. Protective Laws for Dalits

Historically, India has a highly stratified social structure with a hierarchy of castes and predetermined and hierarchical division of rights (civil, human and economic rights) among the castes.\(^{60}\) The ‘untouchables’ (dalits), placed at the bottom of the caste hierarchy, have been deprived of basic human rights. Strong social and religious norms, including social ostracism, have supported such a deprivation of rights and enforced the caste system. The Constitution of India sought to abolish untouchability, and provide legal safeguards against a violation of civil rights of dalits.

The fundamental rights chapter of the Indian Constitution includes a provision that abolishes untouchability and its practice in any form.\(^{61}\) The Indian Constitution also provides for positive discrimination or affirmative measures in employment and higher education, and reservations for seats in parliament and state assemblies.\(^{62}\)


\(^{61}\) Article 17, Constitution of India states: “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.

\(^{62}\) Articles 15(1) and 16(2) prohibit discrimination on the ground of caste in educational institutions and public employment respectively. Articles 15(4), 15(5) and 16(4A) provide for the State to make provisions for reservation on behalf of members of the scheduled caste, in educational institutions and public employment respectively.
benefits are available if a community is included in the category of scheduled castes (SC) and scheduled tribes (ST). While this system of reservation is intended as a positive measure, it is increasingly seen as merely fulfilling certain constitutional formalities, rather than serving the interests of the STs and SCs. In most of the educational institutions, departments and offices, where reservation rules are supposed to have been followed meticulously, the representation of SCs and STs is poor.

In furtherance of the provision regarding abolition of untouchability, Protection of Civil Rights (PCR) Act was enacted in 1955. This law prescribes punishment for practices of untouchability, such as social restrictions in sharing food, access to public places, offering prayers and performing religious services, entry in temple and other public places and denial of access to health services and drinking water sources. Despite this measure to protect the civil rights of dalits, the dalit community has been subjected to brutal forms of violence in order to humiliate and harass its members, in a bid to maintain status quo.

When it was realized that even the amended Protection of Civil Rights Act, 1955 and the generic provisions of the Indian Penal Code were unable to address and deter violence against dalits, a second law was enacted – The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the SC / ST Act). In 1995, rules were framed under the Act to prevent commission of atrocities against members of the Schedules Castes and Tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences.

Further, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition Act) 1993 is a law banning manual scavenging and punishing offenders for employing manual scavengers and for construction of dry latrines. Manual scavenging is the manual removal of human excreta from “dry toilets”. Similarly, Bonded Labour System (Abolition) Act 1976 is a law that unilaterally frees all bonded labourers from bondage and a simultaneous liquidation of their debts, and abolishes all agreements and obligations arising out of the bonded labour system. This law bears special significance for the dalit community as an estimated 40 million dalits, including 15 million children, are bonded labourers.

Dalit women face the double burden of gender and caste identities. A majority of them experience or are vulnerable to physical / sexual violence from the dominant castes, intended at suppressing voices of dissent and maintaining status quo of the dalits within the community. Dalit girls in the southern states are forced into prostitution before they reach puberty, and through the devdasi and jogini systems, they are “married to god” notionally, and are forced to offer sexual services to members of the “upper castes.”

64 http://www.ncdhr.org.in/ncdhr/campaigns/economiclandrights/, accessed on 18 March 2009
As per the statistics of the National Crime Records Bureau for 2007, the total number of crimes against scheduled castes that were registered in 2007 were 30031 cases.\(^{65}\) Chargesheeting rate indicated is 90.6% but conviction rate is only 30.9% - which is higher than the conviction rate for crimes against women, but lower than those for property-related crimes. The number of cases registered under the PCR Act has been very low from its inception. The statistics of the National Crime Records Bureau indicate that the number of registered cases have progressively declined over the years.\(^ {66}\) In 2007, there were 514 persons arrested for cases registered under the PCR Act, and 22424 persons were arrested for cases were registered under the SC / ST Act. The data on atrocities against \textit{dalits} shows that during last decade (1994-2004), more than one lakh (exactly 109505 incidences) cases of atrocities were registered countrywide under the SC / ST Act. Although there has been an overall decline in the number of cases registered under the Act, the National Human Rights Commission has opined that this does not indicate a marked reduction in the practice of untouchability or violence against \textit{dalits}, but is a reflection on the ineffectiveness of the law.\(^ {67}\)

Special Commissions such as the National Commission for Scheduled Castes, and a National Safai Karamchari Commission have been set up, to monitor the progress in eradicating caste-based discrimination and to make interventions in incidents of atrocities against dalits. Affirmative action has facilitated some dalits to have access to public employment and education. However, much more remains to be done. The problem is not the law but the lack of political will to implement the existing laws in favour of dalits.\(^ {68}\)

**IV. Protective Laws for Persons with Disability**

Although the author and editor would prefer the terms “physically / mentally challenged” or “differently abled persons” to “persons with disability”, the latter term is used in this section in consonance with the language in the laws of the land.

As per the 2001 census, India has about 21.9 million persons with disability. This includes persons with mental (mental retardation, mental illness) and physical disability (blindness, low vision, hearing disability, speech disability, locomotive disability). The Indian Constitution, in the fundamental rights chapter, makes no mention of right against discrimination on the ground of disability. Over the last two decades, specific laws were passed to ensure protection of persons with disabilities. These include The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which came into force in 1996, and the Mental Health Act (1987). Such laws provide for employment, education and creating a non-discriminating environment for all persons with disabilities.

\(^ {65}\) \textit{Crime in India} 2007, National Crime Records Bureau, Ministry of Home, Government of India, New Delhi


\(^ {67}\) Report on Atrocity on Scheduled Castes, 2002, National Human Rights Commission, Delhi

\(^ {68}\) For more details of the status of dalits in India, please see \url{http://www.idsn.org/uploads/media/CastAnEye.pdf}, last accessed on 19 March 2009 and P.S.Krishnan, \textit{Frontline}, 16-29 December 2006
However, barriers to enjoyment of equal treatment exist in many spheres such as that of employment, education, matrimonial laws and rights (including divorce, nullity of marriage, maintenance, guardianship, adoption and inheritance), criminal liability, pensions, removal of obstacles and providing access (including to public transport and public spaces). Much of the law does not create mandatory obligations on the state, but only directs the state to implement the provisions subject to its economic capacity. In some situations, disabled persons or their care / service providers have approached various grievance redress forums including the courts, to assert their rights under law.  

For the first time in India, disabled persons were included in the 2001 population census. This facilitated the process of officially documenting the nature and magnitude of disability in India, paving way for law and policy to be formulated in response to the same. This was a major victory for the movement in India. Based on the petition of a blind disability rights activist, the Bombay High Court ordered the Election Commission to make Braille ballot papers available in the assembly elections held in Mumbai and Thane in 2004. Braille facility was provided in 9000 polling booths in Mumbai and Thane as a pilot project. Based on its success, the High Court further directed that the same, or modified, facilities were to be provided throughout the entire state of Maharashtra. Orders were issued directing the Election Commission to ensure that polling stations were accessible to persons with locomotor disabilities. Following this matter, the Bombay High Court installed a ramp on its own premises and made its building more accessible. The Bombay High Court has also directed a group of blind hawkers selling their wares in railway platforms and foot overbridges to form themselves into an association, and directed the railway authorities to issue them identity cards, in order that they may not be harassed.

These are small victories. However, for a majority of the disabled persons, inaccessibility of information, low literacy, poverty and social stigma prevent their access to legal redress. Socio-economic obstacles ensure that children with disabilities are less likely to be in school, disabled adults are more likely to be unemployed, and families with a disabled member are often worse off than average. India has a growing disability rights movement and one of the more progressive policy frameworks in the developing world. However, for laws to have a desired result, a change in the mindset of the people is also essential. Unless a change of mindset leads to a reduction in insensitivity and resistance to the enforcement of the basic human rights of the disabled, the protective laws may remain paper tigers.

---

69 For more details, see [http://www.disabilityindia.org/disabilitylawandrights.cfm](http://www.disabilityindia.org/disabilitylawandrights.cfm), accessed on 19 March 2009

Laws to Protect Human Rights
CONCLUSION

There are many other vulnerable groups, whose rights are protected in law, but could not be discussed within the parameters of this chapter. These include statutory laws and judgments related to rights of religious and linguistic minorities, adivasis, refugees, internally displaced persons, migrant labourers, persons with alternative sexuality and persons with HIV / AIDS. Common features across law and policy frameworks for all vulnerable groups are a) inadequacy of laws; b) lack of political will to implement existing laws and policies; c) socio-economic factors that impede members of such vulnerable groups from asserting their rights through law and other processes; and d) state apathy. These factors highlight the limitations of law, and indicate that law, when coupled with other social, economic and political processes, would protect the human rights of vulnerable groups much more effectively.

SUGGESTED ACTIVITY

This is a group activity, to be facilitated / moderated by the concerned educator / trainer.

Step A: Make a list of the human rights that are at issue in your country - that is, those rights that are denied or that which remain unfulfilled. Divide the rights into three categories – those that remain unfulfilled due to

- the government’s actions;
- the actions of people / non-state actors (outside the government); and
- government’s inaction.

Step B: Formulate strategies (legal / social / political) by which such human rights may be achieved in the short and long term. Legal strategies could include formulation of new laws, amendments to existing laws or repeal of certain provisions / laws. Strategies of a social nature could involve social action such as democratic means of protest. Political strategies would entail exploring dialogue with government officials on the issue.

Step C: Identify obstacles and challenges towards realization of such human rights.

Step D: Discuss with your group and among your classmates as to how the challenges could be overcome.

Step E: Summarize your findings in the form of a table, make a chart of the same and display for further reflection.
BIBLIOGRAPHY

1. *Human Rights – Course Modules for Indian Universities* (New Delhi: South Asia Human Rights Documentation Centre, 2005)


Unlike protective laws that aim at preserving and protecting the human rights of the people, repressive laws / draconian laws empower the state to address specific issues and contexts in a manner that violates human rights of individuals in the “larger interests” of society. Repressive laws are an off-shoot of state repression and are intended to control situations of violence, political dissent, dissent based on ideology and dissent from majority practices.

Two types of repressive laws exist - those that have provisions that are unjust / unfair / unequal; and those laws that have the scope for unjust, unfair or unequal implementation due to a corrupt / biased / inefficient administrative apparatus. Typical characteristics of repressive laws include the following:

- They contain vague and wide definitions of crimes;
- They contain a wide ambit for application, designed to include a large number of individuals;
- They invariably involve vesting state agencies with enormous powers over individuals, often without adequate safeguards against their misuse - including increased powers of search, seizure, arrest, detention, interrogation etc.;
- Ordinary and established court processes are subverted, by setting up of special courts;
- Court hearings are not conducted in an open, transparent manner;
- They prescribe stringent punishment including life sentences and death penalty, often disproportionate to the crime alleged to have been committed; and
- Such laws are justified in the name of public interest / larger interests of society including national security, public order, preservation of democracy etc.

Human rights organizations and sections of civil society have raised concerns over repressive laws for the following reasons:

- They violate rule of law;
- They create inroads into Constitutional guarantees of fundamental rights, and curb / undermine personal liberties of individuals;
They are in direct contradiction with values of democracy;
- They are prone to misuse and are misused by state agencies, targeting the most vulnerable groups and communities;
- They are used to stifle voices of political dissent; and
- They undermine internationally recognized standards of human rights.

I. LAWS RELATED TO PREVENTIVE DETENTION

'Preventive detention' means the detention of a person without trial, justified by a suspicion or reasonable probability of the person committing an offence. In India, the history of preventive detention laws dates back to the days of British colonial regime, when, the government was empowered to detain anybody on mere suspicion.1 This British legacy was adopted by the Indian Constitution-makers after the independence of India. The Indian Constitution allows preventive detention laws to be passed against its people, on grounds of ‘national security’ and ‘maintenance of public order’.2 Article 22 of the Constitution allows an individual to be detained by state agencies without charge or trial for up to three months, even during peacetime and non-emergency situations. The safeguards provided for situations of detention are not extended to situations of preventive detention.3

In accordance with Article 22 (4) of the Indian Constitution, an Advisory Board headed by a sitting judge, is formed by the government to ensure that the detention is justified, before the detention period is extended beyond three months. The authority is not required to disclose facts relating to the detention if such a disclosure is against public interest.4 A petition for a writ of *habeus corpus* may be filed in the High Court or Supreme Court, resulting in the detaining authority being called upon to justify the detention.

In addition to the Constitutional provision, Preventive Detention Act was passed by the Parliament in 1950. When this expired in 1969, it was replaced by Maintenance of Internal Security Act (MISA) in 1971, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in 1974, the National Security Act (NSA) 1980 and The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. All these laws allow for preventive detention. Though MISA was subsequently repealed, the other

---

1 Bengal Regulation – III of 1818 (Bengal State Prisoners Regulation); see also Rule 26 of the Rules framed under the Defence of India Act, 1939 which allowed detention if it was “satisfied with respect to that particular person that such detention was necessary to prevent him from acting in any manner prejudicial to the defence and safety of the country. Elaborated in *Emperor vs. Sibnath* AIR 1945 PC 156

2 Entry 9 of List I and Entry 3 of List III of the Ninth Schedule of the Indian Constitution.

3 Article 22 (1) and (2) of the Indian Constitution provide for protection against detention and arrest of individuals, while Article 22(3) expressly provides that these safeguards would not apply to a person who is “an enemy alien” or to “any person who is arrested or detained under any law providing for preventive detention.”

4 Article 22(6) of the Indian Constitution
laws continue to remain in existence along with state legislations of a similar nature\(^5\) and anti-terrorism laws that also provide for similar provisions.

The very first case that came up before the Indian judiciary subsequent to enacting the Indian Constitution was that in which the preventive detention of a well-known communist – A.K. Gopalan – was challenged in the Supreme Court. The court, on this occasion, decided that the law of preventive detention could not be challenged on the ground that fundamental freedoms guaranteed under Article 19 of the Indian Constitution had been violated.\(^6\) This ruling was subsequently overturned in Maneka Gandhi’s case.\(^7\) On the issue of preventive detention, some of the principles laid down by the courts are as follows:

- The power of preventive detention is a “necessary evil” and is tolerated in a free society in the larger interest of security of the State and maintenance of public order.\(^8\)
- A distinction exists between preventive and punitive detention, the object of preventive detention being not to punish a person for having done something wrong, but a precautionary measure to prevent the person from doing so.\(^9\)
- Preventive detention in public interest is justified, and that such a law is intended to strike a delicate balance between the personal liberties of an individual and the safety of the country and society at large.\(^10\)
- Preventive detention is a serious invasion of personal liberty and such meager safeguards as the Constitution has provided against the improper exercise of the power must be jealously watched and enforced by the Court.\(^11\)
- Law of preventive detention must pass the test of reasonable and fair procedure established by law for deprivation of personal liberty; such scrutiny would be done by the judiciary.\(^12\)
- Any unreasonable or unexplained delay in furnishing to the detained person the grounds of detention, with the basic documents, or in considering the person’s representation, would vitiate the detention and entitle the detained person to be released.\(^13\)

---


\(^7\) Maneka vs. Union of India AIR 1978 SC 597

\(^8\) Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & others AIR 1981 SC 146

\(^9\) Ibid at para 3

\(^10\) See Mohd. Alam vs. State of West Bengal AIR 1974 SC 917

\(^11\) Ram Krishna vs. State of Delhi (1953) S.C.R. 708

\(^12\) Supra n. 7

Through provisions that deny bail to undertrials, such as through anti-terror laws, detention laws are indirectly being enacted, but these are outside the purview of the Constitutional safeguards as the accused is charged with a crime for which he / she is tried over a period of years, and languishes in judicial custody till such time as the trial is concluded and guilt ascertained.

India is one of the few countries in the world that, through its Constitution, allows for preventive detention during peacetime. The European Court of Human Rights outlawed laws on preventive detention many years ago, irrespective of legal safeguards for its use, thereby indicating the adverse impact of preventive detention on human rights of individuals. International Covenant on Civil and Political Rights, which India has ratified and whose provisions India is bound by, also allows for a deviation from stated human rights only in situations where a national emergency is declared. The human rights community in India has had two approaches to the issue. Some sections have demanded that the government repeals all laws related to preventive detention, including the Constitutional provision, while other groups have suggested incorporation of further safeguards to prevent the misuse of such laws.

II. ANTI-TERROR LAWS

Since the 1980s, specific laws came to be enacted to address the issue of terrorism. These include the Terrorist and Disruptive Activities (Prevention) Act (TADA) 1987, the Prevention of Terrorism Act (POTA) 2002 and the amendments to Unlawful Activities (Prevention) Act (UAPA) in 2004 and 2008. By enacting these laws, the government has treated terrorism to be a special crime that warrants special and stringent laws.

Terrorist and Disruptive Activities (Prevention) Act (TADA) was formulated in 1987 against the backdrop of growing violence in Punjab. ‘Terrorism’ was not defined under this law. The judiciary has stated that it is not possible to give a precise definition of terrorism, but that what distinguished terrorism from other forms of violence was the deliberate and systematic use of coercive intimidation. From 1984 onwards, approximately 75000 people were detained under TADA; of these, at least 73000 cases were subsequently withdrawn for lack of evidence. The conviction rate under TADA was less than one percent, indicating that more than 99% cases booked under the law were not backed by substantive evidence. Though the Supreme Court upheld the validity of the TADA in Kartar Singh vs. State of Punjab, the law was criticized by


Art. 4 of the International Covenant on Civil and Political Rights, 1966

See for example, recommendations of South Asian Human Rights and Documentation Centre to the National Commission to Review the Working of the Constitution (NCRWC) in 2000. A summary of the recommendations on preventive detention are available at Human Rights Features, HRF/26/00, 25 September 2000

S. 3(1) listed out intention and terrorist acts covered by the law

Hitendra Vishnu Thakur vs. State of Maharashtra AIR 1994 SC 2623


Ibid

1994 SCC (3) 569

Repressive Laws in India
human rights organizations as well as political parties on various counts. Justice Pandian, who led the majority judgment in Kartar Singh’s case, opined that the law was necessary to strengthen “vigilance against the spurt in the illegal criminal activities of militants and terrorists”, but this judgment failed to take into account the harm done to a large number of innocent people. Justice H. Suresh (retd.) calls the law “irrational” and “unjust”.22 It was permitted to lapse in May 1995 by the P.V. Narasimha Rao government, due to reports of widespread abuse. However cases initiated under it continued to have legal validity and remained pending in courts.

Prevention of Terrorism Act (POTA) was enacted by the National Democratic Alliance (NDA) government in 2002, against the backdrop of the attacks on the World Trade Centre in New York on 11 September 2001. Several attacks in the state of Jammu and Kashmir, and the attack on the Indian Parliament in December 2001 acted as catalysts for the enactment. POTA allowed for detention of a suspect up to 180 days without filing charges in court. It also allowed authorities to withhold identity of witnesses, treated confessions to police as admissions of guilt, and included provisions for banning organizations and for cracking down on funding for terrorism.

One of the most high-profile arrests under POTA was not of a terrorist, but of a politician from Tamil Nadu – V. Gopalaswami alias Vaiko.23 It was also widely reported that in 2002-3, the law was misused to arrest and detain hundreds of Muslims in Gujarat for years without a trial.24 Syed Abdul Rehman Geelani, described as a mastermind in the attack on the Indian Parliament in 2001, was given a death sentence by a POTA court but was subsequently acquitted by the High Court and the Supreme Court in 2005 because of lack of evidence. Over a 100 Parliamentarians had signed a petition for repeal of POTA, and the National Human Rights Commission pointed to its misuse.25 POTA was repealed in 2004. Prime Minister Manmohan Singh, while expressing the decision to repeal the law, stated that “the law had caused unnecessary harassment to many sections.”26 In 2004, a People’s Tribunal was held in Delhi, where persons booked under this law without any cause testified in public. The Tribunal highlighted the fact that adivasis and dalits who were engaged in land reforms and protested against bonded labour were falsely labeled Naxallites and booked under this law, and that charges under POTA had also been made against children, illiterate persons and poor farmers.27

22 Justice Hosbet Suresh, Fundamental Rights as Human Rights (Mumbai: Sabrang Communications and Publishing Pvt. Ltd., 2003), at p. 76
23 He was arrested under POTA by the Tamil Nadu Chief Minister Jayalalithaa for making a public speech in support of Liberation Tigers of Tamil Eelam (LTTE) in the year 2002.
Amendments to Unlawful Activities (Prevention) Act (UAPA), 1967: The United Progressive Alliance (UPA) government had repeatedly said that India already has a number of stringent laws such as NSA and UAPA, and hence there was no necessity to enact another specific anti-terror law. However, when it repealed POTA in 2004, it brought about amendments to UAPA. These included increased punishment for committing acts of terrorism, enhanced police powers of seizure, communication intercepts made admissible as evidence and extended periods of detention without charges to 90 days from the original 30 days. In the backdrop of terrorist attacks in Mumbai in November 2008, the UPA government introduced anti-terrorism provisions by bringing about further amendments to the UAPA. Detention without bail for up to 180 days for Indians, indefinite detention without bail for foreigners and reversing the burden of proof in many instances are some of the amendments brought about.28

Concerns about Anti-terror Laws

Human rights groups and public-spirited citizens have been deeply concerned about anti-terror laws for a variety of reasons, some of which are given below:

- Some opine that such laws are “intrinsically draconian”;29
- They define the offence in very broad term, giving scope for the state officials to use wide discretion in enforcing the law, and therefore to its misuse. This contravenes the established principle in criminal law - that an offence is defined in clear, definite and unambiguous terms;
- They allow for confessions made to the police as evidence of admission of guilt. This is contrary to provisions under ordinary criminal law where police confessions are not admitted as evidence of guilt, due to the possibility of confessions being made under coercion / duress / custodial torture;
- These laws shift the burden of proof on the accused person, presuming guilt of the person unless the person proves his / her innocence. This violates the established right to be presumed innocent unless proved guilty;
- These laws make an exception to the rule of trials in an open court (where they are open to public scrutiny) by either conducting ‘in camera’ (closed door) trials or conducting trials in heavily armed court rooms where public access is prevented;
- By allowing the identity of the witnesses to be withheld, the laws deny the accused person the right to cross-examination of the witness to prove his / her innocence;

The laws restrict / negate the powers of courts to award bail to the accused; and

Anti-terror laws are prone to misuse as they make in-roads into established standards of human rights and safeguards against their violation by state agencies.

Will Stringent Laws Counter Terrorism?

Many believe that stringent laws are required to counter terrorism. This belief is inspired by the logic that such laws will deter terrorists from indulging in acts of terrorism. Those who advocate for a stringent law to counter terrorism also believe that it will make it easier for the police and the prosecution to investigate, prosecute and make perpetrators accountable for acts of terrorism.

Opponents of anti-terror laws raise the following arguments:

- Stringent laws cannot deter terrorists as those who are ready to kill and to be killed do not think of stringent laws;
- Terrorism cannot be countered unless the causes of terrorism are addressed. These include deprivation and denial of democratic rights that have pushed many youth to glorify acts of terror, alienation and disillusionment of people which are then misused to indoctrinate them about the advantages and need for acts of terror;
- It is certainty of the law, and not the severity of the law, that can deter any crime. Certainty of the law comes from its effective and non-discriminatory implementation by state agencies;
- Even when stringent anti-terror laws were in force, terrorist attacks could not be prevented;
- Existing laws such as Unlawful Activities (Prevention) Act (UAPA) 1967, the National Security Act (NSA) 1980 and the Disturbed Areas Act 1990 are adequate to deal with terrorism; and
- Stringent laws to counter terrorism plant the seeds for future violence.

III. SECURITY & OTHER STRINGENT LAWS

The infamous Rowlatt Act, also known as the Anarchical and Revolutionary Crimes Act of 1919, set a precedent for giving unchecked powers to the colonial government to arrest and imprison suspects without trial. After independence, a series of state laws were enacted including the Punjab Disturbed Areas Act, Bihar Maintenance of Public Order Act, Bombay Public Safety Act and Madras Suppression of Disturbance Act, aimed at curbing forces that were using religion to incite violence. In 1970, the West Bengal government passed the West Bengal (Prevention of Violent Activities) Act in response to rise in the Naxalite movement. Since the 1970s, a spate of laws...
came to be enacted to address specific contingencies. These were categorized as “extra-ordinary laws”. Ujjwal Kumar Singh speaks of how extraordinary laws are presented as problem-solving measures, and are usually surrounded by discourses asserting their indispensability and on the other hand, assurances that having come in response to specific situations, they are not everlasting.

**Maintenance of Internal Security Act (MISA)** was a law passed by the Indian Parliament in 1973 under the leadership of Prime Minister Indira Gandhi. This law was enacted purportedly to counter civil and political disorder in India as well as foreign-inspired sabotage, terrorism and threats to national security. It gave the Prime Minister and the enforcement agencies powers of indefinite preventive detention of individuals, search and seizure of property without warrants, in direct contravention of Constitutional guarantees of fundamental rights and established standards of human rights. During the national emergency in 1975-77, thousands of people, including political opponents, are believed to have been arbitrarily arrested, detained, tortured and in some cases, forcibly sterilized. Lalu Prasad Yadav, L.K. Advani and Atal Bihari Vajpayee are some notable political leaders imprisoned under this law. The law was repealed in 1977 pursuant to a change of government.

**Armed Forces (Special Powers) Act (AFSPA)** is a law that has been in operation since 1958. It was first used in Nagaland in response to the Naga independence movement in the late 1950. It was subsequently introduced in Mizoram and Manipur, and briefly in Assam. In 1972, it was extended to all the seven North Eastern states. It is said that the AFSPA is a colonial instrument, modeled on the Armed Forces Special Power Ordinance 1942, which had been enacted to neutralise the Quit India Movement. AFSPA grants power to the Central government and the governor of the state to declare any particular area as a “disturbed area” if it is of the opinion that the use of armed forces to aid civil power is necessary. Upon this declaration, AFSPA sanctions the Indian armed forces with:

- power to shoot to kill civilians for the commission / suspicion of commission of specified offences (Section 4 (a));

---


32 These are the states of Assam, Manipur, Mizoram, Meghalaya, Tripura, Nagaland and Arunachal Pradesh.

33 Armed forces is defined as “the military and Air Force of the area so operating” in the 1972 version of the law. Para-military forces such as the Assam Rifles, created through a separate law but placed under the operational control of the army, also enjoy the powers and protection sanctioned by AFSPA.
a license to destroy any property suspected to be used by insurgents (Section 4(b));

- power to arrest any person without a warrant and to use any amount of force “necessary to effect the arrest” (Section 4(c));

- power to enter and search any premises at any time of the day or night without any search warrant to recover arms, ammunitions, explosives etc (Section 4(d));

- a duty to hand over a person arrested under AFSPA to the nearest police station with the “least possible delay” (Section 5); and

- a protection from legal proceedings unless specifically sanctioned by the Central government (Section 6).

The government finds AFSPA a necessary measure to prevent the secession of the North Eastern states. The army finds the law essential to fight insurgency. The Supreme Court upheld the validity of AFSPA in 1997, but placed checks on the armed forces’ use of powers conferred on them by the law, and interpreted the provisions of AFSPA in a strict and narrow manner so as to reduce scope for abuse. This includes a strict reading of the provision vesting the armed forces with a duty to produce the arrested person at the nearest police station with “the least possible delay”, which the court said could not exceed 2-3 hours. However, this has been diluted to some extent in a subsequent judgment of the Supreme Court.

A government-appointed committee to review if AFSPA should be retained, repealed or modified, headed by Justice Jeevan Reddy, recommended a repeal of the law. Numerous reports exist of alleged abuse of the law, pointing to extra-judicial killings, custodial torture, rape and deaths, enforced disappearances and other violations of human rights civilians suspected to be engaged in insurgency. Experts opine that this law violates Indian and international legal standards. Observers have pointed out that insurgency and under-development are intricately linked in the North Eastern region of India, thereby suggesting that a more long-lasting solution to the issue of insurgency could be development of the region.

---

34 Naga People’s Movement of Human Rights vs. Union of India (1998) 2 SCC 109
35 Masooda Parveen vs. Union of India and the Others, Writ Petition (Civil) 275 of 1999, decided on 2 May 2007
36 A full report of Jeevan Reddy Committee that reviewed AFSPA is available at http://www.hinduonnet.com/nic/afa/ (accessed on 9 January 2009)
37 See for example Asian Centre for Human Rights, The AFSPA: Lawless Law Enforcement According to the Law? A representation to the Committee to Review the Armed Forces Special Powers Act, 1958, 21 January 2005
39 South Asian Human Rights Documentation Centre states the following: Assam produces 25% of all the petroleum for India, yet the petroleum is processed outside the state, thereby depriving the state of revenue; Manipur is 22% behind the national average for infrastructural development and the entire North Eastern region is 30% below the national average. The states in the region are also largely unconnected to the rest of India by rail. Ibid
National Security Act, 1980 is a law that provides for preventive detention in certain cases to prevent a person from acting in a manner prejudicial to the defence of India, the relation of India with foreign powers, the security of India, maintenance of public order and maintenance of supplies and services essential to the community. The law allows for preventive detention of up to two years of persons believed to have committed offences under the Act. The Act provides for grounds of detention to be informed to the person detained, within a prescribed time limit. The law also provides for constituting Advisory Boards consisting of three persons, to be headed by a High Court judge, before whom all information relating to detention of persons under the Act would be placed for scrutiny. In July 2008, a government-appointed Administrative Reforms Commission headed by Veerappa Moily, submitted a report to the government recommending an amendment to NSA and to add a separate chapter to it with the aim of increasing the Central government’s role in tackling terrorist activities.

Official Secrets Act (OSA), 1923 was another law enacted by the British colonialists to protect their rule over India, by addressing the issue of espionage. The law remains in force till date. The disclosure of any information that is likely to affect the sovereignty and integrity of India, the security of the State, or friendly relations with foreign States, is punishable by this Act. A person prosecuted under this Act can be charged with the crime even if the action was unintentional and not intended to endanger the security of the state. The Act only empowers persons in positions of authority to handle official secrets, and others who handle it in prohibited areas or outside them are liable for punishment. The law also empowers the magistrate to issue search warrants under specific circumstances (Section 11). The OSA makes an exception to freedom of information requests under the Freedom of Information Act, if the information requested amounts to an official secret in the opinion of the government. The Central Civil Service Conduct Rules, 1964 complement the OSA by prohibiting government servants from communicating any official document to anyone without authorization. The government-appointed second Administrative Reforms Commission recommended a repeal of the OSA as it found it to be incongruous with the regime of transparency in a democratic society and a “convenient smokescreen” to deny public access to government information. However, the recommendations have been turned down by the government.

State laws relating to Disturbed Areas typically have provisions for state governments to declare an area to be a “disturbed area”. Pursuant to the declaration, the state administration is vested with wide-sweeping powers such as firing upon persons.

---

40 Section 3 (1) and (2), The National Security Act, 1980
41 Sections 9-11, The National Security Act, 1980
contravening certain orders, and powers to destroy arms dumps and fortified positions. The laws also allow for a deployment of security forces without the continuous supervision of the district magistrate, who would normally authorize every step of aid to the civil operations. The varied state laws on the issue, such as the Assam Disturbed Areas Act 1955, The Chandigarh Disturbed Areas Act 1983, The Punjab Disturbed Areas Act 1983 and the J & K Disturbed Areas Act 1992, also exempt state agencies from suits, legal proceedings and prosecution unless specifically sanctioned by the state government. Such provisions allow for human rights violations to be committed with impunity by state agencies, as the perpetrators are shielded from prosecution through procedural requirements. The Disturbed Areas (Special Courts) Act 1976 provides for special courts to be constituted for conducting speedy trials of scheduled offences.

IV. ANTI-POOR LAWS

Some laws adversely impact the rights of the poor, the underprivileged and the homeless. An example is the Bombay Prevention of Begging Act, 1959, which makes begging in public places a crime punishable in law. This law, extended to Delhi in 1960, provides for arrested persons to be tried in special courts, and if convicted, sent to institutions / 'homes'. Till date, there are no known cases registered under the Bombay Act, though beggars are routinely detained. Detention of beggars, for all practical purposes, acts as preventive detention. Since individuals do not opt for begging out of choice, many detained persons return to begging after their period of detention. A survey in Delhi has indicated that many beggars are able-bodied and educated, forced into beggary by unemployment.44 Another study has indicated that 99% of the men and 97% of the women got into beggary due to poverty.45 India’s anti-beggary laws derive inspiration from the vagrancy laws during British colonial rule in India. The law is criticized by concerned citizens and groups, on the ground that the laws criminalize beggary rather than address the socio-economic causes of beggary through a cohesive and humane national policy for beggars in India. Senior lawyer and human rights activist Rani Jethmalani opined as follows: “The aggressive anti-beggar legislation is aimed at wiping the desperately poor off the city’s radar so that society can continue to neglect them without pricking its collective conscience.”46

The debate around land acquisitions, sanctioned by the Land Acquisition Act 1894, bring to the fore tensions between owners of land, including small farmers, and the multi-national corporations. The Land Acquisition Act of 1894 was formulated with the purpose of facilitating the government’s acquisition of privately-held land for ‘public purposes’ that are defined solely by the state. Backed by this law, the state attempts to acquire agricultural land for Special Economic Zones (SEZs), mineral-based industries, industrial infrastructure (rail, road, power, water etc.) and other forms of industrialization, at allegedly lower rates than the market value. Such land required for public purpose is often inhabited by the poor and marginalized; land acquisition

45 Study conducted by Action Aid International in 2004; Action Aid Report 2004
46 Supra n. 44
therefore leads to peasants losing their land and sources of livelihood and creates massive unemployment, apart from a devastating impact on the environment. The compensation provided under law is often hardly a substitute for the loss of property and livelihood. Adequate rehabilitation and proper relocation of land owners and their families who are displaced by the state’s actions, is a crucial issue. Singur\(^{47}\), Nandigram\(^{48}\), Kashipur\(^{49}\), Kalinga Nagar\(^{50}\) and Raigad\(^{51}\) are examples of sites of violent clashes between the local people on one hand, and state agencies and private actors who act on behalf of corporate giants on the other.

**Laws related to “criminal tribes”** have also been the subject of considerable debate and discussion.\(^{52}\) During the colonial rule in India, British authorities labeled certain categories of castes and tribes as “criminal”. Through the Criminal Tribes Act of 1871, once a tribe was “notified” as criminal, all its members were required to register themselves with the local magistrates, failing which they would be charged with crimes under the Indian Penal Code. In 1952, the Government of India repealed the 1871 Act, and enacted the Habitual Offenders Act. This Act does not differ substantially from the 1871 Act. The Habitual Offenders Act sanctions the police to investigate a person’s “criminal tendencies” and whether his / her occupation was “conducive to settled way of life”. A list of tribes have been classified as “habitual offenders” in 1959 under this Act.

The social category known as the “denotified and nomadic tribes of India” covers approximately 60 million people, who are treated as criminals merely because they are born in communities that are classified as “habitual offenders”. Some are included in list of Scheduled Castes, Scheduled Tribes and Other Backward Classes. The law relating to criminal tribes / habitual tribes is an illustration of how stereotype and prejudice about marginalized social groups gets translated into law, leading to stigmatizing populations. The Habitual Offenders Act negates two important human rights principles:

- a) all human beings are born free and equal; and
- b) right to be presumed innocent unless proven guilty.

The U.N. Committee on the Elimination of Racial Discrimination (CERD) has asked India to repeal the Habitual Offenders Act and rehabilitate the denotified and nomadic tribes.\(^{53}\)

---

\(^{47}\) The strife was over land acquisition by the state government on behalf of the Tatas for constructing an automobile factory.

\(^{48}\) The clash related to land acquisition for the purpose of building a SEZ by an Indonesian company – Salim group.

\(^{49}\) In Kashipur, based in Rayagada district of Orissa, the local people have been fighting the Birlas (Utkal Alumina Ltd.) since 1994.

\(^{50}\) In January 2005, several people were killed in police firing in Kalinga Nagar, Jajpur district of Orissa over parting of their lands to the Tatas and other corporates.

\(^{51}\) In Raigad, Maharashtra, a powerful struggle is being waged against acquisition of 35000 hectares of land for SEZ, proposed by Reliance Industries.

\(^{52}\) For a detailed study and analysis, see Dilip D'Souza, *Branded by Law: Looking at India’s Denotified Tribes* (New Delhi: Penguin, 2001).

\(^{53}\) CERD made this Concluding Observation after reviewing its 15th – 19th periodic reports in 2007; Para 11 of CERD/C/IND/CO/19, 5 May 2007.
Laws and policies related to hawking and street vending are another example of how class bias and prejudice adversely affect the right to life and livelihood of the underprivileged and the marginalized. Eviction drives ordered and implemented by municipal authorities routinely lead to extortion, confiscation / destruction of the property of hawkers and street vendors, as a result of which they work in constant insecurity. The Supreme Court, in Sodhan Singh vs. NDMC, upheld every individual’s right to earn a livelihood, and directed all state governments to regulate the use of municipal spaces through hawking zones. It said:

If properly regulated according to the exigency of the circumstances, the small traders on the sidewalks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after a day’s work can pick up these articles without going out of his way to find a regular market. The right to carry on trade or business mentioned in Article 19(1)g of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the streets are meant exclusively for passing or re-passing and no other use.54

A similar approach was taken by the Supreme Court in Sudhir Madan & others vs. MCD & others, where it pointed out the need for formulation of policies by concerned authorities so to balance the rights of pedestrians and rights of hawkers.55 Unfortunately municipal and police authorities in many cities flout such directives. Section 34 of the Police Act empowers the police to remove any obstructions on the streets, which is routinely used to evict street vendors and hawkers, often without any notice.

V. OTHER REPRESSIVE LAWS & POLICIES

In addition to the laws discussed above, there is a larger gamut of laws that are repressive. These include

- anti-conversion laws, enacted by many states, in which the concern is not just with forced conversions but with conversions to a minority religion;56
- S. 377 of the Indian Penal Code, which criminalizes consensual sexual acts between adults of the same sex;57 and
- The Police Act, 1861 and state laws related to policing, most of which

---

54 (1989) 4 SCC 155
55 Judgment passed in 2006, in IA No. 394 in IA No. 356 in WP(C) No. 1699/1987
56 For more details, see Arpita Anant, ‘Anti-Conversion Laws’, The Hindu, 17 December 2002
facilitate political control over the police force, without creating effective mechanisms to ensure police accountability.58

VI. ROLE OF THE JUDICIARY

The role of the judiciary with regard to repressive laws has been mixed. On one hand, the courts have generally upheld the validity of emergency, extraordinary and security laws. Courts have been inclined to accept the existence of special circumstances / contexts as reasons for a less strict interpretation and enforcement of the law, even in situations where an individual’s human rights are at violated. A case in point is the judgment in Masooda Parveen’s case.59 On the other hand, the courts have increased public’s access to justice by allowing public interest litigations and writ petitions, apart from expanding the interpretation of constitutional provisions related to fundamental rights. In Maneka Gandhi’s case, the Supreme Court emphasized that the procedure affecting the rights of any person must be “reasonable, fair and just.”60 In situations of enforced disappearance, custodial deaths and police firing on peaceful demonstrators, the judiciary has awarded compensation of an exemplary nature.61

VII. CAMPAIGNS ON REPRESSIVE LAWS

Concerned members of civil society have come together to campaign for repealing repressive laws, through a variety of strategies. Campaign strategies include holding public meetings, demonstrations, dharnas, rallies, hunger strikes / indefinite fast, press conferences, letter campaigns, distributing brochures and pamphlets, presenting memorandum of demands to the government and dialoguing with policy makers. Some times, street plays, folk songs and dances and other means of popular culture are also used in spreading word about a campaign issue. Whenever required, civil society has drafted alternative laws and submitted to the government. The use of varied strategies over a sustained period of time helps in expanding support of civil society to the issue. This often persuades the government to take note of public sentiments, dialogue with concerned persons and review the law / policy accordingly.

The campaign to repeal Armed Forces (Special Powers) Act is an example of a sustained campaign to repeal a repressive law. The campaign has used many strategies including indefinite fast, public demonstrations and advocacy with key policy makers. The campaign against S. 377 of the Indian Penal Code (which penalizes consensual sexual acts between adults of the same sex) combines public action with legal strategies. The campaign on Communal Violence Bill focuses its efforts towards preventing a repressive law from being passed by the Parliament, through strategies including a media campaign, public meetings and dialogue with key policy makers. Please see the photo pages of this publication for photographs of a few campaigns on repressive laws.

59 Supra n. 35
60 Maneka Gandhi vs Union of India 1978 SCC 248
61 See Sebastian M. Hongray vs. Union of India 1984 Cr L J 830; see also People’s Union for Democratic Rights vs. Union of India AIR 1967 SC 355
Participation in such campaigns is open to all public-spirited members of society, including students and academics.

**SUGGESTED ACTIVITY**

**Contribute to an existing campaign against a repressive law.** Students often have positive energy, enthusiasm and refreshing ideas that could be used to strengthen an existing campaign. Here are some aspects to be considered for contributing to an existing campaign:

- **Choice of campaign** – choosing a campaign that is topical, and has ramifications for / activities in the city where the campaign is being planned would be useful.

- **Understanding the complexity of the issue** – each campaign has its own legal, political and sociological dimensions. Reading and research would help gain a clearer understanding of the issue, the historical and conceptual aspects, the work done so far in the campaign, the demands formulated by the campaign if any, etc. before the activity begins.

- **Information-sharing among students** – this could happen through study circles, organizing essay competitions / debates within the institution to increase students’ awareness of the issue. This will ensure that there is support from ‘within’ for students’ involvement in the campaign.

- **Collaborating organizations** – this involves identifying human rights groups engaged in the campaign, with whom a collaboration could be sought.

- **Manner / aspects of collaboration** – there needs to be a clear understanding of the ways in which students would contribute, and aspects of the campaign that the students would contribute to, to avoid an expectation gap.

- **Choice of activities** – while the choice of activities for the campaign would be decided by the persons / groups working on the campaign based on their assessment of the strategies likely to be most effective, students would have to assess the activities that they can take part in based on their own limitations. Some potential activities for students include production of campaign material (such as brochures, posters and placards), participation in rallies and logistical assistance to press conferences and public meetings. Students involved in popular culture could also collectively produce street plays and songs.

- **Plan the follow up** – it would be useful to build in an aspect of self-evaluation to assess the extent to which students learnt from this activity, and also ways in which students can continue their engagement with the campaign in future.
BIBLIOGRAPHY

Books
1. Bharat’s Preventive Detention in India (New Delhi: Bharat Law House, 2000)
2. Dilip D’Souza, Branded by Law: Looking at India’s Denotified Tribes (New Delhi: Penguin, 2001)

Articles from Journals

Articles from the Internet

Repressive Laws in India


Rally on the rights of gays, lesbians, bisexuals and transgendered people (LGBT), 2008, Mumbai. One of the main demands in the rally was the repeal of S. 377 of the Indian Penal Code which criminalizes homosexuality. Such rallies give visibility to rights of LBGT persons.

Credit: Minal Mehta
Press Conference on Communal Violence Bill, Mumbai, 4 Jul 2007
Credit: Women’s Research & Action Group

Survivors of Mumbai Communal Violence Protesting Against the Communal Violence Bill, Mumbai, 26 Jul 2007
Credit: Women’s Research & Action Group

Press coverage of Public Meeting on Communal Violence Bill, Mumbai, Aug 2007
Credit: Women’s Research & Action Group
Communal violence bill dangerous: Activists

Mumbai: The city's leading rights activists have opposed the National Bill on Communal Violence, which is likely to be introduced in the monsoon session of Parliament this year. With the exception of the state of Tamil Nadu, which is the only state that has passed such legislation, activists across the country, which strengthens the hands of the state machinery, could be dangerous.

"As seen in the past, most laws are not only selective, but are also applied by the state and police in a discriminatory manner, which can lead to the possibility of communal unrest," said activist Sadhana. "The bill is targeted at the religious communities, who are still fighting the gnis for some of Mumbai's riot victims. No campaign has been launched to fight with enough speed that there were minimal in planning communal riots, and nothing has been done to prevent them."

According to the activists, the bill neither takes into consideration the rights of victims, witnesses, and survivors of the riots, nor does it give protection to them. Moreover, it fails to acknowledge sexual violence as a tool to establish communal harmony among several communities. They said the bill is a blueprint for the generation of communal violence, which is not going to help the purpose. The activists have been urging the Centre to ensure that the power is not going to fall into the wrong hands."

Press coverage on Communal Violence Bill Campaign, 2007
Credit: Women's Research & Action Group


Candle Light Vigil organized in observance of the World Day Against Death Penalty on the 10th of October, 2007 at Bangalore in Karnataka by the Karnataka unit of the EU FNSI supported National Project on Preventing Torture in India
Source: http://www.pwtn.org/eubangalorecandlevigil.htm
Credit: Henri Tiphagne & People’s Watch
'National People’s Tribunal on Torture in India’ organized by the EU – FNSt supported ‘National Project on Preventing Torture in India’ on 17 Oct 2008 at New Delhi. Victims / survivors testify at such tribunals, about the torture they have been subjected to, in order to increase visibility to the atrocity.
Source: http://www.pwtn.org/eunationalppt.htm
Credit: Henri Tiphagne & People’s Watch

A victim / survivor of custodial torture testifying before jury members, at the People’s Tribunal on Torture in India, held in Tamil Nadu on 29 May 2008
Source: http://www.pwtn.org
Credit: Henri Tiphagne & People’s Watch
Dr. Binayak Sen, a public health specialist, was arrested and jailed for over two years under draconian laws of Chhattisgarh for being a prominent critic of the Salwa Judum and the state government’s highhanded tactics. The photo shows Dr. Sen after his release, wearing a “Free Binayak Sen campaign” tee shirt. 
Credit: Kamayani Bali Mahabal

NHRC at Dantewada: National Human Rights Commission’s convoy during its investigation into the violations in Chhattisgarh, taken on 26 September 2008.
Source: http://www.flickr.com/photos/30725729@N08/2889024941/
Credit: Jon Matthews, Nandini Sundar and the Campaign for Peace and Justice in Chhattisgarh
A “sit-in” protest of Meira Peibis (‘the women torch-bearers’) – a mass movement of women of the Meiti society in Manipur. The movement raises a collective voice, and largely protests against state repression and its impact on civilians.

*Credit: Anjuman Ara Begum*

Shrine of Thagjam Manorama, who was allegedly sexually assaulted and killed by Assam Rifles in Manipur in July 2004. The incident led to a big demand for repeal of the Armed Forces (Special Powers) Act (AFSPA) in Manipur and beyond. Assam Rifles is a para-military force that enjoys unbridled powers under the AFSPA.

*Credit: Anjuman Ara Begum*

Irom Sharmila, an iconic figure in Manipur, who has been on an indefinite hunger-fast for the repeal of the AFSPA since Nov 2000.

*Credit: Anjuman Ara Begum*
MECHANISMS TO PROTECT & PROMOTE HUMAN RIGHTS

– Arvind Tiwari

Constitutional provisions, statutes, an independent judiciary, the vibrant media and non-governmental organizations/civil society organizations constitute part of a wide range of mechanisms at the national level for the protection and promotion of human rights. The Human Rights Commissions are both catalysts and monitors of good governance within their respective jurisdictions and could play a pivotal role in realization and furtherance of human rights if they are pro-active, if they take preventive measures to mitigate violations and if they are fearless to book those who have violated human rights. The present article critically examines role of human rights commissions and other mechanisms in the protection and promotion of human rights in India.

I. THE PARIS PRINCIPLES

While the United Nations toyed the idea of establishing human rights commissions to protect human rights for a long time, the actual formation of Human Rights Commissions is a recent phenomenon.1 The purpose was to create human rights institutions that would serve as impartial, independent and autonomous entities to enforce national and international human rights norms.2 Their legitimacy and effective functioning can provide their validity as credible partners in the struggle relating to protection and promotion of human rights.

The National Human Rights Institutions (NHRIs), through their functions, are expected to promote good governance, review policies and transform the development agenda in the country concerned with a view to mainstreaming human rights in all activities of civic administration. The Human Rights Unit of the Commonwealth Secretariat identifies NHRIs as “one of the fundamental building blocks of human rights protection”3. Without fundamental principles to guide them, however, NHRIs cannot fulfil their mandate and will weaken the existing human rights system. In 1992, the United Nations Commission on Human Rights adopted a consensus resolution (1992/
54) called the ‘Paris Principles’, articulating the status and responsibilities of NHRIs for the protection and promotion of human rights. These resolutions were transmitted for adoption through the UN Economic and Social Council to the 47th regular session of the UN General Assembly. The Paris Principles are the result of the first systematic effort to enumerate the role and functions of NHRIs. These are divided into sections comprising certain headings: competence and responsibilities, compositions and guarantees of independence and pluralism, methods of operations and additional principles concerning the status of commissions with quasi-jurisdictional competence. Efforts have been made to ensure that NHRIs have “as broad a mandate as possible” and that such mandate has either Constitutional or legislative validity.4

The Paris Principles envisage the following roles and responsibilities for the NHRIs:

- They should be vested with competence to promote and protect human rights;
- They should have a broad mandate for the investigation of human rights abuses;
- They should function independently through legal, operational and financial autonomy, appointments and dismissal procedures;
- They should promote and ensure the harmonization of national laws and practices with international instruments to which the State is a party, encourage ratification and implementation of such instruments;
- They should contribute to the reports which States are required to submit pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- They should assist in formulating and executing programmes for the teaching of human rights and to increase public awareness of human rights through information and education;
- They should co-operate with the United Nations, regional institutions and the national institutions of other countries in the promotion and protection of human rights.

The Principles went on to deal in detail with issues relating to the composition, guarantees of independence and pluralism that should characterize national institutions. They also elaborated concepts concerning the methods of operation of such institutions. In doing so, they emphasized the need for freedom of action, openness with the public particularly in order to publicize opinions and recommendations, consultation with other bodies responsible for promoting and protecting human rights (such as ombudsmen, mediators and the like) and cooperation with non-governmental organizations.

Thus the ‘Paris Principles’ outlines four yardsticks by which to measure the independence and effectiveness of NHRIs. They are: a) independence through legal

---

and operational autonomy; b) independence through financial autonomy; c) independence through appointment and dismissal procedures; and d) independence through pluralism of composition.\(^5\) The NHRIs in India will be evaluated against these yardsticks in the following paragraphs.

II. NATIONAL HUMAN RIGHTS COMMISSION

Until the early 1990s, the Indian Government displayed scant regard for local human rights and civil liberties organizations. Their reports, appeals and petitions on human rights abuses met with deafening silence. The government could not, however, continue to ignore the criticisms of the international human rights community, which reported the on-going incidence of internal conflict and human rights abuses in the country. India was increasingly accused of providing impunity to its security forces and virtually condoning human rights excesses. Under sustained national and international criticism, the Government of India brought forth The Protection of Human Rights Act, 1993 (PHRA), which established India’s National Human Rights Commission (NHRC) the same year. Unfortunately, the motivating factors for creating the NHRC were largely political.\(^6\)

Fifty years after the Universal Declaration of Human Rights and the existence of a Constitution whose Bill of Rights mirrors this document, there remains in India a degree of misunderstanding about human rights, as well as some reluctance among people to recognize human rights as an indigenous part of the culture. “Human rights” are resisted by some to be a Western concept and the creation of a National Human Rights Commission is considered to be a result of pressures from the West. This is, however, not the case. The philosophic roots of the human rights discourse can be found in the ancient scriptures of all the religions practised across the country. India had already put its commitment to human rights into practice by creating various institutions for its better realization such as the Schedules Castes and Scheduled Tribes Commission (1990), the National Commission for Women (1990), and the National Commission for Minorities (1992). The formation of the NHRC in 1993 was the next logical step in this progress, with the chairpersons of the three other commissions being members of the NHRC.\(^7\) The setting up of the NHRC has added an entirely new and additional dimension to the efforts of the country for the protection and promotion of human rights.

II A. Composition of National Human Rights Commission

The PHRA states that a committee consisting of the Prime Minister, the Home Minister, the Speaker of the Lok Sabha, the Vice-Chairman of the Rajya Sabha and the Leader of the Opposition in the two Houses of Parliament would select the Chairperson and

---


the four Members of the Commission for a fixed term of five years or up to the age of 70 – whichever is earlier and appointment is made by the President under warrant. The Chairperson has to be a retired Chief Justice of the Supreme Court of India, and out of the four Members, one has to be a sitting or retired Judge of the Supreme Court, a retired Chief Justice of a High Court and the other two are to be from amongst persons having knowledge of, or practical experience in matters relating to human rights. The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes, National Commission for Scheduled Tribes and the National Commission for the Women are deemed members of the Commission for discharge of functions specified in clauses (b) to (j) of Section 12. Security of tenure has been provided by prescribing that the Chairperson or members can be removed only if, on a reference by the President, the Supreme Court accepts the ground of proved misbehavior or incapacity on enquiry. The Chairperson and the Members have the same conditions of service as the Chief Justice of India and judges of the Supreme Court respectively.8

The Paris Principles envisaged a pluralist composition of the NHRIIs, including presence of non-governmental organizations engaged in human rights, trade unions, associations of lawyers, doctors, journalists and eminent scientists, qualified experts from universities as well as parliamentarians. However, in reality, the NHRC and state human rights commissions in India are presently dominated by retired judges by virtue of the enabling legislation, cited above. It was debated at a workshop organized by Commonwealth Human Rights Initiative in 1998 as to whether members of the judiciary, per se, are best suited to uphold and maintain human rights.9 While judges are not unsuitable as human rights commissioners, the exclusionary character of the current legislative parameters, first, does not allow for a human rights commission which is truly representative of the population and reflective of diverse experiences, and secondly, excludes persons who are not part of the judiciary yet who may be better qualified to protect and promote human rights in India. It was further suggested at the workshop that there must be some mechanism to ensure that judges appointed to the human rights commission are sensitive and responsive to human rights issues and have experience in human rights issues.10 This could be achieved perhaps through an amendment of the Act and/or through civil society monitoring and participation in the member selection process.

Since protecting and promoting human rights can require skills beyond analyzing narrow questions of law, demanding a holistic analysis and an understanding of broad societal contexts, it was suggested at the workshop that a human rights commission should have a member who has expertise in the social sciences and one who is a doctor, to enable analyzing physical manifestations of human rights abuses (such as torture).11

The participants of the workshop further opined that the requirement that the NHRC be chaired by a former Chief Justice of India and that state human rights commissions

8 The Protection of Human Rights (Amendment ) Act, 2006 (No. 43 of 2006)
10 ibid
11 ibid
be chaired by a former Chief Justice of a High Court precludes having a woman as chairperson of NHRC for a long time to come and severely minimizes the chance of a woman heading a state human rights commission.\textsuperscript{12}

Further, the “appointment committee” is not free from political influence and, in practice, its recommendations carry a pro-government overtone. Since the Prime Minister, the Home Minister, the Lok Sabha Speaker and the Deputy Chairman of the Rajya Sabha may all be members of the ruling party, they are able to form a two-third’s majority in the Committee of the six Committee members (including the Chairperson) and appoint persons of their choice. Independence in the appointment of the Committee, as envisaged in the Paris Principles, is therefore not assured. On at least one occasion, appointments to the National Human Rights Commission have not been decided through an effective and participatory discussion process in consultation with the leader of the opposition.\textsuperscript{13}

\section*{II B. Role and Functioning of National Human Rights Commission}

Primarily, the NHRC takes cognizance of complaints of violations of human rights and deals with them. It also has jurisdiction to look into the allegations of negligence on the part of public officers in the prevention of violations of human rights. The Commissions (National & State) have power to utilize the services of any officer of investigating agency of the Central or State Government pertaining to enquiries.\textsuperscript{14} They could also undertake enquiries by their own investigating staff. The HRCs also ensure that violations which amount to criminal offences are sent to the judicial forums for trial after their investigation. Simultaneously, in appropriate cases, interim relief is also recommended. The Commissions have the right to approach a High Court or the Supreme Court, depending upon the nature of the matter, to make their recommendations as a rule of the court. The HRCs have the right to intervene in any proceeding involving allegation of violation of human rights pending before the court.\textsuperscript{15} The NHRC has the mandate to review the safeguards provided by the Constitution or other laws for the protection of human rights and recommend measures for their effective implementation. It also ensures enforcement of human rights with regard to the criminal justice system including custodial institutions, provides advice and assistance to the governments, promotes human rights education and awareness, engages in interaction, exchange and better coordination among the other NHRIs in the region and worldwide, promotes interactions and exchange with NGOs and publishes a monthly newsletter and annual report. In its annual reports, manifold activities have been extensively indicated. In a significant development, the NHRC has also initiated dialogue with major political parties (national and regional) about rights abuse by the party cadre and the need for inculcating a culture of human rights.\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{12} Ibid
\item \textsuperscript{13} For details, see Rajeev Dhavan, \textit{One Step Forward?: Notes on the First Report of the National Human Rights Commission} (New Delhi: PILSARC, 1995) at p. 4
\item \textsuperscript{14} Section 14, PHRA
\item \textsuperscript{15} Section 12, PHRA
\item \textsuperscript{16} For details see Annual Reports of NHRC, available at \url{www.nhrc.nic.in}
\end{itemize}
II C. How Do Commissions Protect Human Rights?

They carry out inquiries on receiving complaints about human rights violations from the victims, their families, non-governmental organizations or from any interested person or group. Sometimes they even inquire into incidents on their own on the basis of news and media reports or on finding irregularities during inspection visits to police lockups, jails, juvenile homes and government hospitals. After conducting an inquiry, human rights commissions can give recommendations to the government to stop an ongoing human rights violation; take suitable measures to prevent further abuse of human rights; register a criminal case and take disciplinary action against the violator; and pay immediate compensation to the victims or their families.

In carrying out an inquiry, human rights commissions have the powers of a civil court to summon and examine witnesses on oath; order discovery and production of any document; receive evidence on affidavits; order a public record or copy to be produced from any court or office; and appoint any person to examine witnesses or documents on their behalf. A large majority of complaints received by human rights commissions are against the police. Therefore a major thrust of the work of human rights commissions has been to ensure that the police perform their duties not only according to the law, but also that they do not abuse their powers or overstep their authority.

II D. How Do Commissions Promote Human Rights?17

Promotion of human rights is also a big part of the work of human rights commissions as they have been set up to create a culture of human rights in the country and especially within the government. Human rights commissions support studies on shortcomings in the criminal justice system, its delays and bias against the poor and the marginalized. The National Commission has taken up research projects on the state of human rights in insurgency or terrorist-affected areas, domestic violence, female foeticide and infanticide, child labour issues, rights of the disabled, rights of mentally ill persons, conditions of people belonging to denotified and nomadic tribes and on environmental issues. Commissions organize human rights training and sensitization programmes for the police, the army, paramilitary forces, judicial officers, police, prison staff, government servants and the general public. Human rights commissions are required to encourage the efforts of non-governmental organisations [NGOs]. In order to enhance its own efforts to promote and protect human rights, the National Commission has formed various core groups to study the human rights situation.18

The Commission also organizes workshops on human rights and develops human rights curricula; provides guidance to the media on how to report human rights violations, encourages research on human rights issues, reviews existing legislation and recommends changes to the same, recommends that the government signs / ratifies international human rights treaties and protocols, supports efforts of non-governmental

17 This section is liberally drawn from CHRI’s publication ‘Human Rights Commissions – A citizen’s Handbook, 2004 available at www.humanrightsinitiative.org/publications/hradvocacy/hr_advoc (accessed on 31 March 2009)
18 For details refer Annual Reports and other publications of NHRC available at www.nhrc.nic.in
organizations in human rights projects, and spreads human rights awareness through seminars, radio and television broadcasts, press releases and promotional material.\(^{19}\)

### II E. Relationship Between Courts & Commissions

The courts of law have, through formal decisions, interpreted the Constitution and the law of the land in terms of the Universal Declaration of Human Rights and the various covenants to which India is a party, and have come to the rescue of the victims of human rights violations. The functions of a court of law are to adjudicate a matter, determine the rights and interests of the parties concerned, and in the context of human rights, determine the human rights violation. In criminal cases, it may lead to a conviction / acquittal of the accused followed by punishment which could be imprisonment and / or fine. In civil cases, it may lead to an award of compensation / damages to the claimant.

Human rights commissions are not courts of law. When a complaint comes to a human rights commission, the commission has the power to make an independent inquiry about what has happened through its own investigators and call all the people involved in the matter before it, listen to witnesses, ask for explanations from the State, and come to its own conclusion, but it cannot punish the offender. It can however, make recommendations to the government to pay immediate compensation and start inquiries toward punishing the offender. Because a human rights commission does not have to follow all the formal rules of a court it can make inquiries and come to a decision more quickly. Governments are required in good faith to take action on the orders made by a human rights commission, though many times they contest these orders or delay in obeying them. The national and state human rights commissions have been set up as additional places to get redress for human rights violations because the courts deal with many other issues, are overburdened and busy.

The PHRA also has a provision for creation of human rights courts. A few states have created the same, though none are known to be functioning well. By concentrating solely on protecting and promoting human rights, commissions and human rights courts can play a more active role in addressing human rights abuses and educating people about their rights. For more details on human rights courts, please see sub-section VII below.

### II F. Filing Complaints before the Human Rights Commissions

Complaints can be filed in person, by telephone or by fax, by post or by telegram or by e-mail.\(^{20}\) Complaints should ideally be in writing - typed or written in clear handwriting so that they are easy to read, be addressed to the Chairperson or the Secretary of the human rights commission, be signed by the person complaining or have her / his


\(^{20}\) Important telephone numbers of the NHRC: Facilitation Centre (Madad) : 011 – 2338 5368; For complaints : Fax No. 011-23386521 / Mobile No: 09810298900 (After Office Hours); email: jrlaw@nic.in (for complaints); Covdnhncenic.in (For general queries). Quoted from Human Rights Newsletter, Feb, 2009 published by NHRC and available at www.nhrc.nic.in
thumb impression. Complaints should also include the full name and address of the complainant, victim, perpetrator and name of the authority who has overall responsibility (if known) and witnesses (if any), time, date and place of the incident, details of the incident, impact of the incident on the victim, and details of other action that has been taken, including complaints to the police and/or court proceedings.

II G. Compensation & Recommendations

Upon receiving the complaint, and after enquiry, human rights commissions may recommend to the government any or all of the following:

a) register a criminal case against the guilty persons;
b) pay immediate compensation to the victim or to the victim’s family;
c) take disciplinary action against the guilty persons;
d) stop a particular act if it is violating human rights;
e) properly perform its duty and protect those whose human rights are being violated; and
f) take preventive measures so that human rights violations do not take place in future.

Human rights commissions may award an immediate compensation to victims or their families. It is paid so that money can be made available to them for rehabilitation, without delay. It does not affect the right to claim further compensation in court by filing a civil case against the offender. It is therefore termed ‘interim relief’ by human rights commissions. Though there is no hard and fast rule, typically complaints regarding serious violations of human rights such as death in custody, torture, rape, illegal detention, kidnapping, destruction of private property, insults to personal dignity, and negligence by police, security forces or government agencies qualify for payment of immediate compensation. This recommendation to pay immediate compensation is made either to the government under whose jurisdiction the violation has taken place or the government that controls the department responsible for the violation. Sometimes after paying immediate compensation, the government concerned recovers the amount from guilty officials. Immediate compensation amounts vary from case to case depending upon the circumstances and from commission to commission.

For example, in Bihar, a man was electrocuted after he came in contact with a live wire that came loose from a distribution line after a storm. His wife complained to the NHRC that she was facing an acute financial crisis because of her husband’s death. The Commission found that the State Electricity Board had been negligent, and ordered an immediate compensation of Rs 2 lakhs to be paid to the victim’s family. The Commission asserted that this award of compensation would not affect the right of the wife to obtain further compensation in court.21

---

In another case, the Uttar Pradesh police claimed to have killed four ‘criminals’ who they said were about to rob a petrol station. The NHRC found this version to be false, and that it was a case of extra-judicial killing. The State of Uttar Pradesh was ordered by the Commission to pay Rs. 4 lakhs each to the victims’ families. The Commission also asked the government to speed up its inquiry into the incident so that the concerned policemen could be prosecuted in court.22

In Manipur, a man was not traceable after he was picked up by the Assam Rifles and taken to their battalion headquarters for questioning. Fearing for his life, his wife complained to the National Human Rights Commission which asked the Assam Rifles for a report. The Assam Rifles reported that he had been released. However, after ascertaining the facts and circumstances and the evidence before it, the Commission was not convinced. It asked the government to pay Rs. 3 lakhs as immediate compensation to the victim’s family. Although the crime took place in the jurisdiction of Manipur state, the Commission asked the Central Government to pay the immediate compensation amount as Assam Rifles is under the direct control of the Central Government.23

While recommending immediate compensation, the commission takes into account the extent of injuries suffered by the victim, medical expenses incurred for treatment, loss of income because of inability to work on account of injuries, number of dependents directly affected by the loss in earning capacity of the victim and humiliation / mental trauma suffered by the victims and / or their families. Although human life cannot be valued in monetary terms, or set-off the loss of a loved one, immediate compensation is intended to bring with it a sense of justice and relief, and to meet the costs of medical treatment / rehabilitation and bring some financial relief to the affected families. At the same time, it is intended to send message to the person / state paying the compensation to discharge his / her / its duty diligently in protecting and promoting human rights.

II H. National Human Rights Commission: A Critique of its Functioning

In addition to the NHRC, PHRA provides for constitution of State Human Rights Commissions and Human Rights Courts for better protection of human rights. The following section will provide a critical analysis of NHRC, SHRCs and Human Rights Courts in progressive realization of human rights in India.

Primarily, human rights commissions scrutinize violations by public authority and make necessary recommendations. For example, in the last fifteen years, the NHRC received a large number of complaints of more than a lakh per year regarding violations of various types of human rights. New human rights jurisprudence is being developed by the Commission through creative interpretation of the cases dealt by it.24 In addition, the NHRC has strived to improve governance through effective interventions in the

---

22 Ibid
23 Ibid
areas relating to food security, right to education, right to health, hygiene and sanitation, custodial justice, rights of women, children, elderly, disabled person, human rights of scheduled castes and scheduled tribes, right to culture and protection of community assets, right to life and living conditions, right to environment, disaster management and relief of rehabilitation of displaced persons. The Commission’s role is complementary to that of the judiciary.\(^\text{25}\)

NHRC has also taken up various issues which have a bearing on realization of human rights of individuals and groups. These include review of the Child Marriage Restraint Act, 1929, prevention of employment of children by government servants, amendment of service rules, abolishing child labour, guidelines for medical personnel on sexual violence against children, trafficking in women and children, maternal anemia, rehabilitation of destitute women in Vrindavan, combating sexual harassment of women in work place, abolition of manual scavenging, problems faced by denotified and nomadic tribes, rights of the disabled and HIV / AIDS-affected persons, right to health, relief work for victims of Orissa cyclone and tsunami, population policy, development and human rights, corruption and human rights, and human rights education.\(^\text{26}\) Thus the NHRC has initiated various measures for progressive realization of economic, social and cultural rights along with civil and political rights. However, the effectiveness of such measures at the grossroot level is yet to be monitored, especially by human rights organizations, concerned citizens’ bodies and individuals.

The Supreme Court has referred a number of important matters such as abolition of bonded labour, functioning of mental hospitals and protective homes in Agra and the right to food for NHRC’s consideration and recommendations. Another welcome feature of NHRC’s functioning is that since its inception, the Commission has recommended interim relief to the extent of Rs. 10,47,58,643, paid in 707 cases. This aside, it has also recommended in a significant number of cases disciplinary actions and prosecutions against the public servant who were \textit{prima facie} found responsible for their action of omission or commission resulting in violation of human rights.\(^\text{27}\) Though the Commission is a recommendatory body, the reports of the Commission are placed in the Parliament with an Action Taken Report (ATR) by the government. Thus, there is an in-built accountability of the government for implementation of NHRC’s recommendations. It states that 95% of the recommendations have been generally complied with.\(^\text{28}\)

Reviewing NHRC’s performance, South Asian Human Rights Documentation Centre—a Delhi-based human rights organization - observed as follows: \textit{India’s NHRC is charged with holding the Government of India accountable for its record on human rights. Unfortunately, all too often in recent years, it has failed for its record on human rights. Although much criticism of the NHRC’s structural shortcomings should be directed for the Indian Government for deliberately designing a weak institution, the NHRC is not powerless. Its tendency to

\(^{25}\) Ibid

\(^{26}\) See details in Annual Reports, Human Rights Newsletters (monthly) and other publications of NHRC available at \texttt{www.nhrc.nic.in}

\(^{27}\) Human Rights Newsletter, November 2006 published by NHRC, New Delhi.

\(^{28}\) NHRC India paper for Universal Periodic Review available at \texttt{www.nhrc.nic.in} (accessed on 21 April 2009)
respond to criticism either by pointing to lack of formal authority or by reciting laundry list of formal (often unused) powers reveals poverty of imagination and initiative that has only grown more acute overtime. Until it rediscovers a modicum of independence, initiative and creativity it had initially displayed, the NHRC will continue to be an ineffective check upon human rights perpetuated by agents of the state. Despite its dearth of formal powers, the early Commission and its leadership did not accept the government’s conception of it as a tool to burnish India’s rights records at home and abroad. It thought of itself as a bona fide National Human Rights Institution and acted accordingly. It was in this realm of perception and of more authority that the commission’s fragile power lay.29

The other criticism made often about the performance of the commission is that none of the NHRC’s Annual Reports after the April 2005 – March 2006 report have been presented in the Parliament. These unreleased reports have already lost much of their purpose as a means of holding the government accountable and as an advocacy tool of the Commission. It has been observed as follows: *we share the NHRC’s understandable frustration with its state of affairs, and applaud its repeated insistence in past annual reports that the government considers its reports more expeditiously. However, the NHRC has taken little public action in the last several years to continue to press this issue, and whatever lobbying it may have done behind the scenes appears to have been ineffective.*30 Its use of its *suo motu* power of investigation (of its own accord) has also been criticized for not being strategic, and for being over-responsive to the mass media. A further question that has arisen with regard to the functioning of NHRC is who uses it and why. The broad statistical data does not indicate any profile of the complainants, as a result of which it cannot be ascertained if the NHRC’s complaint mechanism is being used mainly by members of elite and ‘privileged’ classes.31 Some human rights groups say that the NHRC has been hampered by institutional and legal weaknesses. Since the NHRC does not have the statutory power to investigate allegations, it can only request that a state government submit a report with regard to a complaint of a human rights violation, which state governments often ignore. Asian Commission on Human Rights states that in a particular year, the NHRC did not register all complaints, dismissed cases on frivolous grounds, did not adequately protect complainants and did not investigate cases thoroughly. Another criticism is that NHRC’s powers to investigate cases against the military have been severely curtailed by the Protection of Human Rights Act.33

---


33 Section 19 of PHRA limits the power of the NHRC to directly inquire or investigate alleged violations committed by members of the armed forces; in such situations, the NHRC can only call for information or a report from the Central Government, based on which it may make recommendations to the government if it finds the need to.
III. OTHER COMMISSIONS

There are other Commissions such as National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National / State Commission for Women, National / State Commission for Safai Karmachari, National / State Commission for Minorities, State Backward Class Commission and National Commission for Child Rights. The mandate of these commissions is restricted to the issue for which they have been set up, whereas the NHRC / SHRCs have a broader mandate. Further, the complaints mechanism of the NHRC is far more established and used more widely. These commissions can, however, refer complaints received by them involving violation of human rights to the National and State Human Rights Commissions.

The National Commission for Women (NCW) was set up in January 1992 under the National Commission for Women Act 1990. This was a consequential development of the work of the women’s movement to deal with violence experienced by women in various arena including the home, the workplace and in custodial situations. The ending of community prejudices and practices that have allowed ‘honour crimes’ to occur with impunity, or where male preference leads to an everyday practice of female foeticide, are part of the NCW’s mandate. Apart from drafting Bills to be considered for passage by Parliament, the NCW has scanned a range of laws and suggested amendments to integrate a gender perspective in them. Soon after its creation, the NCW was tasked by the Supreme Court to device a scheme for assistance to victims of rape and to recommend a scheme that may be enforced by an arrangement akin to a Criminal Injuries Compensation Board. The NCW has, on occasion, intervened directly in individual instances of distress and denial of rights to protect women. The Chairperson of the NCW is an ex officio member of the NHRC.

IV. ESTABLISHMENT OF HUMAN RIGHTS CELL IN POLICE HEADQUARTERS

With an increase in the number of complaints against members of the police force, the NHRC considered it necessary to establish appropriate in-house machinery in the State Police Headquarters to help deal with this problem. On 9 March 1999, the Commission convened a Conference of the Directors General of Police of various States, which arrived at a consensus to create ‘Human Rights Cells’ in the Police Headquarters in all of the States. These Cells are to be headed by an officer of the rank of an Additional Director General of Police or Inspector General of Police. A panel of names of three selected officers, known for their reputation, integrity, efficiency and impartiality is to be called for from the State DGP’s, and on due verification, one of the three officers is to be approved by the Commission and its views communicated to the concerned State DGP to appoint him as Addl. DGP/IGP (Human Rights) to be in-charge of the Human Rights Cell at the State Police Headquarters.

According to NHRC, all the State Governments have now confirmed the constitution of such a Cell in the Office of the Director General of Police. Further, on 2 August 1999, elaborate guidelines were formulated and communicated to the Chief Secretaries and Directors General of Police of all the states to ensure effective functioning of these cells.\textsuperscript{34} The purpose of this exercise was to ensure that every state / police department

\textsuperscript{34} For more details, see NHRC Guidelines / Institutions 2005 published by National Human Rights Commission, New Delhi.
has a credible and effective mechanism with which to sensitize the state police personnel to the need to recognise, respect and protect the human rights of the citizenry. These Human Rights Cells are expected to be a link between the NHRC and the state police, and are also expected to deal with complaints made against the police, develop training curricula, organize workshops and spread human rights awareness through publications and the media. The Commission hopes that the establishment of such Cells will help to reduce human rights violations by the police personnel, enhance the image of the police and increase the trust of the public in the police.

Almost all states have set up human rights cell in the police headquarters. However, in most of the states (including Maharashtra) these are not functioning effectively, partly because these are headed by the senior police officials at the rank of Additional Director General (ADG) or Inspector General of Police (I.G.P.) and many of them feel that they have been given unimportant portfolio. This aside, the police personnel working in the Cells also feel that human rights are an impediment for effective policing. Hence they do not take much interest to implement the mandate of the human rights cells in the police department. In addition, most civil society organizations including the media are unaware that such a mechanism is available in the police establishment, and hence do not make use of the same.

V. STATE HUMAN RIGHTS COMMISSIONS (SHRCs)

Section 21 of the Protection of Human Rights Act, 1993 envisages the setting up of State Human Rights Commissions because, being nearer to the people of the respective States, they would be able to provide speedy and less expensive form of grievance redress. The NHRC, for its part, has therefore been urging the early establishment of SHRCs in all states. Successive chairpersons have, accordingly both written to and spoken with the Chief Ministers of states impressing on them the need to set up SHRCs.35 So far 18 States had established State Human Rights Commissions.36

V A. Role of State Human Rights Commissions (SHRCs)

In crux, the purposes for which State Human Rights Commissions have been set up include:

- To bring fairness, transparency and accountability in the governmental administration;
- To act as a mechanism for implementation of fundamental rights and international human rights obligations of the state;
- To provide a forum for investigation and resolution of human rights complaints;
- To promotes a culture of human rights in the state and thereby contribute to the democratization process; and
- To network with academic institutions and civil society organizations for spreading human rights education across the communities.

35 See Annual Reports of NHRC since 1993-94 to 2005-2006
36 Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Manipur, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal.
It may be stated that the SHRC also intervenes in cases involving any allegations of violation of human rights pending before a court with the approval of such a court and also makes endeavor in highlighting invisible and unacknowledged violence against marginalized groups of people including children and women. To discharge its obligations effectively, the SHRCs encourage human rights NGOs to take active part and coordinate with the concerned commission in spreading human rights literacy, awareness and education among various sectors of society. The SHRCs also undertake and promote research in the field of human rights, and hold workshops, seminars and public hearings on various human rights issues.

For example, the Maharashtra State Human Rights Commission (MSHRC) recommended departmental inquiry against a police officer who had brutally assaulted a canteen boy with his belt for refusing to clean the officer’s motorcycle; its action in a case of suicide by a college student allegedly due to inhuman / degrading treatment by the college staff and principal, led to registering a criminal complaint at the police station against the alleged perpetrators; it awarded compensation to the husband of a woman who had died due to medical negligence during sterilization; it sanctioned a fund of Rs. 39,85,000 for provision of civic amenities in Ptherdi Taluka, Ahmednagar district.37

V B. SHRCs: A Critique of Their Functioning

Besides adequate staff and financial resources, credibility of SHRCs depends upon the appointment of its members. As per a 2006 amendment to the PHRA, the SHRC will have 3 members (instead of 5) - two from Judiciary (Chairman and 1 former High Court Judge or District Judge) and 1 from amongst persons having knowledge of or practical experience in maters relating to human rights.38 Experience so far shows that under this category mostly, retired bureaucrats are appointed instead of human rights activists / academicians having knowledge of or working in the field of human rights.

Appointments are made by the State Governor upon the recommendations of a committee chaired by the Chief Minister of the State, and which includes the Speaker of the Legislative Assembly, the Home Minister, the Leader of the Opposition in the Legislative Assembly and, where there is a Legislative Council in the State, the Chair and Leader of Opposition of that Council. The appointment committee is, therefore, wholly comprised of politicians, and functions in a closed and subjective manner, contrary to the goal with which SHRCs were created – to function as a “people’s body”. Similar provisions pertain to the appointment of members of the NHRC. It is obvious that appointments are at present extremely political and do not offer the best persons as members. The 2006 amendment did not include any change in the composition of the appointment committee despite submission made by NGOs in this regard. It is vital that the Protection of Human Rights Act be amended to ensure that the appointment process is de-politicized.

37 Maharashtra State Human Rights Commission 2004, addressed by Chairperson on Human Rights Day at 10th December, 2004
38 Section 21(2) of the Protection of Human Rights, 1993 (As amended by the Protection of Human Rights (Amendment) Act, 2006, No. 43 of 2006
Since many major human rights violations are those caused by the state, there is an inherent conflict of interest when politicians are entrusted with appointing members to a human rights commission. Governments who fail to adhere to human rights norms and standards would naturally be tempted to appoint members who acquiesce to the actions of government and who fail to hold the State accountable for human rights violations. Political opponents waiting to come into power would be similarly minded. The potential exists for SHRCs to become patronage postings, thereby losing their legitimacy with the people whose rights are infringed. It is, therefore necessary that the appointment process must be open and the selection based on clear criteria.

VI. DISTRICT COMPLAINT AUTHORITIES

The NHRC has been deeply concerned at the criticism that the public authorities are abusing and misusing their power to trample the human rights of civilians, and, in particular, the media’s focus on the excesses committed by the police personnel. To this end, the National Human Rights Commission had written 33 to the State Governments and the High Courts to constitute a District Complaint Authority to examine the conduct of the public authorities and their abuse of power in an arbitrary manner, and the growing disrespect for human rights and rule of law.39 The Authority also, in case it finds that the complaint requires to be dealt with either by the SHRC, if existing, or the NHRC as the case may be, may refer to it its own recommendations in that behalf. This will help to further decentralize the grievance redress machinery at the District level.

The composition of the Committee may consist of the Principle District Judge of the district concerned (as the chairperson), the District Collector / Deputy Commissioner in charge of the district (as a member), the Senior Superintendent of Police / Superintendent / Additional Superintendent of Police in charge of the district (as a member) and The Superintendent of Police / Additional Superintendent of Police Secretary (as an exofficio member).

It is noteworthy to mention that such a system is already in existence in Kerala where it is known as the ‘District Human Rights Authority’. It is a noble step to decentralize the grievance redress mechanisms at the district level. However, NHRC’s annual reports do not mention any follow-up action taken by the various states and Union Territories on this issue. No data is available as to whether these mechanisms are functioning effectively, and how many victims of human rights violations approach and use these mechanisms. A detailed study is also required to be undertaken regarding best practices evolved by that in Kerala so that it may help other states and union territories to streamline their district complaints mechanism.

It is evident from the above discussion that there is no dearth of redress mechanisms for effective realization of human rights. However, not all these mechanisms are known to the citizens, social activists and human rights defenders. Therefore, it is a need of the hour that these mechanisms are widely publicized by the SHRC and police

---

departments in close collaboration with academic institutions, human rights organizations and the local media.

VII. HUMAN RIGHTS COURTS

The PHRA envisages that for the purpose of providing speedy trial of offences arising out of violations of human rights, state governments may, with the concurrence of the Chief Justice of the concerned High Court, specify for each District a Court of Sessions to be a Human Rights Court to try such offences. For every such court, the state government shall specify a Public Prosecutor or appoint an advocate of at least seven years standing as a Special Public Prosecutor for the purpose of conducting cases in that court. Such courts were thereafter notified in Andhra Pradesh, Assam, Sikkim, Tamil Nadu and Uttar Pradesh but ambiguity remained as to the precise nature of offences that should be tried in such courts and other details regarding conduct of their business. In Maharashtra, for example, the Chief Justice of Bombay High Court, in concurrence with State government has specified the Court of Additional Session Judge as a special court to try such offences.

To fill the gap People’s Union for Civil Liberties filed a criminal revision case (No.868/96) under Article 227 of the Constitution regarding the jurisdiction and procedure to be followed by Human Rights Courts set up under the PHRA in all the districts of Tamil Nadu. The Madras High Court delivered its judgment on June 23, 1997 giving its views of various aspects of the functioning of Human Rights Courts. The High Court framed as many as 25 questions/issues touching on the interpretation of various provisions of the Protection of Human Rights Act, 1993, the scope of jurisdiction of the Human Rights Courts and the human rights offences. In fact, it will be of great assistance to the proper functioning of Human Rights Courts not only in Tamil Nadu but in other States as well.

It is noteworthy to mention that the human rights court is not empowered to award compensation to the victims of human rights violations. However, it can approach NHRC or concerned SHRC to make recommendations for payment of interim compensation for the victim. For example, in March 2000, a human rights court in Kanpur Nagar referred a case relating to the death in judicial custody of a person by the name of Jasveer Singh. The Court came to the conclusion that the deceased had been denied proper and timely medical attention while in custody, and his death was the result of gross negligence and carelessness on the part of state authorities in whose custody the deceased was. The court referred the issue of compensation to the NHRC, which recommended to the U.P. government on 20 September 2001 to pay Rs. 2,70,000 as immediate interim relief to the family of the deceased. It also recommended the identification and initiation of prosecution against the concerned public servant.

The necessity of constituting human rights courts lies in the speedy trial of cases arising from human rights violations, by special courts with an expertise and focus on

---

40 Section 30 of The Protection of Human Rights Act, 1993
41 Section 31, ibid
human rights. In particular, cases arising out of laws such as Protection of Civil Rights Act 1955, SC/ST (Prevention of Atrocities) Act 1989, Bonded Labour System (Abolition) Act 1976, Dowry Prohibition Act 1961, Devadasi System Abolition Act, Prevention of Immoral Traffic Act, Juvenile Justice Act and Workmen’s Compensation Act 1953 which impact vulnerable sections of society would be considered urgent in nature, requiring a speedy trial in a special court such as the human rights court. However, recent annual reports of the NHRC have not provided any assessment of human rights courts. Therefore their usefulness as a redress mechanism to realize human rights at the grassroots level is yet to be ascertained. The Commission has made various recommendations to the Government of India to amend the PHRA regarding human rights courts. However, the government ignored them while amending the PHRA in 2006.

VIII. THE WAY FORWARD

In India the implementation of human rights are influenced by factors including:

- socio-economic factors (such as denial of the right to livelihood and decent standard of living) that lead to indignity and lack of self respect for a majority of the people;
- failure of governance – implementation of social policies and programmes in an improper, ineffective and discriminatory manner;
- effects of corruption on good governance and human rights;
- tendency of the state to usurp more and more power vis-à-vis the civilians, and misuse / arbitrary use of state power to curtail / violate human rights of the people;
- lack of awareness of rights among the most marginalized, underprivileged and vulnerable communities;
- lack of financial and other means to access the legal system to assert their rights; and
- a largely indifferent middle-class that is self-centred and does not concern itself / engage with issues of human rights that exist in India today.

This aside, the globalization process has deeply transformed relationships between and within states. Although more people than ever have access to information, the gaps between the rich and poor countries and between wealthy and destitute people have never been greater than today. The exclusion and deprivation of whole communities of people from the benefits of development naturally contribute to tensions, violence and conflicts within countries. Preventing and mitigating internal conflicts are a necessary first step, but not sufficient to promote peace and stability in the world today. It is important to uphold human rights, focusing on inclusive and equitable development that respects human dignity and diversity. It is equally crucial to develop the capacity of individuals and communities to make informed choices and to act on their own behalf. Human security is a response to these challenges.
According to a 2003 report of the UN Commission on Human Security, human security means protecting vital freedoms, protecting people from critical threats and situations, and building on their strengths and aspirations. It also means creating systems that give people the building blocks of survival, dignity and livelihood. Human security connects different types of freedoms, and offers two general strategies - protection and empowerment. Protection shields people from dangers. It requires concerted efforts to develop norms, process and institutions that systematically address insecurities. Empowerment enables people to develop their potential and become full participants in decision-making. Protection and empowerment are mutually reinforcing, and both are required in most situations. The report argues that human security complements state security, furthers human development and enhances human rights. It complements state security by being people-centered and addressing insecurities that have not been considered as state security threats.

In many ways the Protection of Human Rights Act 1993, under which the NHRC and SHRCs have been set up, symbolizes the concerns and aspirations of the country. It reflects the commitment to create institutional mechanisms at various levels to protect and promote human rights; it recognizes the need to address human rights problems at the governmental and societal levels; it underscores the commitment of the nation to bring into practice the provisions of international human rights instruments to which India is a party; above all, it represents the effort to bring all the players (state and non-state actors including members of civil society) – to work towards a better realization of the country’s commitment to uphold the dignity of its citizens and to protect their rights. Given the country’s diversity and range of problems, this is an immense and challenging task.

SUGGESTED ACTIVITY

1. Organize and make a field visit to the state human rights commission / commission for women / commission for minorities / human rights cell of the Police Department. Observe the following:
   - various functions and responsibilities carried out by the commission / cell;
   - the profile of people who approach such commissions for help;
   - skills, capability and attitude of the personnel at the commission / cell in dealing with the issues at hand;
   - the effectiveness of interventions made by the commission / cell in the past year;
   - issues / factors that could make the commission / cell perform its role more effectively.

Have a discussion on the same among your classmates, with your teacher as the facilitator. Write an article recording your observations and get it published in your college / local journal or newspaper.

---

2. Organize and make a field visit to a human rights court in your city, if one exists. Gather information including directives and guidelines issued by the NHRC with regard to the creation of human rights courts. Compare the same with the actual functioning of the court. List out additional guidelines that could help the human rights court function more effectively. Discuss this among your classmates, facilitated by your teacher. Write a letter to the NHRC with the observations and suggestions of the entire class for improving the functioning of human rights courts.
BIBLIOGRAPHY

Books


Articles from Journals


PRACTISING HUMAN RIGHTS: 
ROLE OF NGOS
– Kamayani Bali Mahabal

NGOs or NPOs?
A non-governmental organization (NGO) is an organization that is not part of a government and was not founded by states. NGOs are therefore typically independent of governments. So literally speaking, a *panwalla* shop can be an NGO and so can a multiplex cinema or a multi-national company. Hence a more appropriate term used widely will be a *non-profit organization* (abbreviated NPO, also not-for-profit). NPO is a legally constituted organization whose objective is to support or engage in activities of public or private interest without any external commercial or monetary profit. For this reason, this chapter uses the term NPO instead of NGO.

A. INTRODUCTION
NPOs constitute an important agent in what is known as ‘civil society’, which refers to the totality of players acting outside the state to achieve certain goals. NPOs exist in addition to other institutions, such as the media, trade unions and consumer organizations. The role of civil society has been seen as that of limiting the untrammeled use of power by the state through the institutionalization of political and civil rights. This is done by creating a realm of actors, who function in a manner autonomous of state regulation in groups smaller than the state.¹ In this manner, the role of NPOs is to prevent states from becoming dictatorial and also to form a link between individual citizens and the state. Indeed, one of the most important roles played by NPOs is to constitute an effective ‘pressure group’ and constantly attempt to make the state accountable for its actions. Neera Chandhoke talks about civil society actors such as NPOs becoming “the site for the production of a critical rational discourse, which possesses the potential to interrogate the state”.² It is for this reason that it has been argued that NPOs should be seen only in relation to the state.

B. NPOS AND THE HUMAN RIGHTS MOVEMENT
The United Nations has given recognition to the concept of non-governmental organizations under Article 71 of the UN Charter, which states:

“The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.”

Article 71 falls under Chapter X of the United Nations Charter, which pertains to the Economic and Social Council (ECOSOC). NPOs play an important role in the ECOSOC, particularly as far as natural disasters and refugees are concerned. Moreover, NPOs have made significant contributions during the sessions that have been arranged by the Security Council to consult them, in the past. One view is that a public interest group qualifies as a ‘human rights NPO’ if it “bases its criticism of state conduct on international human rights law”, on the basis of the states’ adherence to principles laid down in the Universal Declaration of Human Rights, the Civil-Political Rights Covenant and other such instruments containing principles of international human rights law. This view has been rejected by several authorities, since it is restricted to the formal source of the norms, which are invoked to criticize state conduct. It is submitted that a more favourable definition of ‘human rights NPOs’ would be one that takes into account the context of human rights violations in every state and one that incorporates a broad construction of the term. It is important for NPOs to use domestic standards of human rights as well, for, it provides for holding those countries accountable, which may not have ratified the international covenants related to human rights. The functioning of human rights NPOs must constantly respond to changes in human rights issues, new forms of abuse, new methods of addressing abuses and new manners of intervention. This may often call for human rights NPOs to make serious choices about modifications in their methodology.

Hence, it is important for human rights NPOs to keep in constant touch with the changing requirements in their field and reinvent themselves in accordance with the same. Upendra Baxi, in a discussion on the tasks and missions of human rights NPOs, names the following functions:

- **Future Inventing**: This refers to the process of constantly reinventing human consciousness and organization to shatter dominant discourses, which may not favour certain groups, such as racism, colonialism and discrimination against women.

- **Agenda Setting**: Several NPOs create an agenda of political and social action, which arises out of their conception of a better future for human beings.

---


5 Although several countries are parties to these instruments, the governments in these countries fail to implement human rights and it is for this reason that human rights NPOs have a role in making them accountable. *For further details* on states’ commitments under international human rights law, please see Chapter 7 of this publication.
Norm-Creative: NPOs are often faced with the task of opposing developments that pose a threat to the normativity of human rights.

Implementational: Human rights NPOs carry out an array of functions relating to the implementation of human rights, such as investigation to expose human rights violators, and the process of advocacy, persuasion and dialoging with government officials. The performance of these functions often involves close collaboration with the media.

Solidarity: The duty of creating a global culture of empathy and a network that connects national and local level rights activists from the world over.6

Upendra Baxi also identifies four principles that human rights INPOs are characterized by, namely the primacy of human rights; non-retrogression; the right to effective remedies and the right to participation. Baxi is of the view that none of these characteristics are free from debate.7

C. THE ROLE OF INTERNATIONAL NPOS (INPOs) IN THE HUMAN RIGHTS MOVEMENT

The International Committee of the Red Cross, which was established in the year 1863 by Henri Dunant, a physician of Swiss origin, is known to be the first INPO.9 There was a tremendous increase in the number of INPOs in the twentieth century, particularly due to the fact that the United Nations Charter had extended recognition to NPOs, under Article 71. Some of the prominent INPOs that came up were the International Commission of Jurists, Amnesty International,10 Human Rights Watch,11 the Anti-Slavery Society12 and the Lawyers Committee for Human Rights.13

Human Rights INPOs perform a range of functions, which include: the preparation of reports of human rights violations in countries across the world, distribution of such reports, creating awareness among the media about issues of human rights by distributing information to them and carrying out the tasks of lobbying and advocacy with respect to human rights. They also engage in drafting model legislations that incorporate the human rights discourse, providing education on human rights and organizing protests and demonstrations.14 Some of the prominent issues that human rights INPOs are concerned with include the rights of women, minorities, indigenous

---

7 Ibid at p. 54.
8 For list of NPOs, please see http://en.wikipedia.org/wiki/List_of_human_rights_organizations (accessed on 30 December 2008).
12 Ibid.
13 Ibid.
14 Ibid at p. 947.
peoples, opposition to censorship, economic and social rights, rights of prisoners and children’s rights etc.\textsuperscript{15}

Human rights NPOs play an important role in upholding human rights, as envisaged under the United Nations Declaration of Human Rights and other human rights instruments. They also perform the task of creating awareness about these human rights. Through their activities, they are also successful in setting human rights standards. INPOs are often very large and influential bodies, capable of exercising international pressure. Due to this characteristic, they compel the governments of countries across the world to enforce human rights in their respective countries and be vigilant in order to prevent infringement of these rights. Since these INPOs are autonomous of the government, they are often useful owing to the fact that they can resort to the use of informal channels to disseminate information about human rights even in countries where the government regime is repressive.\textsuperscript{16}

D. CRITICISMS OF HUMAN RIGHTS INPOs

- **Legitimacy:** It has been alleged that human rights INPOs do not have the legitimacy that they require for the tasks carried on by them. Kenneth Roth feels that “international organizations have volunteered and been volunteered for a variety of tasks that, in a word, require forms of legitimacy that international organizations never had”\textsuperscript{17}. He claims that there is a “democracy deficit”, for INPOs have assigned themselves the power and authority that they yield.\textsuperscript{18}

- **Elitist Bias:** Another major criticism that INPOs face is that of having an elitist bias. Since the membership of most INPOs is constituted largely by educated middle class individuals from affluent western countries, it has been said on several occasions that INPOs lack any real connection with the “masses”. Hence, the scope and participants in the dialogue relating to human rights is restricted to opinions and people from the North.\textsuperscript{19} Chindi Odinkalu sums up the problem with respect to the activities of human rights INPOs in Africa: “while exhorting national human rights groups in Africa to think globally and act locally, these agencies think locally and act globally”.\textsuperscript{20} It is submitted that the framework in which INPOs formulate their policies are based on the conception of human rights as envisaged in international instruments relating to human rights, which often reflect a western bias. As a result, INPOs sometimes fail to appreciate the nature of the specific nature of human rights violations that developing countries face.

\textsuperscript{15} Ibid
\textsuperscript{16} P. Tujil, ‘NPOs and Human Rights: Sources of Justice and Democracy’ 52 Journal of International Affairs, (1999)
\textsuperscript{18} Ibid at p. 93
\textsuperscript{19} Ibid at p. 96
Ritualistic Pattern of Reports: Stanley Cohen expresses his distaste for human rights INPOs using a standard pattern in composing their reports. He is of the opinion that the format used by human rights INPOs – which involves, in the following order, the INPO expressing concern and condemnation for the objectionable practice in question, stating the problem, setting the context of the problem, describing the sources and methods of information obtained by the organization, allegations in greater detail, a statement of the relevant international instruments and lastly, calling upon the government to undertake some action – has become ritualistic. He calls for a change in this pattern. So, following such a pattern in a mechanical pattern is likely to portray the INPO in bad light, for it shows a lack of innovation on their part. It is also indicative of the fact that the same format may be applied to dissimilar situations in the world.

Selection Bias: Critics point out that INPOs such as Amnesty International report extensively on human rights violations in relatively democratic and open countries. Amnesty International defends its position by stating that its mandate is to document any available information and pressurize governments on the basis of this information. It is submitted, however, that the information ultimately presented by such INPOs is distorted and often biased against governments where information is easier to obtain.

E. CHARACTERISTICS & FUNCTIONS OF HUMAN RIGHTS NPOS IN INDIA

Before entering into a discussion on the characteristics of human rights NPOs in India, it is essential to understand the evolution of the concept of human rights in India. The concept of human rights in India has been modelled upon the definition of human rights given in the Universal Declaration of Human Rights, 1948. Section 2(d) of the Protection of Human Rights Act, 1993 in India lays down the definition as follows:

Human Rights means the rights relating to life, liberty, equality and non-disparity of the individual, guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The National Human Rights Commission (NHRC) of India is an autonomous statutory body established on October 12, 1993, under the provisions of The Protection of Human Rights Act, 1993 (PHRA). Some of its functions include the following:

- It inquires into violations of human rights or negligence in the prevention of such violation by a public servant;
- It intervenes in any proceeding involving any allegation of violation of human rights pending before a court;

23 For the text of Protection of Human Rights Act, please see http://www.epw.org.in (accessed on 31 December 2008)
It visits any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and makes recommendations, reviews the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommends measures for their effective implementation;

- It reviews factors that inhibit the enjoyment of human rights and recommends appropriate remedial measures;

- It studies treaties and other international instruments on human rights and makes recommendations for their effective implementation;

- It undertakes and promotes research in the field of human rights, spreads literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means and encourages the efforts of NGOs and institutions working in the field of human rights.24

The narrative of the human rights movement in India and its historical origins has always been contextualized in the post-colonial democratic era.25 The turning point with respect to human rights activism in India was undoubtedly the Emergency period during the reign of erstwhile Prime Minister Indira Gandhi. The Emergency was a period characterized by the curtailment of civil liberties through amendments to the Constitution to clamp down on the right to enjoy the fundamental rights enshrined within it, the promulgation of ordinances that legitimized the government’s actions, such as arresting people on the pretext of ‘preventive detention’ as well as the establishment of new intelligence outfits, such as the CBI and RAW, which assisted the government with its agenda.26 As a result of the severe repression of civil liberties by the government, several individuals and organizations came to the forefront, as champions of basic human rights. The most prominent among these was Jayaprakash Narayan’s ‘People’s Union for Civil Rights’.27 A similar organization that was established was the ‘People’s Union for Democratic Rights’.28 The importance of these organizations was that they were autonomous of the government and critical of its actions.

Since then, the human rights movement in India has progressed with the establishment of other human rights NPOs, fighting for a variety of causes. The Human Rights Organization of Manipur, Andhra Pradesh Civil Liberties Committee (APCLC), Naga People’s Movement for Human Rights of Nagaland, etc. are NPOs dealing with state-specific human rights issues in India; The Other Media and the Association of Parents of Disappeared Persons (APDP) work on issues of human rights in Kashmir; the National Centre for the Protection of Human Rights coordinates several human rights

---

24 For detailed information see www.nhrc.nic.in (accessed on 31 December 2008)
26 Ibid
28 C. J. Nirmal, Human Rights in India: Historical, Social and Political Perspectives (New Delhi: Oxford University Press, 1999) at p. 79
activities; NPOs such as the Indian Association of Lawyers, the Lawyers Collective and the Human Rights Trust disseminate information on human rights through their publications; the South Asian Human Rights Documentation Centre and the Asian Centre for Human Rights engage in activities including documentation, research, campaigning, training and implementation of human rights; the Punjab Human Rights Organization works with Amnesty International and the UN Human Rights Commission;\(^ {29}\) the National Campaign on Dalit Human Rights works for protection and promotion of human rights of dalits through various activities.\(^ {30}\)

K. S. Krishnaswamy identifies six functions performed by human rights NPOs, namely:

- Gathering, evaluating and disseminating human rights;
- Advocating human rights;
- Lobbying and mobilizing public opinion;
- Providing legal aid;
- Providing humanitarian relief; and
- Developing human rights norms.\(^ {31}\)

It is submitted that in a developing country like India, it is important to equip citizens with proper awareness about human rights, such that they do not remain distant concepts and so that the government does not take advantage of marginalized groups. However, in addition to creating awareness and aiding the formulation of public opinion, providing assistance in terms of physical resources may often be of tremendous importance.

The human rights movement has come a long way since the Emergency, with a proliferation of human rights NPOs ever since. Human rights violations in India have been manifested in different forms in India even after the Emergency, often with the state being a party to these violations or showing indifference to the plight of the victims. According to many writers, the human rights movement has expanded itself ever since its origin during the period of Emergency.\(^ {32}\) It now focuses on a wider range of issues that include civil and political, social and economic as well as rights of groups / communities. These changes have been attributed to a variety of factors, such as the change in the way development is viewed, the nature of government programmes and the priorities of donor agencies.

Human rights NPOs have been instrumental in expanding the rights discourse to include certain rights, which were previously not part of the human rights discourse, due to the limited sense in which the state projected rights. As a natural consequence of this development, the state has been compelled to take steps for the implementation

\(^{29}\) Ibid

\(^{30}\) For more details please see the website of National Campaign on Dalit Human Rights, available at http://www.ncdhr.org.in (accessed on 31 December 2008).

\(^{31}\) Supra n. 5 at p. 198.

of human rights. These NPOs have created awareness about the state being a human rights violator, by carrying out atrocities in Gujarat, Punjab, Kashmir and the North Eastern states, for example, and through the passage of draconian law. In order to formulate an effective defence against these accusations, the state has had to bring about reform in its policies and actions. For more details on repressive laws, please see Chapter 4 of this publication.

Human rights NPOs in India have played a significant role by taking steps to guarantee human rights to marginalized groups, including children, women, *dalits*, *adivasis*, members of minority communities, physically and mentally challenged persons, migrant workers, refugees and members of other groups of marginalized and underprivileged communities. It is largely due to the sustained efforts of human rights NPOs that the state has taken cognizance of the rights of these groups.

F. CRITICISMS OF HUMAN RIGHTS NPOS IN INDIA

- **Lack of A Comprehensive Approach:** One criticism leveled against human rights NPOs in India has been that their approach is not a comprehensive one due to the rather rigid manner in which they focus only on a single issue. For example, the NPOs dealing with providing human rights to women may not engage with the problems of the peasantry. This would lead to issues such as those of women’s exploitation in the farmers’ movement being neglected. It is submitted that the NPOs must pursue a more flexible approach, for, concentrating on single issues without thinking about interrelated rights of other groups may prove to be myopic.

- **Isolation of Human Rights NPOs:** Basically due to their restricted social base, it is said that NPOs do not enjoy popular support, to the extent that their exclusivity lends them the character of powerful class-based movements, often the kind that they are opposed to. Moreover, the media and the middle classes begin to view them as groups pursuing their vested interests and working as per the whims of their donors.

- **The Issue of Funding:** Possibly the biggest criticism that human rights NPOs in India face is related to the issue of funding. It is alleged that many human rights NPOs formulate their programmes, such that the interests of their donors are given priority to.

G. INPOS AND NPOS: A COMPARATIVE DISCUSSION

Baxi opines that NPOs find security in creating “global spaces”, as opposed to “local spaces”, that is, there is a greater possibility of NPOs from different countries coming together to protest against a global cause, rather than a local cause. This is a natural outcome of the fact that human rights NPOs in India are likely to pursue goals that may be unique to their home country, owing to the peculiar nature of the problems.

that they are protesting against. Several NPOs identify their goals in terms of protest against specific policies of the governments of their respective countries, which result in human rights violations of citizens of that country. It follows that it may often be difficult to generate global awareness or solidarity about causes that are specific to the countries of origin of many local NPOs, and hence the solidarity expressed at a global level pertains to global issues of human rights. Further, most of these NPOs may not even possess the resources to bring their local cause into the global space, given the limited space that they operate in.\(^{35}\)

Another point of difference between INPOs and NPOs is the quantum of resources at their disposal, and as a result, the number of people that they seek to target. It is noteworthy that INPOs, such as Amnesty International, OXFAM and Greenpeace have more members than citizens in small countries, such as Fiji, Nauru and San Marino.\(^{36}\) INPOs are far larger than NPOs. Often, NPOs in India may be small organizations, which take up a particular cause and deliberately aim at targeting a very small section of people. For example, an NPO in India may take up the issue of trying to guarantee tribals residing in a particular region their human rights. The localized presence of many human rights NPOs can be seen in contrast to the massive scale at which some INPOs operate. Moreover, the small-scale operation of an NPO may be due to a lack of greater resources, but it is also often a matter of choice, with domestic NPOs finding that effectiveness would be best guaranteed by local projects.\(^{37}\)

H. AN OVERVIEW OF A FEW HUMAN RIGHTS MOVEMENTS AND CAMPAIGNS IN INDIA

I) The Women’s Movement In India

The women’s movement in India took off in the 1920s, building on the 19th century social reform movement. The women’s movement progressed during the period of high nationalism and the freedom struggle, both of which shaped its contours. Among the many achievements of the movement, the most significant were the constitutional guarantees of equal rights for women and universal adult suffrage in independent India. However, these guarantees did little to bring about social and material change in the lives of most Indian women. A new women’s movement, articulated to mass and popular politics, emerged in the 1970s, when several events — some within and some outside India — gave a radical turn to the women’s movement. The “new feminism” in developed Western countries led in 1971 to the international year and then decade of women. The focus was on development. In the 1950s the Indian state had bypassed Gandhi’s vision of an alternative path to progress, opting instead for conventional models of development: industrialization, central planning and expansion of science and technology. The mid-1970s were also a watershed in Indian politics. Congress, under the leadership of the erstwhile Prime Minister Indira Gandhi, inaugurated a new era of populist politics, and there was a gradual broadening of the democratic base of

\(^{36}\) Ibid at p. 46  
\(^{37}\) Supra n. 1 at p.304
mainstream political institutions. At the same time, the Indian Left fractured, giving rise to a new body of Leftist thought. A series of locally organized and intense popular struggles broke out. This was the beginning of new social movements, within which popular women’s voices found their first platform.

**Some Trends In The ‘Modern’ Women’s Movement**

Since women’s groups and organisations came to the fore as key civil society actors in the region in the 1970s and 1980s, the chief issues that have engaged women have been:

- improving women’s access to income, and empowering them to take control of their own situations;
- developing legal and social networks to deal with violence against women, including the issue of trafficking in girls and women;
- processes of legal reform, with a particular emphasis on laws governing ‘family life’;
- focusing on women’s reproductive health, with an emphasis on improving their health and nutrition status and enhancing their reproductive and sexual choices;
- evolving strategies to enhance women’s participation in political processes, including the establishment of quotas and reservations for women at policy and decision-making levels; and
- analyzing the representation of women in mass media, and rejecting the perpetuation of gender-based stereotypes.

The United Nations’ Fourth World Conference on Women, held in Beijing in 1995, provided an opportunity for the Indian women’s movements to participate at the global level. UN and donor funding enabled the formation of a Coordination Unit to hold preparatory meetings in different parts of the country. Post-Beijing, these groups formed the National Alliance of Women’s Organisations (NAWO) that played an active role in the Beijing Plus Five meetings held in New York. Women were also organized through a Task Force set up for the Plus Five process. In India, the post-Beijing era has seen the emergence of the NAWO as the largest national women’s network. In the present context, the sectors that women’s groups forge linkages with include *dalits*; indigenous and tribal peoples; members of religious, ethnic and linguistic minorities; migrant workers; refugees and internally displaced people; gays and lesbians; and people living with HIV/AIDS.

**Using a Rights-based Approach**

As a result of the emphasis on ‘human rights’, which has emerged within the women’s movement as well as within the UN system as a whole, human rights groups have begun to accept the need to integrate a gender perspective in their work. Women’s groups have also begun to re-frame their work on legal reform and legal intervention,
from the point of view of a rights-based approach. Offences against women have been newly codified in ways that acknowledge the specificity of women’s vulnerable situation as, for example, in contexts of conflict. Rape, forced impregnation and other forms of sexual violence against women in times of war have been classified as ‘war crimes’ and ‘crimes against humanity’ in the statute of the International Criminal Court (ICC). The work done by the Women’s Caucus for Gender Justice (later renamed Women’s Initiatives for Gender Justice), which is a multinational women’s lobby group in which several hundreds of women across several countries participate, has been invaluable in this process.

In India, two constitutional amendments - the 73rd and 74th - made it possible for one-third of the representatives elected to village, block and district panchayats to be women. As a consequence, over one million women throughout India are today members of these local government bodies. The 81st amendment to the Indian constitution, which makes it mandatory for one-third of members of parliament to be women, is still under consideration, and has been the topic of much controversy and discussion throughout the region. The movement goes where society takes it. For instance, earlier, the women’s movement did not talk about negative globalization but now it does. The declining child ratio, communalism and fascism are contemporary issues that the women’s movement grapples with. The movement should be like water and take the shape of whichever utensil it is poured into. The women’s movement has been shaped by its responses to the varied manifestations of patriarchy, with no pre-fixed agendas and in a democratic manner.

II) The Right To Information Campaign

The most important feature that distinguishes the movement for the people’s right to information in India from that in most other countries, is that it is deeply rooted in the struggles and concerns for survival and justice of the most disadvantaged people in rural India. The reason for this special character to the entire movement is that it was inspired by a highly courageous, resolute, and ethically consistent grassroots struggle related to the most fundamental livelihood and justice concerns of the rural poor.

The MKSS, Minimum Wages and the Right To Information

The Mazdoor Kisan Shakti Sangathan (MKSS) is a Rajasthan-based formed in 1990 with a stated objective of using modes of struggle and constructive action for changing the lives of its primary constituents – the rural poor. For the MKSS, the seeds of the Right to Information demand lay in the struggle for minimum wages. During two struggles for minimum wages when the MKSS sat on hunger strike, first in 1990, and then in 1991, the importance of access to government records became clear to the whole group. The MKSS had employed a range of strategies to obtain the wages owed to workers in public projects. When neither the executive nor the judicial institutions provided redress, sympathetic officials made critical project documents available. To leverage the information for effective advocacy and public mobilization, the MKSS conceived

38 The most of the material for this movement has been derived from a documentary on MKSS and the right to information campaign.
of a forum in which village communities (many of whom were public wagemakers) could discuss public expenditures incurred in their areas. This led to the birth of Jan Sunwais (public hearings), also called social audits.39

When its public hearings were so effective, the MKSS started examining ways to institutionalize the social audit process. MKSS successfully lobbied the state government to introduce aspects of the public hearing process within local governance processes. The state government now requires that a social audit be held each year in villages. As part of the audit, all village residents must be given an opportunity to vote on a resolution verifying that the projects in their village have been successfully completed. While this process has its limitations, it represents a radical change in the institutional space provided to citizens to audit public funds.

Pursuant to the concerted and sustained efforts of the campaign, Right to Information Act was enacted and brought into force in 2005. The campaign now focuses its efforts towards monitoring and ensuring the proper implementation of the Act by various stakeholders.

III) The Right to Food Campaign in India

Background and Rationale

The Right to Food is a right enshrined under Article 11, Part 2 in the International Covenant on Economic, Social and Cultural Rights (ICESCR) that the Indian government ratified in 1979.40 There is an extremely high prevalence of hunger in India. This is particularly visible amongst vulnerable and marginalized groups of people (especially people belonging to indigenous tribes, interior rural areas or those belonging to the Scheduled Castes [SCs] and Scheduled Tribes [STs]). Amongst such invariably poor groups, women and children suffer the most. This is ironic in the backdrop of a country whose food stocks have increased to more than 65 million tonnes in recent years and where the total food subsidy neared Rupees 30,000 crores as of March 2003.41

An informal network of Indian civil society organizations and individuals committed to the realization of this right started the “Right to Food Campaign” in 2001. The campaign

39 A social audit is a collective scrutiny by communities of public funds. There are five distinct stages in the social audit process including gathering information, collating information, distributing information and the public hearing. For more details on MKSS and social audits, please see http://www.mkssindia.org/

40 “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge; by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; and, (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

works on the overriding principle that everyone has a fundamental right to be free from hunger and under-nutrition and to enjoy a right to life that allows them a life with dignity. In the present context, where people’s basic needs are not a political priority, state intervention itself depends on effective popular organization. Thus, the campaign asserts a commitment to fostering this process through all democratic means.42

Legal Tools of Advocacy

The campaign believes that a powerful tool in the struggle for the right to food is the use of legal action. Article 21 of the Constitution guarantees right to life, and imposes upon the State the duty to protect it. In May 2001, the People’s Union for Civil Liberties filed what turned out to be a landmark public interest petition in the Supreme Court. It drew attention to the fact that over 50 million tonnes of food grains were lying idle in the godowns of the Food Corporation of India (FCI) against the backdrop of widespread hunger in the country, especially in the drought-affected areas of Rajasthan and Orissa. Initially, the case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, in the specific context of inadequate drought relief. Subsequently, the case was extended to the larger issue of chronic hunger, with all states and union territories as respondents.43

The Supreme Court has held that shortage of funds cannot excuse the failure to fulfil Constitutional obligations. Following on this, the petition asked the Supreme Court to intervene, by directing the central government to: a) provide immediate open-ended employment in drought-affected villages; b) provide ‘gratuitous relief’ to persons unable to work; c) raise the entitlement to be received per family; and d) provide subsidized food grain to all families. The petition also requested the Court to order the central government to supply free food grain for these programmes.44 The Supreme Court has passed orders directing the Indian Government to

- Introduce mid-day meals in all primary schools;
- Provide 35 kilograms (kgs) of grain per month at highly subsidized prices to 15 million destitute households; and
- Double resource allocations for the Sampurna Grameen Rozgar Yojana (SGRY), India’s previously largest rural employment programme.

A key feature of the new law is that it will be implemented through elected local bodies (such as the Gram Panchayats)45 and NPOs, unlike earlier poverty alleviation programmes that were tightly controlled by the central or state governments.46 Some 200 districts, including 150 districts already covered by an existing “food-for work” programme, would benefit initially. It would then be gradually extended over the next five years to cover all of the country’s 600 districts. Deciding on what households will actually benefit is yet uncertain because of differing assessments of poverty and

---

42 http://www.righttofoodindia.org/ (accessed on 31 December 2008)
44 Ibid
45 Unit of local self-government at the village level.
deciding what exactly the poverty line is. Yet, it soon became clear that just tapping the legal process would not take the movement very far on its own. This motivated the effort to build a larger public campaign for the Right to Food that would combine social action with a mix of entitlement and rights-based strategies. Thus, was born the Right to Food campaign in India that would take up a diversity of aspects related to this Right.

Some Abiding Concerns of the Right to Food Campaign are:

- Effective implementation of all nutrition-related schemes;
- Introduction of cooked mid-day meals in all primary schools;
- Reform and expansion of the public distribution system (PDS);
- Realization of the right to work, especially in drought-affected areas;
- Social security measures for the destitute.

Fig. 6.1 Legal Action (Using PILS)
**Process: The Use of Rights-Based Strategies**

The campaign depended, in part, on formally petitioning the judiciary for the enforcement of the right of every Indian to adequate nourishment. In this, it was inspired by the rulings of the Supreme Court; the Court has held that in cases of fundamental rights, it was willing to give little latitude to governmental pleas of financial stringency. Numerous activities undertaken under the umbrella of multi-pronged, entitlement-oriented, rights-based strategies, that target issues related to food security, are organized under the umbrella of the campaign (see figure 6.1). What is commendable is that these strategies have been used with the active participation of all concerned stakeholders on a nationwide level. It goes to the credit of the campaign that the concerted use of such strategies have succeeded to a large extent in making the State accountable to the citizens and has now become an example that is generally acknowledged worldwide as one that is totally rights-based in methodology and practice.

**IV) Dalit Rights Movement**

Over one-sixth of India’s population, some 170 million people, live a precarious existence, shunned by much of Indian society because of their rank as “untouchables” or dalits—literally meaning “broken” people—at the bottom of India’s caste system. Dalits are discriminated against, denied access to land and basic resources, forced to work in degrading conditions, and routinely abused at the hands of police and dominant-caste groups that enjoy the state’s protection.

Beginning in the 1920s, various social, religious and political movements rose up in India against the caste system and in support of the human rights of the dalit community. In 1950, the Constitution of India was adopted, and largely due to the influence of Dr. B.R. Ambedkar (chairman of the constitutional drafting committee), it departed from the norms and traditions of the caste system in favor of justice, equality, liberty and fraternity, guaranteeing all citizens basic human rights regardless of caste, creed, gender or ethnicity. The implementation and enforcement of these principles has, unfortunately, been an abysmal failure. Despite the fact that “untouchability” was abolished under India’s constitution in 1950, the practice of “untouchability”—the imposition of social disabilities on persons by reason of their birth in certain castes — remains very much a part of India.

---


48 Historically, the caste system has formed the social and economic framework for the life of the people of India. In its essential form, this caste system involves the division of people into a hierarchy of unequal social groups where basic rights and duties are assigned based on birth and are not subject to change. Dalits are ‘outcastes’ falling outside the traditional four classes of Brahmin, Kshatriya, Vaishya & Shudra. Dalits are typically considered low, impure and polluting based on their birth and traditional occupation; thus they face multiple forms of discrimination, violence, and exclusion from the rest of society.

49 Despite a formal abolition of untouchability in law, dalits are prevented from using the same wells, visit the same temples, drink from the same cups in tea stalls, or lay claim to land that is legally theirs. Dalit children are frequently made to sit in the back of classrooms, and communities as a whole are made to perform degrading rituals in the name of caste. Most dalits continue to live in extreme poverty, without land or opportunities for better employment or education. With the exception of a small minority who have benefited from India’s policy of quotas in education and government jobs, dalits are relegated to the most menial of tasks, as manual scavengers, removers of human waste and dead animals, leather workers, street sweepers, and cobblers. Dalit children make up the majority of those sold into bondage to pay off debts to dominant-caste creditors.
The National Campaign for Dalit Human Rights (NCDHR) is a coalition of *dalit* human rights activists, civil society organizations, journalists and academics who are committed to end the caste-based discrimination and “untouchability” practices.\(^{50}\) It is to be stressed that the campaign is not an effort to subsume, replace or negate ongoing efforts of dalits and others in various mass movements, people’s organizations, labour unions etc. Rather, it is an effort to galvanize and martial all these movements into a representative body that can collectively organize, educate, agitate and demand for an end to untouchability and castism once and for all in both the government and in civil society. Since its inception in 1998, NCDHR has made major strides in giving visibility to the plight of the *dalit* community in South Asia.

In 1996, the Committee formed under the Convention on the Elimination of Racial Discrimination (CERD), which India ratified in 1968, concluded that the plight of the dalits falls squarely under the prohibition of descent-based discrimination. The journey towards the internationalization of the dalit rights movement began in 1998 when NCDHR was formed with an eye on the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (known as WCAR), held in Durban. The essence of the movement’s efforts at Durban was to ensure that the final resolutions of the WCAR reflect the dalit realities and an international commitment to address them.

Since 2001 the *dalit* rights movement has discovered the same lesson learnt by the anti-apartheid movement: the need to implement domestic political change. The International Dalit Solidarity Network was established throughout Europe and the US. The international campaign is beginning to work. In 2002, the CERD strongly condemned “descent-based discrimination, such as discrimination on the basis of caste.” and in 2004 appointed two Special Rapporteurs, Professors Yokota and Chung, to work on this issue. They came on an informal visit to India from 24 February to 1 March 2006.\(^{51}\) In December 2006, Prime Minister Manmohan Singh had declared, “The only parallel to the practice of untouchability was apartheid in South Africa. It is not just social discrimination. It is a blot on humanity.”\(^{52}\) In February 2007 the New York-based organisation Human Rights Watch issued a document tellingly entitled ‘India: Hidden Apartheid’, which criticized the Indian government’s latest report on caste discrimination.

Despite the international campaign, powerful nations such as the United States and the United Kingdom have not formally exerted pressure on India on the *dalit* issue. However, some progress has been made. The US House of Representatives in July 2007 passed a resolution calling caste discrimination illegal. The *dalit* caucus believes that this is likely to have an outcome on organizations in India that do business with the US government. Divakar argues that it is with the corporate world that the real struggle lies. “The *dalit* movement which began 70 years ago focused on reservations, but we are now operating in a different world. The government now only controls a

\(^{50}\) [www.ncdhr.org.in](http://www.ncdhr.org.in) (accessed on 3 January 2009)

\(^{51}\) For more details, please see [www.ncdhr.org.in](http://www.ncdhr.org.in) (accessed on 3 January 2009)

small part of the economy.” For real change to happen, Divakar calls for anti-discriminatory monitoring of the corporate world.53

Firstly, organizational changes among dalit activists played a major role in these successes, most importantly the formation of a unified dalit network within India and the subsequent creation of a transnational solidarity network. Secondly, rhetorical changes played a key role, as the campaign moved from the long-standing focus on caste-based discrimination to a broader framework, within the more internationally acceptable terminology of discrimination based on work and descent. Through the active participation of the campaign in the Racism conference at Durban and activities following the same, the campaign has been successful in drawing international attention to the issues of caste-based discrimination and untouchability, and was able to dialogue with high-level government officials – both Indian and foreign – as well as with human rights bodies and institutions of the United Nations. The campaign presently works on a range of issues including rehabilitation of manual scavengers, identification and release of bonded labourers, land reforms, livelihood issues of dalits, poverty alleviation, education, discrimination and violation of right to life and security.

V) Campaign for the Release of Dr. Binayak Sen

Who is Dr Binayak Sen?

Dr Binayak Sen is a paediatrician, public health specialist and national Vice-President of the People’s Union for Civil Liberties (PUCL) based in Chhattisgarh state, India. Dr. Sen is the winner of the tenth annual Jonathan Mann Award for Global Health and Human Rights, and the first winner from India and South Asia. He is noted for extending health care to the poorest people, monitoring the health and nutrition status of the people of Chhattisgarh, and as an activist defending the human rights of tribal and other poor people. In May 2007, he was detained for allegedly violating the provisions of the Chhattisgarh Special Public Security Act 2005 (CSPSA) and the Unlawful Activities (Prevention) Act 1967. His trial commenced on 30 April 2008. He obtained bail from the Supreme Court on 25 May 2009, after two years in detention. At the time of this book going into print, the trial continues.

The Salwa Judum

Dr. Sen has been a prominent critic of the Salwa Judum and the Government’s highhanded tactics in the State, and has participated in many investigations that exposed these violations. The Salwa Judum is a civilian militia group, largely armed and supported by the government of Chhattisgarh and controlled by the police. It forcibly recruits civilians, including children under the age of 15; attacks entire villages it perceives as being pro-Naxalite, and forces villages to relocate to Salwa Judum Camps.

53 Ibid
- squalid shanty towns, often enclosed in barbed wire, where villagers have no regular supply of food, or any way to make a living, and live in constant fear. As a result, over 600 villages have been “abandoned” and nearly three hundred thousand people displaced from their ancestral lands and deprived of their livelihoods.56

The Maoists / Naxalites in Chhattisgarh

Naxalites call for a total transformation of the existing political system to create a new social order ending what they see as the exploitation of marginalized and vulnerable communities. Tactics include forced land re-distribution, destruction of state infrastructure, attacks on state officials and police, extortion of money and food, coerced recruitment (including children) and killing of “traitors.”57

Use of the Black Laws

Repressive laws such as the Chhattisgarh Special Public Security Act (CSPSA) have been used to imprison Dr. Binayak Sen. This law dramatically broadens what is deemed unlawful. Any activity that may have even a tendency to pose an obstacle to the maintenance of public order is now deemed illegal.58 The law prohibits the media from reporting on any activities that can be seen as ‘unlawful’ activities. This is a violation of international standards and the freedom of speech and expression guaranteed by the Indian Constitution.59 These Black Laws have been used to silence voices critical of the Government or of the Salwa Judum.60

Present Demands of the Campaign

Dr. Binayak Sen’s case represents an alarming trend where human rights defenders who oppose various forms of state repression, such as extra-judicial killings, custodial torture, rape and killings by state officials, and enforced disappearances, are vulnerable to having their civil liberties curtailed under draconian laws, with the intent of not only silencing their voices, but also to stifle potential voices of protest from other possible sources. The arrest and subsequent release of Ajay T.G, an independent film maker and social activist from Chhattisgarh is a case in point. The brutal attack in July 2009 on Shamim Modi, an activist from Madhya Pradesh who has championed the cause of land rights of adivasis, further indicates the extent of vulnerability of human rights defenders, aggravated by state apathy and state failure to extend protection to the same. The “Free Binayak Sen campaign” not only aims at his acquittal in the case initiated by the state government, but also the repeal of the draconian laws under which he was imprisoned, and to stop harassment of human rights activists in Chhattisgarh and other parts of India.

56 ‘Salwa Judum and the tale of 644 deserted villages’, www.rediff.com (accessed on 1 Sep 2008)
57 Ibid
58 ‘Memo to President of India on the CSPS Bill’, People’s Union For Democratic Rights (PUDF), Mar 2006.
CONCLUSION

The human rights movement today would be incomplete without the contribution of civil society, particularly the non-profit organizations, which have been indispensable in the human rights movement, not merely for redressing the wrongs done to victims of human rights violators but also for successfully creating a comprehensive discourse on human rights. Without NPOs contributing to the field of human rights at the international level and the domestic level in various countries, the state would exist without having any specific agencies to be accountable to, for the violation of human rights. Further, these organizations have helped in bringing instances of human rights violations to the notice of the state, so that they can take action in that regard. The protection of human rights has become an issue of prestige in the current day scenario, with no state being able to afford complacency on its part. NPOs have also been instrumental in equipping marginalized groups – women, children, indigenous peoples, to name a few – with the ability to demand their rights.

However, the functioning of these agencies has, by no means, been without its share of criticism. The issue of funding has come up time and again, in the international as well as Indian context. There is no doubt about the fact that NPOs need to bring about more transparency in the manner in which they conduct their work, for, anything short of that would make their credibility in the human rights movement suspect.

There is also a growing realization that the human rights discourse must be expanded – both at the international as well as Indian level. At the international level, INPOs must ensure that their definition of human rights does not reflect a bias towards the North. At the domestic level in India, NPOs would gain by developing an inter-related approach to human rights, one that would take into account the human rights of groups that may be related to the ones whose cause they are advocating. Creating such alliances may lead to better mobilization of the victims of human rights violations. It would also make the human rights movement more effective, since it would reduce the fragmentation that currently exists therein.

There is a need for cooperation and better coordination among different players - the most important being the human rights NPOs and the state. The eventual aim is to create a society where no more vigilance is required and where human rights organizations are redundant. Until such a time comes, unceasing effort must continue, an effort in which the organizations have indeed a vital role to play.

Lastly, it must be said that the human rights movement is in a state of constant change, with new doctrines and ideas being added everyday to the human rights discourse. This will undoubtedly affect the working of the human rights NPOs. Whether it will assist them in developing a more comprehensive mandate or whether it would lead to constant disagreement between them, resulting in a weakening of the human rights movement, remains to be seen.

It is equally true that human rights is also the only common language and framework for the oppressed. The Universal Declaration of Human Rights is a product of thousands
of struggles the world over and it needs to be evolved and become more inclusive, especially of collective rights. The Guinness Book of World Records shows that the declaration is the most translated document in the world. It is available in 360 languages, from Arabic, Chinese to Pipil spoken by 50 people in Central America. In these bleak times when the world is so divided, this Declaration does stand out as a little beacon of hope. Human rights NPOs have an important and constructive role to play in making the Universal Declaration more inclusive and reflective of the contemporary needs and aspirations of the peoples of the world.

SUGGESTED ACTIVITY

1. Form groups and choose a human rights issue per group.
2. Develop a concept note on the status of the human rights issue in your college.
3. Develop a questionnaire/ survey which would indicate whether the human right is being violated or protected.
4. Prepare a report and discuss in your class.
5. Associate with an NPO to strengthen your knowledge and base for human rights activism/ internship, For more details, see Chapter 8: Students as Human Rights Defenders.
6. You can find list of NGOs in Mumbai at the following link:
   http://mumbainews.wordpress.com/2006/08/20/list-of-ngos-working-in-mumbai/
BIBLIOGRAPHY

Books


Articles from Journals


Articles from the Internet


A study of human rights in India would be incomplete without an understanding of international human rights standards, which share a dynamic relationship with domestic laws and standards. The standards are contained in international human rights documents. It is imperative to understand international human rights standards as they have often provided an inspiration and a foundation for Indian laws and judgments pertaining to human rights. This chapter attempts to demystify and simplify international human rights documents and concepts, and provide an overview of India’s engagement with international human rights treaties.

I. WHAT IS AN INTERNATIONAL TREATY ON HUMAN RIGHTS?

An international treaty on human rights is a legal instrument concluded between states, providing standards of conduct for governments to fulfil, and spelling out the states’ mandate for protecting human rights. It is called by various names, including covenant, pact and convention. A majority of international treaties on human rights emerge from many months and years of negotiations under the auspices of the United Nations. A treaty is binding in nature among those states that consent to being bound by the same. A treaty is different from a Declaration which suggests certain standards; a Declaration is non-binding and non-mandatory in nature. However, some Declarations, such as the Universal Declaration of Human Rights (UDHR), 1948, have achieved universal acceptance over the past six decades; its contents have been incorporated into the national constitutions of numerous states. Hence the UDHR enjoys a special status – despite being a mere declaration, it has acquired the force of law as it has become a part of customary international law – the customary law of nations.

Human rights treaties usually contain

- A definition of human rights concepts and terms;
- Standards of conduct to be fulfilled by the states; and
- Mechanisms for monitoring / implementing the standards of conduct.

Traditionally international treaties on human rights focused only on regulating the behaviour of states, to ensure that they did not violate the human rights of the people living in those countries. Increasingly, international treaties also seek to address the
issue of discrimination and violation of human rights by non-state actors, including individuals, private institutions and organizations, and multi-national corporations. In many such situations, states have a responsibility to respect, fulfil and protect its people from human rights violations by private individuals, groups and entities. For example, the Convention on Elimination of Discrimination Against Women (CEDAW) holds the concerned state accountable for violations committed by private individuals in the public and private spheres. Therefore, states are required, not only to ensure that their officials do not violate human rights, but also to undertake means that enable, regulate, protect and redress violations by private actors.

The standards of conduct stated in international treaties on human rights are only a minimum standard; individual states, through their domestic law, may have a higher standard of conduct, which would result in a higher level of human rights protection to the people concerned. This would necessarily need the political will of the state concerned, and could come about due to persuasion by an active civil society in that state.

II. HOW DOES A HUMAN RIGHTS STANDARD BECOME A LAW?

At the roots of almost every international treaty on human rights lie years of human rights violations and injustice at the ground level. Such violations and injustice often result in local, regional and national action. These include formulation of laws and policies, initiation of preventive measures and establishment of mechanisms for redress. When such violations take place on a large scale, and / or in many countries of the world, the international community begins to take note of and act on the same. Depending on a consensus between and political will among the various states, the violation would be addressed. Quite often, this is done through the creation of a non-enforceable recommendation / declaration, which provides for and prescribes international standards of conduct that are not mandatory. After some years, based on growing support and adherence to such an international standard of conduct, a convention maybe drafted and adopted by the UN. Drafting of most international treaties is carried out by the UN and its specialized agencies, including through special conferences. The human rights standard becomes a convention after discussions and negotiations among the representatives of states on various drafts and proposals. Once the contents of a treaty are agreed upon by the states, it is then presented to all members of the UN for a formal adoption of the treaty.

III. A CLARIFICATION OF KEY CONCEPTS

- **Entry into force** – Similar to domestic law, international treaties do not become operative as soon as they are concluded. Most treaties have a stipulation as to when they come into force. For example, the Rome Statute of the International Criminal Court states that the treaty will come into force on the first day of the month after the 60th ratification1 while the Child Rights Convention states that the treaty will come into force on the thirtieth day

1 Article 126(1) of the Rome Statute of the International Criminal Court, 1998. In accordance with the provision, the Treaty came into force on 1 April 2002.

International Treaties on Human Rights
after the twentieth ratification.\(^2\) Please refer to Table 7.4 below for details of entry into force of various human rights treaties.

- **Signature** – The signing of a treaty is an indication of the country concerned that it agrees to the contents of the treaty in principle and intends to abide by the same. Signing a treaty is often, though not always, the first step towards ratification (explained below). However, signing the treaty does not make the provisions binding on the country concerned. Treaties are signed by the duly accredited representative of the country concerned. Please refer to Table 7.4 below on treaties that India has signed.

- **Ratification** – Ratifying an international treaty creates a legal obligation on the country concerned to respect and implement the provisions of the treaty. For this reason, countries sometimes prefer to sign a treaty, modify their domestic laws in accordance with the provisions of the treaty and ratify the treaty subsequently. After ratification, if the country violates the provisions of the treaty, it could be made accountable for such violations through the mechanism set up in the treaty. Please refer to Table 7.4 below on treaties that India has ratified.

- **Accession** – A country is said to have “acceded” to a treaty if it ratifies the treaty after it has come into force. Before a treaty comes into force, ratification has to be preceded by signing of the treaty. However, after it comes into force, it can be directly acceded to without signing the treaty. The legal obligations arising from ratification and accession of a treaty are the same. Please refer to Table 7.4 below on treaties that India has acceded to.

- **Reservation** – Sometimes, a country concerned may not wish to be bound by all the provisions of a treaty. It may either be principally opposed to a few provisions in a treaty or it may feel that it would need more time in making the necessary modifications in domestic law or overcoming other obstacles to fully implement all provisions of the treaty. Under such circumstances, in order to encourage countries to become parties of the treaty, a ‘reservation’ may be made, by which, the state modifies its obligations under the treaty. Reservations can only be made at the time when a country becomes a party to / ratifies the treaty. Reservations are always given in writing. Although countries are allowed to make reservations, a reservation that contradicts with the object and purpose of the treaty will not be permitted. This has been clarified by the Human Rights Committee (established under the International Covenant on Civil and Political Rights (ICCPR), 1966) as well as in the provisions of some international treaties on human rights.\(^3\) The Human Rights Committee has given the following examples of reservations that would be incompatible with the object and purpose of the treaty.

---


\(^3\) See for example, Article 51 of the Convention on the Rights of the Child, which states that ‘a reservation which is incompatible with the object and purpose of the present Convention shall not be permitted.’ Article 20(2) of the International Convention on Elimination of All Forms of Racial Discrimination (CERD) states: “A reservation incompatible with the object and purpose of this Convention shall not be permitted; nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed...”
of the Covenant: reservations by a state indicating that it intended to provide no remedies for human rights violations, and that it would not be bound to present a report and have it considered by the Committee.4 Please refer to Table 7.5 below for details of reservations made by India on human rights treaties that it has ratified.

- **Withdrawal of reservation** - A reservation made by a country concerned may be withdrawn subsequently, due to a change in circumstances including the country’s positive effort in overcoming the difficulties faced in implementing the provisions of the treaty. A provision and procedure for withdrawal of reservation is prescribed in the treaties. For example, CERD prescribes for withdrawal of reservations “at any time by notification to this effect addressed to the Secretary-General.”5 Withdrawal of a reservation is also to be given in writing. An example is a withdrawal of reservations to CEDAW by Morocco in December 2008.6

- **Declaration** – A declaration states the meaning / interpretation given to a particular provision of the treaty by the country concerned. It outlines what and how the country understands its legal responsibility under the treaty. Unlike a reservation, a declaration does not seek to modify the country’s legal obligations under the treaty, but merely clarifies the country’s position. Please refer to Table 7.5 below for details of declarations made by India on human rights treaties that it has ratified.

- **Withdrawal from a Convention** – Ratifying a convention is a well-though out decision by each country. In rare occasions, when a country concerned decides that it does not agree with the overall intent of convention, or due to a change of circumstances, by issuing a notice to the United Nations, it may withdraw from a convention. In some treaties such as the International Covenant on Civil and Political Rights (ICCPR), there is no express provision for withdrawal, while in other treaties, such a provision exists.7 As an example, the Democratic People’s Republic of Korea (DPRK) tendered its withdrawal from the ICCPR in 1997.8

---

4 General Comment No. 24 (52), CCPR/C/21 Rev. 1/Add.6  
5 Article 20(3) of International Convention on the Elimination of All Forms of Racial Discrimination, 1965  
6 Morocco had ratified the treaty in 1993, with reservations, refusing to enforce any clauses opposing national or Islamic law. On announcing the withdrawal from the reservations, King Mohammed VI of Morocco said that the reservations had become obsolete due to the “advanced legislation” adopted by the country. For more details, please see [http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-563308](http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-563308). (accessed on 29 December 2008)  
7 Convention Against Torture, Child Rights Convention and Convention for Elimination of All Forms of Racial Discrimination are examples of treaties containing a provision for withdrawal. In the absence of an express provision for withdrawal, the matter has to be considered in the light of Art. 56 of the Vienna Convention on the Law of Treaties, 1969.  
8 The withdrawal was preceded by a resolution passed by the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities on 21 August 1997, calling upon DPRK to respect its obligations under the ICCPR. Jurists opine that DPRK’s withdrawal has no legal recognition, as ICCPR has no express provisions for withdrawal and requirements stated in Art. 56 of the Vienna Convention have not been fulfilled. For further details, please see article of Elizabeth Evatt in Australian Journal of Human Rights, 1999, available at [http://www.austlii.edu.au/au/journals/AJHR/1999/8.html](http://www.austlii.edu.au/au/journals/AJHR/1999/8.html). (accessed on 29 December 2008)
- **Optional Protocol** – is a further agreement supplementing the main treaty on specific concerns. It creates newer responsibilities on the countries concerned, or newer standards in accordance with the international community’s changing perspective on human rights. For example, the Optional Protocol to the Convention Against Torture (CAT) provides for establishing a system of regular visits to places of detention carried out by independent international and national bodies,9 while the two Optional Protocols to ICCPR concern themselves with facilitating individuals to directly complain to the committee established under the treaty, and abolition of the death penalty respectively.10 The Optional Protocol does not replace the treaty but is to be read along with it. It is usually required to be ratified separately by parties that have already ratified / acceded to the main treaty. *For a list of Optional Protocols concluded and in force, please refer to Table 7.3 below.*

- **Treaty Bodies** – are monitoring mechanisms created under various treaties on human rights to ensure that countries follow their obligations under the treaties. *For more details, please see below - IV: How Are International Conventions Enforced?*

- **Periodic reports** – are reports submitted by each country to the treaty body established under the treaties that they have ratified. All ratifying countries are under a legal obligation to submit periodic reports, stating in detail their compliance with the treaty provisions. These include legislative, judicial, administrative and other measures undertaken domestically, services provided, budget allocated and statistics and other data that would indicate such compliance. Each treaty has provisions with regard to submission of periodic reports. For example, ICCPR prescribes all states who have ratified the treaty to submit a report within one year of the treaty’s entry into force and thereafter, as and when the Human Rights Committee so requests.11 *Please refer to Table 7.5 below for details of periodic reports submitted by India on human rights treaties that it has ratified.* The table indicates that as on 1 December 2008, India’s periodic reports under ICCPR, CEDAW and CRC have not been submitted or before the due date of submission to the respective committees.

- **Shadow reports** – are reports prepared by members of civil society including human rights activists and non-profit organizations working on human rights issues. These are submitted to the treaty bodies to state the ground realities with regard to the extent to a country’s fulfillment of its treaty obligations. The shadow reports serve the purpose of highlighting issues that require further effort from the concerned government, areas where the country has failed to fulfill its obligations, and violations of obligations under the relevant treaty by state agencies / officials. The shadow reports enable the treaty

---

9 Optional Protocol to the U.N. Convention Against Torture (OPCAT) was adopted by the General Assembly on 18 December 2002.


11 Article 40 (1) of the International Covenant on Civil and Political Rights, 1966
bodies to objectively evaluate and monitor state obligations, as they help verify the claims and statements made by government representatives.

- **General Comments / Recommendations** – provide the treaty bodies’ interpretations of the contents of specific articles. The General Comments / Recommendations clarify ambiguities that may exist in the treaty that could hinder the implementation of specific articles of a treaty. They play a significant role by providing authoritative interpretations to various provisions in the treaties. For example, while CEDAW does not expressly mention violence against women, the Committee for Elimination of Discrimination Against Women clarified, through a General Recommendation, that gender-based violence is a form of gender discrimination as it is violence which is “directed against a woman because she is a woman”.12

- **Concluding Comments / Observations** – is a document consisting of comments and observations made by the treaty bodies with regard to country-specific fulfilment of treaty obligations. The document is prepared after the treaty body has received and read the periodic and shadow reports, and heard oral representations with regard to a country’s fulfillment of treaty obligations. The Concluding Comments act as a directive to the concerned government in highlighting areas for further action. For example, the Committee on Rights of the Child (established through the Convention on Rights of the Child), in its Concluding Comments to India, strongly recommended that India prohibit corporal punishment in the family, schools and other institutions.13

- **State Parties** – are countries that have ratified a treaty.

**IV. HOW ARE INTERNATIONAL CONVENTIONS ENFORCED?**

The effectiveness of any law / legal system depends on its powers to ‘enforce’ the laws and norms that originate from it. The law related to international human rights is no different. However, the manner in which international human rights treaties are enforced is different from the manner in which domestic laws are enforced. For international treaties, countries come together and agree to abide by norms / standards of conduct / rights and responsibilities that they arrive at by consensus. There is no international police force to monitor countries’ compliances with the obligations they have accepted under various human rights treaties. Except the International Criminal Court, which deals with very specific crimes, and the International Court of Justice (ICJ) which deals only with disputes between states, there is no other international  

---


13 Concluding Comments of the Committee on the Rights of the Child: India, 35th session, CRC/C/15/Add. 228, dated 26 February 2004, para 45
court where individuals may prosecute perpetrators for violations of human rights. The issue of ‘international enforcement’ is controversial and highly resisted by many states. While the United Nations has been successful in setting standards on many human rights issues, its creation of mechanisms, institutions and procedures to ensure effective enforcement is an ongoing effort, as it largely depends on the consent / will of states.

Treaty bodies form an important enforcement mechanism. Treaty bodies may enforce treaty provisions through three ways: a) individual communications; b) state to state complaints; and c) inquiries. They are empowered by their respective treaties to receive periodic reports from the countries that are parties to the treaty, and also from members of civil society, in order to assess the efforts taken by the country concerned in respecting and fulfilling its obligations under the concerned treaty. Treaty Bodies give “teeth” to each human rights treaty. Please refer to Table 7.1 below for details of treaty bodies set up under various human rights treaties.

<table>
<thead>
<tr>
<th>Name of the Treaty</th>
<th>Treaty Body Created</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. International Covenant on Civil and Political Rights (ICCPR)</td>
<td>Human Rights Committee</td>
</tr>
<tr>
<td>2. International Covenant on Social, Economic and Cultural Rights (ICESCR)</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>6. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</td>
<td>Committee Against Torture</td>
</tr>
<tr>
<td>7. International Convention on Protection of Rights of All Migrant Workers and Members of their Families (MWC)</td>
<td>Committee on Migrant Workers</td>
</tr>
</tbody>
</table>
Each treaty body consists of several members who are usually elected from countries that have ratified the concerned treaty. They meet periodically to receive and study the periodic reports and shadow reports (explained above under III.), to hear oral presentations and make their observations with regard to each country’s fulfilment of its obligations under the treaty. They then give ‘Concluding Comments’ to each country, giving their specific findings with regard to the country’s compliance with legal obligations under the treaty, and highlight issues on which the government needs to focus its efforts. In situations where the treaty body observes that a state’s performance is less than satisfactory, such an observation can cause embarrassment to the government in the international community, and could provide impetus for the country to improve its human rights standing in the international community. The principal objective of treaty bodies is to develop a constructive dialogue with reporting states, and thereby promote the states’ compliance with the provisions of the concerned treaties, and fulfilment of state obligations under the same. Persuasion through political and diplomatic channels is also relied upon, as no country wishes to be known internationally as a human rights violator. Please refer to Chart 7.1 below for the reporting cycle under the human rights treaties.

Chart 7.1: Reporting Cycle Under the Human Rights Treaties

Source: [http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif](http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif)
As per the provisions of certain treaties / Optional Protocols, individuals may also approach the treaty bodies directly for violation of their rights. However, the Indian government is principally opposed to allowing individuals direct access to the treaty bodies, and has not ratified the concerned legal instruments that would facilitate such a process.

There are other ways in which international human rights standards are enforced. The UN Charter uses the term ‘enforcement’ in relation to the powers of the Security Council to use force, including issuance of economic, military and other sanctions on countries in contexts of threat to peace, breach of peace and acts of aggression. Charter-based organs whose creation is directly mandated by the UN Charter or authorized by one of the organs also contribute to enforcement of international human rights standards. These include the General Assembly, the Economic and Social Council (ECOSOC) and the Human Rights Council. Other human rights mechanisms of the U.N. also contribute to enforcement of human rights, including Working Groups, Special Rapporteurs and Special Representatives on specific issues. Such bodies can visit the country in order to monitor the human rights situation and make a report and recommendations on the same, only if the country concerned permits them to do so. Please see Table 7.6 for a list of outstanding requests to India from international human rights bodies for visiting India, for which the India’s permission is pending.

On 18 June 2007, one year after its first meeting, and in compliance with General Assembly resolution 60/251, the Human Rights Council of the United Nations established a new mechanism, called the Universal Periodic Review (UPR). Through this mechanism, the Council decided to review on a periodic basis the fulfilment of the human rights obligations of all countries, ensuring that they are treated equally and are subject to a review of their human rights record. The review is carried out by a working group composed of members of the Council that will meet three times per year for two weeks and is facilitated by groups of three States members of the Council which will act as Rapporteurs (or “troikas”) appointed by the Council. This new innovative mechanism provides scope for an interactive dialogue between countries, where they question each other’s human rights records, and for each country to be accountable to other countries for its performance in protecting, promoting and implementing human rights. Human rights organizations have a special role to play in this process by drafting complaints (similar to ‘shadow reports’) highlighting issues on which the respective governments have not complied with their human rights obligations under international law.

India’s review took place on 10 April 2008. During this review, a number of countries made observations and expressed concerns on a range of issues. These include recommending an early ratification of the Convention Against Torture, raising concerns

14 Optional Protocol to CEDAW, CERD, CAT, ICCPR and Convention on the Rights of Persons with Disabilities (CRPD) provide for the treaty bodies to consider complaints / communications from individuals including victims / survivors of the violations.
15 Stated in detail in Articles 39 – 51, Chapter VII of the UN Charter
16 Such mechanisms include the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on the Status of Women, the UN High Commissioner for Human Rights, Working Groups and Special Rapporteurs on specific issues.
over caste-based discrimination, misuse of Armed Forces (Special Powers) Act, communal violence, child labour, harmful traditional practices, government and police corruption and concerns related to the criminalization of homosexual conduct in Indian legislation.\(^{17}\)

**V. AN OVERVIEW OF INTERNATIONAL TREATIES ON HUMAN RIGHTS**

International human rights documents can be broadly classified as a) declarations; and b) conventions / treaties. As mentioned in Part I above, legal obligations created under Declarations are not binding on state parties, with the exception of the Universal Declaration of Human Rights. Similarly, Principles and Standards have been formulated on various issues through international consensus. These function as guidelines and safeguards, and are also not binding in nature. However, these are often useful standards to incorporate into domestic law. *Please refer to Table 7.3 below for a list of Declarations and Principles / Standards on human rights.*

A legal instrument may be global – where any country in the world can become a party to it - or regional in nature, which allows countries only in a particular region to become a party to it. The instrument could concern itself with human rights in general or focus on a specific human right. Arising from the need to accord special protection of groups that are vulnerable to human rights violations, treaties may concern themselves with the human rights of particular groups of people. *For details of human rights instruments that are general, regional, issue-based and those dealing with specific groups of people, please refer to Table 7.2 below.* Optional Protocols supplement the main treaties on human rights. *For a list of Optional Protocols, please refer to Table 7.3 below.*

International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Social, Economic and Cultural Rights (ICESCR) are together called the Bill of Rights. They derive their foundation from the Universal Declaration on Human Rights (UDHR), and encompass a large gamut of human rights. Apart from the UDHR and the Bill of Rights, the other treaties frequently referred to include

- Convention on the Elimination of Discrimination Against Women (CEDAW), 1979;
- Convention on the Rights of the Child (CRC), 1989;
- Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965; and
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

**VI. LIMITATIONS ON HUMAN RIGHTS**

**Derogable & Non-Derogable Rights**

Contrary to a popular belief that all human rights are absolute and non-derogable (cannot be violated under any circumstances whatsoever), it is an established principle that under exceptional circumstances, including during times of national emergency, a country can...
legitimately suspend certain human rights. This principle is recognized in the ICCPR,\textsuperscript{18} and has been elaborated upon by the Human Rights Committee and the European Court of Human Rights. Siracusa Principles relating to the Proclamation of Emergency and the Derogation of Rights have been formulated to provide further guidelines. However, even during times of emergency, not all human rights can be suspended / restricted / denied to the people. Certain human rights are considered non-derogable. These include

- the right to life;
- the prohibition against torture or cruel, inhuman or degrading treatment or punishment;
- prohibition against slavery and servitude;
- prohibition against imprisonment merely on the ground of inability to fulfill a contractual obligation (imprisonment for debt);
- prohibition against enacting penal laws with retroactive effect;
- the right to recognition as a person before the law; and
- the right to freedom of thought, conscience and religion.\textsuperscript{19}

**Other Limitations / Restrictions on Human Rights**

Enjoyment of human rights may also be restricted through general limitation clauses, or through a limitation on specific rights. The following limitation clauses are found in ICCPR and ICESCR:

- restrictions ‘prescribed by law’ (authorized by domestic law; but such a law should be compatible with international human rights law);\textsuperscript{20}
- ‘in a democratic society’ (restrictions that are necessary for a democratic society but do not undermine democracy itself);\textsuperscript{21}
- Restrictions to protect ‘national security’;\textsuperscript{22}
- Restrictions to protect ‘public order’\textsuperscript{23} & ‘public safety’;\textsuperscript{24}
- Restrictions to protect ‘public health’ or ‘morals’;\textsuperscript{25} and
- Restrictions to protect the ‘rights and freedoms of others’\textsuperscript{26}.

\textsuperscript{18} Article 4 of the International Covenant on Civil and Political Rights states: ‘In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.’


\textsuperscript{20} Arts. 12, 18, 19, 21 and 22 of ICCPR; Art. 8 of ICESCR.

\textsuperscript{21} Arts. 14, 21 and 22 of ICCPR; Art. 8 of ICESCR.

\textsuperscript{22} Arts. 12, 14, 19, 21 and 22 of ICCPR; Art. 8 of ICESCR

\textsuperscript{23} Art. 12, 14, 18, 19, 21 & 22 of ICCPR; Art. 8 of ICESCR

\textsuperscript{24} Art. 18, 21 & 22 of ICCPR

\textsuperscript{25} Art. 12, 14, 18, 19, 21 & 22 of ICCPR

\textsuperscript{26} Art. 12, 18, 19, 21 & 22 of ICCPR
VII. DUTIES & RESPONSIBILITIES

If there are rights, there are bound to be corresponding duties and responsibilities. The treaties on human rights deal largely with rights of individuals, and corresponding duties and responsibilities of the governments concerned. This is based on the philosophy that states are superior in power, and that conversely, individuals are vulnerable to violation of their rights. However, the treaties also have provisions stating duties and responsibilities of individuals to other individuals as well as to the community they belong to. The preamble to both ICCPR and ICESCR refer to duties of individuals. However, it is important to keep in mind the fact that there is a very clear and imminent danger that the notion of duties and responsibilities to the community maybe used as a pretext by governments to violate / undermine / restrict human rights of individuals.

VIII. THE RELEVANCE OF INTERNATIONAL TREATIES FOR HUMAN RIGHTS IN INDIA

A very direct relationship exists between international treaties on human rights and their application within the domestic sphere in a country. In common law countries such as India, an international treaty, even after ratification, cannot automatically be implemented within the country; application takes place by enacting a domestic law, known as the ‘implementing legislation’. Article 253 of the Indian Constitution empowers the union government to legislate with respect to India’s treaty obligations. The Constitution also directs the state to foster respect for international law and treaty obligations.

Inter-linkages between international treaties and domestic human rights situation become significant for the following reasons:

- International treaties influence domestic jurisprudence by providing referral points for courts in interpreting human rights of individuals and in ascertaining state responsibility; for more details, see below under ‘Judicial Application of International Human Rights Standards.’

- They can be used as benchmarks to critique and measure domestic laws and legislative amendments. An example is critiquing the anti-terror law passed in the Indian Parliament in December 2008 in the wake of terror attacks in Mumbai in the previous month. The amendments to Unlawful Activities (Prevention) Act (UAPA) 1967 have been criticized by Amnesty International on the ground that they would violate international human rights treaties. For details, see www.amnesty.org/en/for-media/press-releases/india-new-anti-terror-laws-would-violate-international-human-rights-standards (accessed on 28 December 2008)
They have the potential to be used as *standard-setting mechanisms for domestic law reform initiatives*. An example of this is the Law Commission of India’s consultative paper on witness protection, where it refers to witness protection under international law.\(^{31}\) The campaign on Communal Violence Bill has also used international standards, concepts and principles.\(^{32}\)

- They provide a **framework for making the state accountable** and liable for violating international obligations related to human rights.
- They provide us **additional forums** (at the international and national level) to **discuss human rights issues**.
- They provide a **mechanism to monitor compliance** – through the periodic reporting system under various treaties and international human rights bodies. An example of this is the initiative taken by the People’s Forum for Universal Periodic Review of India, which submitted a stakeholders’ report to the Office of the High Commissioner on Human Rights (OHCHR) in November 2007 on the human rights situation on the ground, and the state obligations.\(^{33}\)

- They **inspire domestic campaigns for signing / ratifying / acceding to international treaties on human rights**, and for withdrawal of reservations made in such treaties, if any. Some examples are ICC-India: the Indian campaign on International Criminal Court\(^{34}\) and the campaign for ratification of the Convention Against Torture.\(^{35}\)

**Judicial Application of International Human Rights Standards**

The Indian judiciary has referred to the Universal Declaration of Human Rights and international conventions ratified by India in many of its judgments.\(^{36}\) Such references have been made in the context of statutory interpretations, in upholding human rights of individuals and prescribing state responsibilities pertaining to the same. The judiciary has also referred to international principles and standards on human rights, notably:

---


32 For details, see [http://www.wragindia.org/campa_participated_1.html](http://www.wragindia.org/campa_participated_1.html) (accessed on 28 December 2008).


34 Details about the campaign are available at [http://www.wragindia.org/campa_icc.htm](http://www.wragindia.org/campa_icc.htm) (accessed on 28 December 2008).


such as the Standard Minimum Rules for Treatment of Prisoners as recommended by the United Nations,\textsuperscript{37} as well as finding UN Declarations related to human rights relevant while pronouncing judgments.\textsuperscript{38} In other judgments, courts have not only referred to international human rights treaties but also indicated the binding nature of their obligations.\textsuperscript{39} Courts have granted relief to petitioners for wrongful action by employers which contravened international conventions that India is a party to.\textsuperscript{40}

International conventions and norms have also been read into fundamental rights guaranteed under the Indian Constitution in the absence of domestic law, and where there is no inconsistency between international law and the Indian legal framework.\textsuperscript{41} A number of landmark judgments on women’s rights have successfully referred to and used provisions of the CEDAW.\textsuperscript{42} Indian judgments have also critiqued reservations and declarations made by the government of India under treaties. In referring to the reservation made by India under ICCPR that India does not recognize a right to compensation for victims of unlawful arrest and detention, the Supreme Court held that the reservation had lost its relevance in view of the Supreme Court awarding compensation in a number of such cases.\textsuperscript{43}

**CONCLUSION**

There are many who are critical about the use of international human rights standards and mechanisms. Critics’ opinions are shaped by the following, among other, arguments:

- adverse impact of international human rights mechanisms on the autonomy of the human rights movements;
- concern about international campaigns and processes being donor-driven;
- concern that ‘internationalizing’ a human rights issue would reduce focus on the local cultural / political context in which the issue operates;
- doubt about whether voices from the grassroots would really be heard or allowed to be heard within the UN structures;
- skepticism that response of the international community to grave human rights violations may be too little and too late;

\textsuperscript{37} Sunil Batra’s case, ibid at 1603
\textsuperscript{38} Ibid
\textsuperscript{39} Sheela Barse vs. Secretary, Children’s Aid Society AIR 1987 SC 656 at 658
\textsuperscript{40} In MacKinnon Mackenzie and Co. Ltd. vs. Audrey D’Costa (1987) 2 SCC 469, the court found that the principle of equal remuneration for men and women for work of equal value, embodied in an international convention that India was a party to, had been violated.
\textsuperscript{41} Vishaka vs. State of Rajasthan AIR 1997 SC 3011 at 3015
\textsuperscript{43} D.K.Basu vs. State of West Bengal (1997) 1 SCC 416 at 438
poor accessibility to international mechanisms for redress;

- lack of know-how in persuading and mobilizing opinion among international institutions with regard to human rights violations in a particular country;
- a fear that perspectives from the Global South may get exoticized;
- a doubt about the need to approach the international mechanisms in the context of limitations within the UN system, including the highly political role of Security Council;
- a critique of international treaties and mechanisms, that they lack an intersectional understanding of an issue as the system that is more or less compartmentalized on the basis of issues;
- an apprehension about geo-political dynamics within which human rights conventions and mechanisms operate – that they are Western-dominated, thereby lending themselves to possible targeting of developing and smaller, weaker countries;
- dependence on states to ratify human rights treaties and implement them domestically, in order to make them accountable under the same; and
- an opinion that the international legal order within which human rights operate is narrow & constricting.

While such criticisms are not without substance, it is pertinent to note that international treaties on human rights constitute an important advocacy tool for the protection and promotion of human rights in the domestic sphere. An effective use of international treaties, standards and mechanisms can contribute to state accountability for human rights. Needless to say, international treaties and standards would complement domestic laws and standards in ensuring accountability for violation / protection / promotion of human rights. The contemporary human rights movements in India have engaged themselves with mechanisms, institutions and standards at the international level. Some instances include efforts to ensure accountability for human rights violations in Punjab (in the 1980s), North eastern states, Kashmir, and the campaign for repeal of the Armed Forces (Special Powers) Act.

Indian representatives (both governmental and non-governmental) have actively participated in international conferences on human rights. For example, they participated in big numbers in the U.N. World Conference on Women - held in Beijing in 1995 and the U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (known as WCAR) – held in Durban in 2001. There is a growing realization of the importance of participation in international forums on human rights, as these provide

- opportunities for ensuring state accountability, with the support of government representatives, like-minded groups and individuals from other countries;
avenues for the international community to recognize / address / redress local and regional level human rights issues using the international human rights framework;

ways to influence formulation of norms, standards, principles, guidelines, strategies and plans of action, which subsequently contribute to standard-setting through international treaties; and

opportunities for shared information, experiences, resources and strategies among like-minded groups working on human rights.

Evolving international standards on human rights can also motivate and spur domestic law reform initiatives, in order that the domestic legal system / framework maybe strengthened in addressing human rights issues. A symbiotic relationship exists between domestic and international human rights law, in expansion / introduction of legal definitions, concepts, procedures and standards. For example, the Rome Statute creating the International Criminal Court derived much of its provisions from domestic systems of common and civil law. The Statute’s provisions, in turn, now motivate domestic law reform on varied issues pertaining to mass crimes, ranging from definition of crimes and standard of evidence to victim / witness protection and sentencing.

Members of the Indian civil society also acknowledge the importance of engaging with international mechanisms, including treaty-based bodies, to ensure state accountability for human rights violations. This is to persuade the government to fulfil the commitments it makes in the international sphere. Preparation and presentation of shadow reports, sending complaints and communications to various human rights bodies, interactions with U.N. Special Rapporteurs and Working Groups, and participation in the process of Universal Periodic Review and the Asia Pacific Forum of National Human Rights Institutions are some examples of active engagement of members of Indian civil society with international bodies.

Just as domestic laws and the domestic legal system are not perfect but evolve over time, international treaties and mechanisms also continuously evolve. Efforts are being made to improve the functioning of the UN and its human rights mechanisms, in response to the criticisms advanced. A pragmatic approach for the countries as well as the civil society, is to engage with the system and use international standards and mechanisms to strengthen local laws, mechanisms, initiatives and campaigns. At the same time, it is equally important to be aware of the limitations of international human rights standards and mechanisms, in order that our expectations are realistic, and so that we are able to participate in processes for improving such standards and mechanisms.

44 For more details, see attempts for strengthening and democraticizing the UN including through ‘Reform the UN’ – a project of the World Federalist Movement– Institute of Global Policy, available at http://www.reformtheun.org (accessed on 24 January 2009)
TABLE 7.2: Overview of International Human Rights Instruments I:
Major Conventions on Human Rights

<table>
<thead>
<tr>
<th>Conventions (General)</th>
<th>Conventions (Issue-based)</th>
<th>Conventions (Group-based)</th>
<th>Conventions (Regional)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984</td>
<td>Convention on the Rights of the Child (CRC), 1989</td>
<td>Inter-American Convention on Forced Disappearance of Persons, 1994</td>
<td></td>
</tr>
</tbody>
</table>
### Table 7.3: Overview of International Human Rights Instruments II:
Major Declarations, Optional Protocols and Principles

<table>
<thead>
<tr>
<th>Declarations</th>
<th>Optional / Additional Protocols</th>
<th>Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universal Declaration on the Eradication of Hunger and Malnutrition, 1974</td>
<td>Second Additional Protocol to Geneva Conventions, 1977 (protection of victims in non-international armed conflict)</td>
<td>Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982</td>
</tr>
<tr>
<td>Declaration on the Elimination of Violence Against Women, 1993</td>
<td>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 2002</td>
<td>Basic Principles for the Treatment of Prisoners, 1990</td>
</tr>
<tr>
<td>Declarations</td>
<td>Optional / Additional Protocols</td>
<td>Principles</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>of Society to Promote and Protect Universally Recognized Human Rights and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fundamental Freedoms, 1999</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Basic Principles on the Role of Lawyers, 1990</td>
</tr>
<tr>
<td></td>
<td></td>
<td>United Nations Principles for Older Persons, 1991</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Basic Principles and Guidelines on the Right to a Remedy and Reparation, 2005</td>
</tr>
<tr>
<td>Name of Convention</td>
<td>Treaty's Entry into force</td>
<td>Signature</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>---------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Geneva Conventions I, II, III &amp; IV, 1949</td>
<td>21 Oct 1950</td>
<td>16 Dec 1949</td>
</tr>
<tr>
<td>Additional Protocol to Geneva Convention, 1977 (protection of victims of international conflict)</td>
<td>7 Dec 1978</td>
<td>x</td>
</tr>
<tr>
<td>Second Additional Protocol to Geneva Conventions, 1977 (protection of victims in non-international armed conflict)</td>
<td>7 Dec 1978</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Due Date of Submission of Report
<table>
<thead>
<tr>
<th>Name of Convention</th>
<th>Treaty’s Entry in to force</th>
<th>Signature</th>
<th>Ratification / Accession (a)</th>
<th>Reservations*</th>
<th>Declarations*</th>
<th>Due Date of Report to Treaty Body</th>
<th>Date of Submission of Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Optional Protocol to the ICCPR (CCPR-OP1), 1966 (on individual communications)</td>
<td>23 March 1976</td>
<td>x</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty) (CCPR-OP2), 1989</td>
<td>11 July 1991</td>
<td>x</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSPCA), 1973</td>
<td>18 July 1976</td>
<td>x</td>
<td>22 Sep 1977 (a)</td>
<td>x</td>
<td>On date of accession</td>
<td>No provision for submission of periodic reports under the Treaty</td>
<td>No provision for submission of periodic reports under the Treaty</td>
</tr>
<tr>
<td>Optional Protocol to the CEDAW, 1999 (on individual communications)</td>
<td>22 Dec 2000</td>
<td>x</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>Name of Convention</td>
<td>Treaty’s Entry into force</td>
<td>Signature</td>
<td>Ratification / Accession (a)</td>
<td>Reservations*</td>
<td>Declarations*</td>
<td>Due Date of Report to Treaty Body</td>
<td>Date of Submission of Report</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
<td>-----------</td>
<td>-----------------------------</td>
<td>---------------</td>
<td>--------------</td>
<td>----------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984</td>
<td>26 June 1987</td>
<td>14 Oct 1997</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>Optional Protocol to CAT (OPCAT), 2002</td>
<td>22 June 2006</td>
<td>x</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>International Convention on Protection of Rights of All Migrant Workers and Members of their Families (MWC), 1990</td>
<td>1 July 2003</td>
<td>x</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>Rome Statute of the International Criminal Court, 1998</td>
<td>1 July 2002</td>
<td>x</td>
<td>Not ratified</td>
<td>No provision for reservations under the Treaty</td>
<td>No provision for declarations under the Treaty</td>
<td>No provision for submission of periodic reports under the Treaty</td>
<td>No provision for submission of periodic reports under the Treaty</td>
</tr>
<tr>
<td>Name of Convention</td>
<td>Treaty’s Entry into force</td>
<td>Signature</td>
<td>Ratification / Accession (a)</td>
<td>Reservations*</td>
<td>Declarations*</td>
<td>Due Date of Report to Treaty Body</td>
<td>Date of Submission of Report</td>
</tr>
<tr>
<td>--------------------</td>
<td>---------------------------</td>
<td>-----------</td>
<td>-----------------------------</td>
<td>---------------</td>
<td>---------------</td>
<td>----------------------------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td><strong>Convention on the Rights of Persons with Disabilities, 2007 (CPD)</strong></td>
<td>3 May 2008</td>
<td>30 Mar 2007</td>
<td>1 Oct 2007</td>
<td>x</td>
<td>x</td>
<td>Not listed yet</td>
<td>-</td>
</tr>
<tr>
<td><strong>Optional Protocol to CPD</strong></td>
<td>3 May ’08</td>
<td>x</td>
<td>Not ratified</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
</tbody>
</table>

* For details of declarations and reservations, please refer to Table 7.5 below

**Sources:**
- Office of the United Nations High Commissioner for Human Rights, [http://www2.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx](http://www2.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx)
- [www.bayefsky.com](http://www.bayefsky.com) (accessed on 28 December 2008)
## Table 7.5: DETAILS OF RESERVATIONS & DECLARATIONS MADE BY INDIA ON MAJOR TREATIES ON HUMAN RIGHTS (as of 1 Dec 2008)

<table>
<thead>
<tr>
<th>Name of Convention</th>
<th>Reservation / Declaration</th>
<th>Objections to Reservations / Declarations by Other Countries</th>
</tr>
</thead>
</table>
| ICCPR              | - Arts. 1 (right to self-determination applies only to peoples under foreign domination);  
                      - Art. 9 – no enforceable right to compensation for unlawful arrest / detention under Indian law;  
                      - Art. 13 (expulsion of foreigners only after decision reached in accordance with law) – reserves right to apply its law relating to foreigners;  
|                    |                           | France objected to India’s reservation on Art. 1 stating that it was attaching conditions not provided for in the U.N. Charter for exercise of right to self-determination; Germany & Netherlands also objected. |
| ICESCR             | - Arts. 1 (right to self-determination applies only to peoples under foreign domination);  
                      - Art. 9 – no enforceable right to compensation for unlawful arrest / detention under Indian law;  
                      - Art. 13 – reserves right to apply its law relating to foreigners;  
                      - Arts 4 & 8 will be applied in conformity with Art. 19 of the Indian Constitution;  
                      - Art. 7 (c) will be applied in conformity with Art. 16(4) of the Indian Constitution.  
|                    |                           | France, Germany & Netherlands objected to India’s declaration on Art. 1 |
| CEDAW              | - On Arts. 5(a) & 16 (1) – shall abide in conformity with policy of non-interference in personal affairs of any community without its initiative and consent.  
                      - On 16(2) – though agreement in principle, compulsory registration of marriages not practical in a vast country like India.  
                      - Art. 29 (1) – on submitting dispute for arbitration, and then to ICJ. India considers itself not bound by it.  
<p>|                    |                           | Netherlands objected to the declaration &amp; reservation as it found them to be incompatible with the object and purpose of the Convention. |</p>
<table>
<thead>
<tr>
<th>Name of Convention</th>
<th>Reservation</th>
<th>Objections to Reservations / Declarations by Other Countries</th>
</tr>
</thead>
</table>
| CRC                | ■ Economic, social & cultural rights of children can only be progressively implemented, subject to available resources  
                        ■ On child labour: Children at various ages work in India for various reasons; their work is regulated in terms of hours and conditions of work. Not practical to prescribe minimum age for admission to each and every area of employment; hence progressive implementation | x                                           |
| CRC-Optional Protocol | On Art 3(2) – about minimum age of recruitment into Armed Forces being 18 years, and voluntary nature of recruitment | x                                           |
| CERD              | On Art 22 – for referral of dispute to ICJ, consent of all parties required in each individual case. | Pakistan objected to the declaration.                       |
| Genocide Convention | On Art. IX - for referral of dispute to ICJ, consent of all parties required in each case. | Netherlands objected to the declaration as it found it to be incompatible with the object and purpose of the Convention. |
| Apartheid Convention | That India’s accession is with effect from 17 Aug 1977 | x                                           |
Table 7.6: Outstanding Requests for Visiting India from
International Human Rights Bodies
(Indian government’s permission pending as of May 2007)

<table>
<thead>
<tr>
<th>Year of Request</th>
<th>Requested By</th>
<th>Other Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993</td>
<td>Special Rapporteur on Torture</td>
<td>Repeated requests for 10 years without a satisfactory response; the Rapporteur drew attention to Commission’s Resolution 2002/84 that emphasizes cooperation with the Commission through relevant thematic procedures</td>
</tr>
<tr>
<td>1993</td>
<td>Special Representative on the Situation of Human Rights Defenders</td>
<td>Special Representative mentions in the 2002 report that her request to visit India is still outstanding</td>
</tr>
<tr>
<td>1993-95</td>
<td>Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions</td>
<td>Request made thrice</td>
</tr>
<tr>
<td>2000</td>
<td>Special Rapporteur on Summary Executions</td>
<td>Follow-up request made in 2005</td>
</tr>
<tr>
<td>2004</td>
<td>Special Rapporteur on Sale of Children</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>Special Rapporteur on Toxic Waste</td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>Working Group on Arbitrary Detention</td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>Working Group on Enforced Disappearances</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Special Rapporteur on Racism</td>
<td></td>
</tr>
</tbody>
</table>

SUGGESTED ACTIVITY

1. Organize a human rights tribunal in your college. Tribunals are a compelling forum for documenting and making visible human rights violations, as well as for ensuring that the government takes effective steps to protect those rights. Here are some steps for organizing a tribunal:

- Define theme, objectives and outcomes – decide which human rights issue to focus on. The tribunal could have a single theme or multiple themes, though the former is usually more effective.
- Determine speakers and participants – who will be testifying before the tribunal, who will be listening, who will form part of the jury panel which would present opening and closing remarks.
- Develop a strategy for media outreach. This could include preparation of press invites, media kits, press reports, and possibly a press conference.
- Chalk out the procedure for the tribunal – ensure that it is inclusive, democratic and is sensitive to those testifying of human rights violations. Make effective use of human rights standards in domestic laws and international treaties.
- Plan the follow up – this would include dissemination of report of the jury panel, persuading policy makers to act upon the issues raised during the tribunal and support to testifiers against reprisals.
2. Organize a poster competition on human rights. Posters are a powerful way of disseminating information on international human rights treaties. Here are some suggested steps:

- Define theme, objective and outcomes – decide which human rights issue to focus on. Provide a concept note, which the poster should be based upon.
- Work out the logistics - determine the participants and judges; would an entrance fee be charged? Would materials be provided by the organizers?
- Chalk out the criteria for and procedures relating to the competition – for example, would the poster be done manually or through a software? Should it contain more text or more visuals? What factors would help the judges determine the winner?
- Plan the follow up - Identify a sponsor for providing a cash prize and / or for printing the winning poster. The printed posters could be displayed in various parts of the college, and could be distributed among other colleges and human rights organizations as well.

3. Prepare India’s country manual on human rights. A country manual presents an overview of an issue or issues, and highlights domestic laws and international treaties relevant to it. The manual would help evaluate India’s performance in engaging with international human rights treaties. The manual is a tool that can be used for further activities on human rights. Do remember to keep the language in the manual simple, use illustrations wherever possible, cite the sources accurately, use examples from India and South Asia liberally and use quotes / slogans / images. The manual could contain the following:

- An international and national overview of the status of human rights;
- Matching international treaties with domestic laws;
- An overview of India’s ratification and reporting status;
- A mapping of Indian campaigns associated with international human rights;
- A directory of organizations in India / state / city concerned working on the issue;
- A directory of international organizations and networks working on the issue;
- A list of relevant websites;
- Facts and figures – using international and national data to highlight the issues; and
- A list of selected readings.

BIBLIOGRAPHY

Books

Articles from the Internet
STUDENTS AS HUMAN RIGHTS DEFENDERS

– Bella Das

Introduction

Protection of human rights is a global issue. Everyone has a responsibility to protect human rights. As the Declaration on Human Rights Defenders affirms: Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics. Professional human rights defenders have many skills and years of experience, but there is no mystery to defending human rights. We all hold the potential to become human rights defenders.

I. HUMAN RIGHTS DEFENDERS

‘Human rights defender’ is a term used to describe people who, individually or with others, act to promote or protect human rights. Human rights defenders (HRDs) are those persons who act peacefully for the promotion and protection of those rights. Human rights defenders uncover violations, subject violations to public scrutiny and press for those responsible to be accountable. HRDs empower individuals and communities to claim their basic entitlements as human beings. Today, despite international laws that protect human rights, human rights defenders are needed all over the world to monitor and challenge abuses and violations.

The term ‘human rights defender’ has been used increasingly alongside other terms such as human rights activist, human rights advocate or human rights worker, since the adoption of the UN Declaration on Human Rights Defenders. Anyone, regardless of their occupation, can be a human rights defender: they are identified primarily by what they do rather than by their profession. Some human rights defenders are professional human rights workers, lawyers working on human rights cases, journalists, trade unionists or development workers. But a local government official, a policeman or a celebrity who actively promotes respect for human rights can also be a human rights defender. Defenders may act on their own or in association with others, in a professional or personal capacity. Many defend human rights in their ongoing work, while others become human rights defenders because of one individual action or stance they have taken in favour of human rights.

---

1 Article 1 of The U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998

2 The U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms was adopted by the U.N. General Assembly in 1998.
Human rights defenders have several characteristics in common. They

- uphold the fundamental principle of universality - that is, that all human beings are equal in dignity and rights, regardless of gender, race, ethnicity, or any other status;
- are committed to the realization of international human rights standards; and
- respect the rights and freedoms of others in their own actions.

The rights defended by human rights defenders may be civil and political rights; (such as the right to be free from torture or the right to a fair trial), economic, social and cultural rights; (such as the right to health, food and nutrition, and the right to education) or group rights or people’s rights (such as right to environment, right to development and rights of indigenous peoples). Some defenders work against particular abuses, such as torture or forced eviction. Others work for the rights of specific groups or sectors of the population facing discrimination and disadvantage, such as indigenous people, rural women, street children or lesbian, gay, bisexual and transgendered people. Primary responsibilities assumed by human rights defenders include promoting awareness of human rights issues and abuses, sharing their expertise on local conditions, and finally ensuring development, protection and advancement of human rights and equality across the world. Human rights defenders thus play an important role in promoting and protecting the rights of people around the world, serving as guardians for dignity, justice and freedom.

Human rights work cannot be carried out in isolation. There are several threats to the preservation of the norms of human rights today. It is very important for us to find the appropriate means to respond to situations that are influencing the human rights conditions in all parts of the world. It is also important for us to realize that human rights violations emerge and emanate from conditions, whether they are political, social, or economic. In the name of security, precedence has been given to military means and methods, and political solutions to political issues have almost been abandoned. For example, the union budget 2008-09 has allocated Rs. 105,600 crores for India’s defence, accounting for nearly 14.1 per cent of total central government expenditure. Prevalence of practices emanating from social injustice, such as human trafficking, slavery, debt bondage, child labour, war crimes, violation of women’s rights, genocide, evils of governance and other such phenomena have made it difficult to pave way for a just society. The context, in which the human rights defenders work therefore, becomes vitally important.

I A. How Do Human Rights Defenders Work?

Human rights defenders promote and protect human rights in many different ways. These include:

- representation of victims and survivors of human rights violations in their fight for justice and redress;
Unpackaging Human Rights

- documentation of violations;
- dissemination of information on human rights abuses;
- teaching human rights principles and values as part of the school curriculum;
- organizing communities to take a stand against a threat to their human rights;
- grassroots campaigning;
- advocacy;
- lobbying governmental or international institutions;
- building the capacity of local communities to understand and claim their rights;
- providing humanitarian relief services to people displaced by conflict or natural disaster; and
- working through legal and quasi-legal processes.

Many human rights defenders work through legal processes to claim justice and redress for people whose rights have been violated. An increasingly effective international legal system has also provided avenues for redress where justice is denied at home. Besides the international mechanisms under the auspices of the United Nations (U.N.) and regional mechanisms on human rights, a global judicial infrastructure has begun to emerge in recent times, most notably with the adoption in 1998 of the Rome Statute of the International Criminal Court, facilitated through long-standing efforts of civil society from countries around the world working together. The Court has jurisdiction over the most serious crimes under international law, including genocide, crimes against humanity and war crimes.3

Defenders have also sought to find creative alternatives to criminal prosecution in situations where this was rendered politically or practically impossible. In many situations of transition from conflict or authoritarian rule, defenders have helped establish “truth commissions” aimed at bringing to light the experiences of victims and survivors, establishing accountability and providing reparation. Indeed they have been advocated as a ‘third way’, offering an appealing alternative “when trials are judged as impractical and forgetting as undesirable.” Although truth commissions differ considerably in terms of mandates, methods, processes and outcomes, they share a basic commitment to investigate, establish and publicly disseminate information about past human rights abuses. In addition truth commissions provide public platforms for victims, encouraging them to tell their stories and empowering them in the process. The South African Truth and Reconciliation Commission is an example of such a process, set up after the abolition of apartheid. Human rights defenders play a significant role in many ways, including in identifying and supporting victims and survivors to participate in the entire process, in helping document the violations and in assisting the country concerned in determining the perpetrators.

3 For more details about the International Criminal Court, please see www.icc-cpi.int and www.iccnow.org (accessed on 12 April 2009)
I B. Defending New and Contested Rights

In recent decades, defenders have fought to make the promise of the UDHR relevant to new and emerging threats to human dignity. They have brought human rights into the sphere of the home and the community through the struggle to halt gender-based violence against women; pushed for multinational corporations to be held morally and legally accountable when their actions or omissions deprive people of their basic human rights; framed the demand for universal access to primary education and to life-saving anti-retroviral treatment as fundamental entitlements rather than services conditional on economic growth or charitable benevolence; worked on emerging human rights issues such as environmental protection, non-state actors (be they multinational enterprises, NGOs or militias) and their impact on human rights, the rights of the physically and mentally challenged people, rights of lesbian, gay, bisexual and transgendered people (LGBT), educating the public, participating in election campaigns, organizing volunteers, and providing training at the state and local levels.

I C. Boundaries of Human Rights Change

Boundaries of human rights are not static. The contours of human rights shift as patterns of oppression change. Their scope and content will therefore always be a matter for contestation. The human rights agenda has always been built by its own critique. Those excluded from the way human rights are traditionally understood or interpreted in any given social or historical context - for example, women, indigenous peoples, lesbian, gay, bisexual and transgendered people, or the disabled - have fought for inclusion and have enriched and transformed understandings of human rights as a result. This evolution will continue and new generations of human rights defenders will continue to challenge orthodox interpretations of human rights and articulate new claims.

I D. “The Rules of the Game Have Changed”

Some governments have argued that “the rules of the game have changed” since the horrifying events of 11 September 2001 in the USA and subsequent acts of terror in other countries. They have called into question the extent to which human rights considerations should take precedence over the concern to protect their populations against attack. This has led to attempts to justify torture and other ill-treatment in the name of fighting terrorism effectively, and to the bypassing of basic due process guarantees by holding thousands of suspects indefinitely without charge or trial.

At the same time as expanding the boundaries of human rights, defenders have therefore had to fight to preserve long-recognized ethical values at the heart of the human rights framework, such as: the complete and utter unacceptability of torture and the right of everyone - no matter what they are alleged to have done - to be treated with dignity and fairness at the hands of the state. Human rights defenders working in different contexts and cultures are striving to ensure that human rights does not become a reactive agenda, but a progressive proposition for a better future.
I E. UN Declaration on Human Rights Defenders

Elaboration of the Declaration on human rights defenders began in 1984. The U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, frequently abbreviated to “The Declaration on Human Rights Defenders”, was adopted by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. A collective effort by a number of human rights organizations and some state delegations helped to ensure that the final document was a strong, useful and pragmatic text.

Perhaps most importantly, the Declaration is addressed not just to states and to human rights defenders, but to everyone. It tells us that we all have a role to fulfil as human rights defenders and emphasizes that there is a global human rights movement that involves us all. The Declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the International Covenant on Civil and Political Rights. Since the Declaration was adopted by consensus by the General Assembly it indicates a strong commitment by States to implement standards set in the same.

The Declaration provides for the support and protection of human rights defenders in the context of their work. It does not create new rights but instead articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders. The Declaration outlines some specific duties of states and the responsibilities of everyone with regard to defending human rights, in addition to explaining its relationship with national law. Most of the Declaration’s provisions are summarized in the following paragraphs. It is important to reiterate that human rights defenders have an obligation under the Declaration to conduct peaceful activities.

(a) Rights and Protections Accorded To Human Rights Defenders

Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration provide specific protections to human rights defenders, including the rights:

- To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning.
and to draw attention to any aspect of their work that may impede the realization of human rights;

- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- To unhindered access to and communication with non-governmental and inter-governmental organizations;
- To benefit from an effective remedy;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against or opposing through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
- To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).

(b) Duties of States
States have a responsibility to implement and respect all the provisions of the Declaration. However, articles 2, 9, 12, 14 and 15 make particular reference to the role of States and indicate that each State has a responsibility and duty:

- To protect, promote and implement all human rights;
- To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
- To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms;
- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;
- To promote public understanding of civil, political, economic, social and cultural rights;
To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions; and

To promote and facilitate the teaching of human rights at all levels of formal education and professional training.

(c) Responsibilities of Everyone
The Declaration emphasizes that everyone has duties towards and within the community and encourages us all to be human rights defenders. Articles 10, 11 and 18 outline responsibilities for everyone to promote human rights, to safeguard democracy and its institutions and not to violate the human rights of others. Article 11 makes a special reference to the responsibilities of persons exercising professions that can affect the human rights of others, and is especially relevant for persons including police officers, lawyers and judges.

(d) The Role of National Law
Articles 3 and 4 outline the relationship of the Declaration to national and international law with a view to assuring the application of the highest possible legal standards of human rights.

II. HUMAN RIGHTS EDUCATION- THE FIRST STEP IN THE MAKING OF A HUMAN RIGHT DEFENDER

Human rights education (HRE) is a powerful means of influencing people and changing their attitudes. HRE is at the heart of the effort to promote and protect human rights. It is a pro-active process which empowers people and enables them to shed their prejudices. HRE should concentrate on faculty development which is sensitive to human rights, teaching methods, and curriculum development. The beneficiaries should be identified and the curriculum should be devised to meet the specific needs of the same. Human rights education is thus meant for conscientisation in education- to question traditions, structures and other internalized beliefs, myths and understanding. An HRE program should bring the world to the campus, incorporating the broader community into its educational mission. Human rights education is thus the first step into making of a human rights defender.

The World Conference on Human Rights held at Vienna in 1993 has reaffirmed that states are duty bound, as stipulated in the UDHR and ICESCR and in other international instruments, to ensure that education aimed at strengthening the respect for human rights and fundamental freedoms is imparted. It also recommended that human rights, humanitarian law, democracy and the rule of law should be included as subjects in all formal and informal learning processes. The Conference inter-alia recommended that States should develop specific programmes and strategies to ensure widespread human right education and the dissemination of public information, particularly the human rights need of women, and that the United Nations should consider proclamation of United Nations Decade for Human Rights Education for 1995-2004.
Pursuant to the suggestions made by the World Conference in 1993, the UN General Assembly through its resolution 49/184 of 23rd December 1994 resolved to declare the period 1995-2004 as the UN Decade for Human Rights Education. The UN High Commissioner for Human Rights requested that the member states celebrate the Decade by drawing up a National Action Plan and implement the same. Accordingly, the Government of India, Ministry of Home Affairs has prepared a “National Action Plan for Human Rights Education in India” in 2001. The overall goals of the National Plan are driven by the need to link the right to know along with the duties, promote social enforcement and respond to specific needs of target groups - such as schools, colleges and universities, government officials including army and other armed forces, especially police para-military and prison officials, parliamentary, law offices and the judiciary. The concerned ministries / departments have drawn up time-bound activities on human rights education and duties and started incorporation of these activities.

Besides, the National Human Rights Commission has been taking steps to focus attention in furthering the cause of human rights education since its inception. The University Grants Commission (UGC), National Council of Educational Research & Training (NCERT) and National Council for Teacher Education (NCTE) have prepared modules and programmes on human rights and duties education. However, the impact of these efforts on protection and promotion on human rights is yet to be substantiated through empirical studies. The purpose and objectives of HRE with reference to India include:

- To create consciousness and to disseminate information about legal and institutional safeguards and to promote human rights among targets groups;
- To build a more humane world whereby the role of violence in social conflicts can be reduced;
- To equip the target groups to address human rights violations in day to day life;
- To facilitate institutional reforms in police, judiciary and prisons; and
- To democratize structures of authority such as patriarchy, caste, property and the state.

Human Rights is a civilization issue, and is thus indispensable to create a just, humane and equitable society. There has been a concerted effort to include human rights as a subject of study in the curricula and syllabi of schools, colleges and the universities. Human rights education in India has become more important with the increasing violations of human rights, as cases of custodial violence, mass detentions without trial, bonded and child labor, and environmental degradation and the like have been brought to the public’s attention by human rights organizations, the media and public.

---

5 For more details, see www.ugc.ac.in (accessed on 26 April 2009), www.ncert.nic.in (accessed on 26 April 2009), www.ncte-in.org (accessed on 26 April 2009) and www.ncte.org (accessed on 26 April 2009)
interest litigators. Human rights educators believe that a grassroots and indigenous orientation and a focus on local human rights problems are very important and ought to be projected in the course strongly. Human rights education has been incorporated into formal and non-formal learning processes - the formal process through the syllabi of educational institutions, and non-formal process through trainings and workshops conducted by human rights organizations.

II A. Human Rights Education in Indian Universities

In the last decade, the Indian education system has begun to promote human rights. At the undergraduate level, human rights education is generally conducted as a part of international law and Indian constitutional law (fundamental rights). In political science departments, human rights education is incorporated in courses on constitutional and political development of India (fundamental rights) and international politics (United Nations). In some universities, human rights education is part of sociology, economics, and modern Indian history. Human rights constitute a subtopic of the foundation course, which is compulsory for the restructured three-year bachelor of arts. At the master’s level specialized human rights education is offered in some departments of law as an optional course. In departments of political science, human rights are taught as part of one or two courses only. Recently, some universities have introduced a master’s course on human rights using distance education. A few universities are also introducing a one-year postgraduate diploma course in human rights. Social work institutions incorporate human rights in both undergraduate and post-graduate courses. More information about human rights courses available in India is available on the internet.6

II B. Opportunities for Students of Human Rights

Many opportunities exist for students of human rights, including

- Working with human rights organizations at the local, national and international levels;
- Training and field opportunities;
- Advocacy and campaigning on human rights issues;
- Internships and fellowships in national and international human rights organizations;
- Work with law agencies for the legal empowerment of the poor and the marginalized;
- Work with national and state level human rights commissions;

---

- Participate in global exchange programmes to other educational institutions and organizations;
- Join “reality tours” that address contemporary political, economic, environmental and cultural issues around the world;
- Volunteer for human rights and peace to help communities in crisis; and
- Join the media and be their voices on human rights issues.

III. INVOLVEMENT OF STUDENTS AS HUMAN RIGHTS DEFENDERS

It is commonly acknowledged that students are the dynamic and progressive component of citizenry. According to the 2001 census the youth population in India comprises of 40.05%. All youth must benefit from the system of education to be at the forefront of efforts to promote social and economic progress and justice.

In order to achieve this, the course curriculum of human rights ordinarily strives to complement the formal educational curriculum by providing experiential learning opportunities, mini-courses and candid, personal perspectives into the real work of human rights in the field. Giving students an opportunity to learn about practical aspects of human rights helps provide them with new insights on which their future work can grow. Potential also exists for students to work on human rights issues through the National Social Service Scheme (NSS) and its various activities. The students could be engaged in the process of translating attitudinal changes to a factual reality. This can be done by the students identifying themselves with the real life situations of those who are victims of human right violations such as people displaced with large developmental projects, victims of caste atrocities in rural hinterlands and so on. Not only can they participate in field trips to prisons, places of detention, juvenile homes and mental institutions and mark their own impressions which can be later given to the authorities to be worked upon, but they can also participate in various democratic means of protest including dharnas, morchas, rallies and demonstrations. Potential also exists for students to engage themselves in empowering underprivileged communities and disseminating information on human rights, and in preparing promotional and educational material on human rights.

Students could, as part of the internship and fellowship programmes, work with national and international human rights organizations, law agencies, national and state level human rights institutions (such as the National Human Rights Commission), and volunteer in troubled regions to help communities in crisis.

---

7 http://www.censusindia.net/ (accessed on 17 April 2009)
III A. Insights of Students on Human Rights

A questionnaire was circulated among a randomly chosen sample population of college students pursuing different disciplines with a view to gain insight on their understanding of human rights.

Questions posed were:

- What is your understanding of human rights?
- How can students be engaged as human rights defenders?
- How can students be mobilized through academic curriculum?
- How can students be catalyst of social change?
<table>
<thead>
<tr>
<th>S.N.</th>
<th>Name</th>
<th>Educational Institution</th>
<th>1. What is your understanding of human rights?</th>
<th>2. How can students be engaged as human rights defenders?</th>
<th>3. How can students be mobilized through academic curriculum</th>
<th>4. How can students be catalyst of social change?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bhavin</td>
<td>Institute of Business Studies and Research, New Mumbai.</td>
<td>Protecting people, making people aware of what they need to know to empower them.</td>
<td>Through National Service Scheme (NSS).</td>
<td>By having practical sessions. Theory fails always.</td>
<td>By including themselves in activities, with encouragement from friends and family.</td>
</tr>
<tr>
<td>2.</td>
<td>Demetrius Pais</td>
<td>BMM- Wilson College Mumbai</td>
<td>That each and everyone of us is equal and our lives are of equal worth. These rights belong to everybody. They are as much mine as they are yours.</td>
<td>The awareness of human rights issues among students is poor. Human rights issues need to be recognized in the first place, for students to be engaged as human rights defenders.</td>
<td>Including human rights as a compulsory subject in every academic course from school is where it should begin.</td>
<td>Being a student is all about passing on what you’ve learnt this world via the experience of living. They learn first and then they teach. So if what they learn is right, then what they teach will also be right. Students can thus be a catalyst of social change by being teachers as well.</td>
</tr>
<tr>
<td>3.</td>
<td>Vaibhav Mane</td>
<td>Ruia College, Mumbai</td>
<td>Human rights are actions against the tyrannical actions of the government.</td>
<td>As students of field work one can engage in putting forward cases of violation of rights of the prisoners, women and children, etc. before the authorities.</td>
<td>By going to the field and studying the cases.</td>
<td>By being examples of awareness themselves.</td>
</tr>
<tr>
<td>4.</td>
<td>Sumanya Velamur</td>
<td>Masters in International Affairs- Peace &amp; Conflict Studies - Australian National University &amp; MSW- Nirmala Niketan College of Social work Mumbai</td>
<td>They are inalienable rights of every individual. However, there are variations across culture and the human rights of an individual is subjective. Definition of human rights cannot be arrived at without an active consultation with the individual whose human rights are being defined.</td>
<td>As already mentioned, students must acquaint themselves with the different realities that exist in the world and to respect each one of them, through interaction. Once students are aware of human rights issues, they can engage in whichever manner they want.</td>
<td>Mobilization is a long term process and cannot be achieved over a short period of time. So it is important to give it time and not get disheartened at the early stages. Conducting overnight workshops could be a starting point to garner support from the students.</td>
<td>Students can facilitate change only by changing themselves. They need to be open to the idea of changing their own ideas as convincing arguments may be presented. Keeping alive the process of introspection &amp; conversation among themselves &amp; between them and others are absolutely essential for change.</td>
</tr>
<tr>
<td></td>
<td>Name</td>
<td>Institution</td>
<td>Overview</td>
<td>Methodology</td>
<td>Conclusion</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>--------------------</td>
<td>--------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Harish Narsee Monjee</td>
<td>Vishwanath Institute of Management Studies (NIMS) Mumbai</td>
<td>The basic rights of an individual homosapien that is under threat by evils of the society, both human made and made by nature; a true gauging of the empathy quotient; Human rights help create a philanthropic sense and essence in civil society.</td>
<td>At various levels, on various issues both direct and indirect.</td>
<td>Our teaching methods have to mature to keep pace with the present times. Faculty needs to use innovative teaching methods, web logs and social media needs to be brought to the fore. As of now, human rights activism is seen as a crazy outcry. If we want that to change, we need to let students know that they could make a difference democratically though the media that they relate to well. And that would come only when the same is inculcated in the curriculum and proper methods for evaluating the same are made.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Soumil Ruia College Shukla Mumbai</td>
<td></td>
<td>Human rights are the natural rights of human beings that are inherent &amp; cannot be violated.</td>
<td>Through discussion forums, participation in peoples movement, media writings.</td>
<td>Create awareness among the people through mass media I would like to address the cause and not the symptoms.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Siddhant SVKM College of Law Ville Parla, Mumbai</td>
<td></td>
<td>Human rights are basically the born rights which a person possesses and these rights are the fundamental rights which a person requires.</td>
<td>By holding activities which make people aware of their rights. We can talk to all groups of people especially the marginalized about our fundamental rights. We can engage in mass awareness programmes as students.</td>
<td>Students can be mobilized through academic curriculum by having seminars on human rights in colleges.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Name</td>
<td>Institution</td>
<td>Role in Human Rights Education</td>
<td>Contributions</td>
<td>Personal Reflection</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>--------------------</td>
<td>------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Karishma Thaker</td>
<td>SVKM College of Law</td>
<td>Human rights are those which are embodied in a person from birth. They are natural rights which cannot be taken away from a person. They are universal in nature and cut across all kinds of boundaries.</td>
<td>Students are generally excited by ideas of campaigns so the best way would be to teach them about the various ways in which they can make a difference.</td>
<td>Today students have a subject on environmental studies. Human rights could be added in that.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Shikha B Singh</td>
<td>SVKM College of Law</td>
<td>Human rights are those rights which help the society from having any kind of injustice, mainly by public authority. Human rights also includes cases like custodial deaths etc.</td>
<td>I feel that a students should engage in educating the people especially under-privileged sections of society about their rights.</td>
<td>At school level a chapter in human rights in the civics and history textbooks should be included to bring about awareness in students. Practical exposure on issues of violation is very important. Students can participate in distribution of pamphlets, engage in campaigns on human rights issues and create awareness on human rights.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Mehta Reema Rajan</td>
<td>SVKM College of Law</td>
<td>Human rights are the basic fundamental rights of a person. This includes social economic political rights etc.</td>
<td>The law students can file complaints under the perview of human rights so that awareness is created.</td>
<td>Human rights should be made compulsory for arts, science and in all other disciplines of education. At college level the knowledge should broaden and curriculum should include internships at the state and national protection mechanisms. Students can be engaged in campaigns in the college campus. Law students can help people to file public interest litigation.</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Nilesh Puradkar</td>
<td>VPM TMC's Law College</td>
<td>Human rights is the essential entitlement every individual has. Human rights debate provides logical background not only on social front but also at personal level for us.</td>
<td>Students have always been at the forefront in the strife towards better world and living condition. Students are the ones who are innovating new meanings of the concepts not only for today but also considering future changes. Law students are especially the key players in building social opinions.</td>
<td>Required concepts linked with persons and emerging out of day to day life. The curriculum developers have to take special effort in understanding the life of the students along with the learning goals of the subjects. I consider studenthood is all about forming groups, linking with new people and very informal exchange of thoughts. It is the phase of life where maximum exchange of thoughts and opinions takes place. Thus youth should look at this phase of life as a crucial phase where he/she is not building his opinion and personality but also developing the personalities of one’s peers.</td>
<td></td>
</tr>
</tbody>
</table>
‘Protecting human rights is a global initiative, aimed at promoting peace and harmony in the world. I have been saddened by the atrocities committed by various agencies, including the state agencies like the civil police and the national armed forces in my state (Manipur). Human rights are routinely violated. Some of the most shocking atrocities that I have seen and came across are committed under the Armed Forces (Special Powers) Act (AFSPA) - a draconian legislation.9

I would like to illustrate one such incident that took place in Namitiram on 7-12 August 1995. The district of Tamenglong is a high rainfall area situated in the western hilly region of the state, making communication and travel an arduous task.

On 7 August 1995, a convoy of Rajputana Rifles was attacked and ambushed by some militant near Namitaram village in the Tousem Sub-Division of Tamenglong District. This led to the death of one army personnel and injury to another. Reprisal on these innocent villagers was swift and savage. There was a complete black out of news about this incident. Top officials of the civil administration were not allowed anywhere near the area. After about 5 days of mass torture on the villagers, the district authorities were allowed to enter. Even government vehicles carrying doctors and paramedics were not allowed to move freely. Everything was thoroughly searched, including medical kits and medicines. The scars of the Namitarm incident are still fresh, both physical and mental.

Having witnessed such atrocities, I decided to educate myself on human rights, and opted for a post graduate diploma course on human rights from the Department of Civics and Politics, Mumbai University. As a part of this course, I did a dissertation on the implications of AFSPA in Manipur. Presently I am pursuing M.A. in Civics & Politics from the same department to enhance my knowledge and further work for the cause of human rights. As I am busy with a full time job, I am not able to devote the entire day to human rights work. However, I deliver talks and make presentations on the issue whenever possible. I have been attending training programmes of Mumbai Initiative for Human Rights Education (MIHRE) as I find them highly informative, for empowering myself as a human rights defender.

“A girl with lot of dreams about my career and future in my eyes can be my simple introduction. I am pursuing an M.A. in Social Work from Tata Institute of Social Sciences (TISS), Mumbai. I completed my B.S.W. degree course in College of Social Work, Nirmala Niketan, Mumbai. In Nirmala Niketan, I learned professional skills related to the practice of social work.

I have been engaged in human rights campaigns while studying and have been exposed to various issues including those pertaining to caste, gender and child rights. When working with Women’s Research and Action Group (WRAG) – a non-profit organization based in Mumbai - I developed an understanding of a variety of human rights issues. My course of study and field work experience helped me develop my interest in human rights further, and in understanding how social work can be used as a..."
process to address human rights issues. My involvement with the activities of Narmada Bachao Andolan also stoked the ‘activist’ side of me.

A seminar on custodial deaths, torture and death penalty conducted by Mumbai Initiative for Human Rights Education (MIHRE) for students of colleges helped me change my opinion about abolition of death penalty. My field placement in a BMC hospital as part of the Masters course in social work, helped me understand rights of women who approached the hospital for abortion and the rights of the HIV/AIDS affected patients as they face discrimination by the hospital staff.

Being inspired by my learnings I made a study on the rights of the destitute women and single women. I am a human rights defender and a feminist. I hope to become stronger and more effective in my human rights endeavours in times to come."

‘Our lives go through crests and troughs to create perfect symphony. Mine’s is no different. Though there were melancholic moments like everyone else, when I felt that life has been unjust to me, I bounced back with optimism. From being a survivor of child sexual abuse to being a crusader for animal rights to being a terror helpline owner, the humanist in me has taken leaps and still, I surge ahead.

A human being’s relation with pain is the strongest of all relations. Most of us feel oneness with their pain, but the ones who feel another’s pain are truly blessed. Abused and dejected, my childhood was spent in immense pain. And most was mine. As I grew, I started developing a relationship with nature like plants and animals, and felt for them. As life went I realized I had wronged by painting the whole human race with the same brush. Not all were bad. With this realization I started speaking for people and animals who couldn’t. I started with educating my immediate neighbourhood on child rights and gay rights.

It was during the 26/11 attacks that I could speak to people indirectly affected by the attacks. I started the blog www.MumbaiTerrorHelpline.blogspot.com which was started as a virtual helpline to help worried relatives of those trapped in the Taj, Oberoi and Trident with up-to-date information. The response was overwhelming. Every phone call was different; some were hopeful, some were devoid of any hope with certainty about their relatives being dead. There were some who just cried. There were some who called up and abused me for I couldn’t get them the details of their loved ones. I could understand their situation. Media helped me reach out to a larger number of people through CNN/BBC. I gave people a human response. Many cribbed about the police and public being ill-equipped. I thought it was time that we stopped cribbing and started acting. I formed a group “GAP” (Group: Altruism Proactive) which will have a volunteer pool that will be trained in cardiopulmonary resuscitation and emergency first aid. We, in turn, will train other individuals on the same and thus create a chain reaction.

That has been my path till now. My future path will evolve as I reach there! And I feel it will be a path well-defined, with my heart in the right place…’’

Harish Vishwanath Iyer, Student, Narsee Monjee Institute of Management Studies (NIMS)
IV. **CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS: FIGHTING THE BACKLASH**

No one was born to be a human right defender. Defenders are ordinary people who assume risks either in their work or in their activities aside from their work and generally they do it in the context of their normal lives, shared with their families and friends. Human rights defenders have not only had to battle against static or restrictive understandings of human rights but in recent years, they have had to guard against a more fundamental assault on the validity and relevance of the human rights framework.

Human rights defenders are often targetted, both by state and non-state actors. Targetted attacks on defenders affect not only their own physical and mental health, but also make their families vulnerable. Such attacks are also intended at silencing others doing similar work. Patterns of repression have varied over time and across contexts. Disappearances, death squad killings and politically motivated detentions are used against defenders in many countries around the world. Human rights defenders in many countries are at risk of being detained or abducted. Daily harassment of human rights defenders is so common but often goes unreported. This may take the form of surveillance, phone-tapping and restrictions on travel. More extreme forms of harassment include attacks or raids on offices or homes, confiscation of equipment and files, blocking access to the internet and other communication facilities and freezing assets. Smear campaigns and defamatory tactics are also used to delegitimize the work of defenders.

In the Indian situation, some human rights defenders who have faced targetted attacks / harassment include Dr. Binayak Sen – a public health specialist from Chhattisgarh; Ajay T.G. - an independent film maker and social activist from Chhattisgarh; Lachit Bordoloi - a human rights activist from Assam; Prashant Rahi - journalist from Uttarakhand; Govindan Kutty - editor of People’s March in Kerala; Praful Jha - a journalist from Uttarakhand; Vernon Gonsalves - an activist from Nasik; Arun Ferreira, Ashok Reddy, Dhanendra Bhurule and Naresh Bansode - activists from Vidarbha and Shamim Modi – an activist engaged with adivasi rights in Madhya Pradesh.

Mechanisms exist to protect human rights defenders, many of whom continue to face harassment, intimidation or other abuses. Defenders also call upon a wider human rights community, including human rights organizations, governments, inter-governmental organizations, donor agencies and the student community for support. The efforts are further bolstered by new technology, networking and training.

**CONCLUSION**

In conclusion, being a human rights defender can be a fulfilling but challenging role. Students, as human rights defenders, have an important role to play in protection and promotion of human rights and to be defenders of peace and security, justice and accountability, democracy and rule of law.

---

10 For more details about Dr. Binayak Sen, please see case study in Chapter 6: ‘Practising Human Rights: Role of NGOs’
SUGGESTED ACTIVITY

The activities suggested below are to be undertaken in a group, and moderated by the teacher / trainer concerned.

1. Make a list of human rights organizations. Categorize them according to those that work at the city, state, national and international levels. Also identify specific human rights that they engage with. Collect and compile the contact details and create a directory of human rights organizations for your and your classmates’ use.

2. Similarly, create a directory of human rights courses that are available in India and abroad. You can categorize them according to post-graduate and diploma courses, and also as per the various disciplines (such as law / social work / political science) under which they are taught. Compile the contact details of the educational institutions and departments that offer such courses. Promote the use of the directory prepared by your group within your college.

3. Make a survey of human rights organizations working in your city. Contact concerned persons from the organizations and enquire the campaigns / issued that they are involved with. Explore and discuss possibilities of students’ / youth involvement in such campaigns or issues, and whether they would be open to the same. Make a list of all such organizations and issues, and identify ways in which students could involve themselves in the same. Formulate a work plan based on such information.
BIBLIOGRAPHY

Books

Articles from the Internet
1. www.witness.org (accessed on 3 April 2009)
2. www.humanrightsfirst.org/defenders/hrd_special/hrd_special_rep_2.htm (accessed on 12 April 2009)
3. www.amnesty.org (accessed on 13 April 2009)
4. www.hurights.or.jp/pub/hreas/5/08sharma.htm (accessed on 26 April 2009)
5. www.wcl.american.edu/humright/center/complementaryed.cfm (accessed on 22 April 2009)
10. www.thepolitic.org/content/view/81/39/ (accessed on 12 April 2009)
**DID YOU KNOW?**

– Kamayani Bali Mahabal

**Ragging is Illegal**

1. The Prohibition of Ragging Act, 1996 (applicable to the state of Tamil Nadu).
5. The Prohibition of Ragging in Educational Institutes Act, 2000 (applicable to the state of West Bengal).

**Prostitution is not illegal**

India is estimated to have 2 million female sex workers. Indian anti-trafficking laws are designed to combat commercialized vice; prostitution, as such, is not illegal. The primary law dealing with the status of sex workers is the 1956 law referred to as the *The Immoral Traffic (Prevention) Act*. According to this law, prostitutes can practise their trade privately but cannot legally solicit customers in public.

**Homosexuality is illegal**

*Indian Penal Code Criminalizes Homosexuality; Delhi High Court Judgment Decriminalizes It.*

Section 377 of the Indian Penal Code states that ‘Whosoever has carnal intercourse voluntarily against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or imprisonment for a term which may extend to 10 years, and shall be liable to fine’. With the adoption of the law in 1860, by the British Government, homosexuality became illegal in India. The punishment for engaging in a homosexual relationship can go up to life imprisonment. As far as the enforcement of the law in India is concerned, the country has hardly noticed any convictions in the last 20 years. Please note however that a Delhi High Court pronounced a historic judgment on 2 July 2009, in *Naz Foundation vs. Government of NCT of Delhi and Others*, W.P. (C) No. 7455/2001, decriminalizing homosexual activity among consenting adults. In the appeal filed in the Supreme Court against this judgment, on 20 July 2009, the Supreme Court has declined to pass an interim order staying the Delhi High Court judgment.

**Disabled Persons are not a Minority**

There are 600 million persons with disabilities in the world today. Eighty percent of them live in developing countries. A staggering 90 million people in India are disabled. That’s almost one in every ten. The Persons with Disabilities (Equal Opportunities,
Protection of Rights and Full Participation) Act, 1995 establishes responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment.

Abortion is Legal

In India, abortions were illegal and amounted to homicide till 1971 (as per provisions under IPC 1860 and CPC 1898). Medical Termination of Pregnancy (MTP) Act was passed in 1971 and came into force with effect from 1st April, 1972. Under the MTP Act, the following are strictly specified:

- Maternal/ Fetal conditions under which MTP can be done;
- Place where it can be conducted; and
- Persons who can conduct the same.

MTP was introduced in India as a maternal health measure and NOT as a birth control measure. Unsafe abortions account for nearly 540,000 maternal deaths in India every year. Treating women who had illegal abortions drain health systems and the women face long term morbidity and social disability.

Sex-Selective Abortions is Illegal

Sex selective abortion, also called female feticide by some, is a two-step process. The first step involves determination of the sex of the fetus in one of three ways: amniocentesis, chorionic villus sampling or ultrasound. The second step consists of therapeutic abortion which, in India, was legalized in 1971 under the Medical Termination of Pregnancy Act. The motivation for sex-selective abortions in India is the prevalence of son-preference in our society, which in turn, is indicative of the low status of women in the Indian society. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (the PNDT Act for short), 1996 prohibits the misuse of scientific techniques for pre-natal sex determination leading to female feticide.
Contributors

Prof. Antony J. Kunnath has taught political science for over 30 years and retired as Head of the Department of Political Science at Bhavan’s College, Mumbai, affiliated to the University of Mumbai. He specializes in political thought and theory, especially in human rights and Gandhian ideas. He has been associated with human rights activism and education for the past several decades.

Dr. Arvind Tiwari has obtained his M.A. in Criminology and Forensic Science from Sagar University, Masters Degree in Sociology from Meerut University and Doctoral Degree from Sagar University. Presently, he is Professor of Criminology and Human Rights at the Centre for Socio-Legal Studies and Human Rights, School of Social Sciences, Tata Institute of Social Sciences (TISS), Mumbai. He has over two decades of teaching, training, research and advocacy experience in human rights, criminology and victimology. He was a Senior Research Officer at National Human Rights Commission - India for about 3 years and he has worked extensively with State Human Rights Commissions, civil society organizations and the criminal justice system. Presently, he serves on the Board of Research Studies, Faculty of Law, Bombay University and Department of Criminology and Forensic Science, Sagar University. Dr. Tiwari has organized many capacity-building workshops/seminars on human rights for various stakeholders. He has also worked towards formulation of human rights courses for undergraduate and post-graduate students in the Indian Universities. His main areas of interest are criminology, public policy, human rights and administration of criminal justice. He has completed many research projects and has published several research papers in reputed journals. He has been conferred various academic awards for his contribution in the field of criminology and human rights. He can be contacted at tiwari_a@tiss.edu

Ms Bella Das - a social worker by profession, has her first Masters in History from Delhi University. She also holds her second Masters in Social work from the College of Social Work Nirmala Niketan, Mumbai. Besides this, she has a background in Personnel Management and Industrial relations (PMIR) from Sardar Patel Institute of Communication and Management (Bhartiya Vidya Bhavan) Delhi, and a diploma in human rights from Mumbai University. Presently she is pursuing Bachelors of Law (LLB) from Mumbai University. She has experience working on issues of women’s rights, child rights, disability rights, communal harmony and peace, and human rights education. She has been a visiting faculty in human rights with the Department of Civics and Politics, Mumbai University. She has served as office bearer in various national and international organizations and has contributed to their projects actively. Currently she is the Honorary Secretary of Mumbai Initiative for Human Rights Education (MIHRE) - a network of organizations
and individuals working on human rights education in schools and colleges of Mumbai. She can be contacted at belladas@hotmail.com

Ms Kamayani Bali Mahabal, a post-graduate in clinical psychology, had a stint as a clinical psychologist in Mumbai for a year and did her diploma in journalism. She worked with the national news agency UNI and Indian Express for five years. Simultaneously she completed her law degree while being a journalist in 1996 and thereafter focused on human rights law. She worked with India Centre for Human Rights and Law (ICHRL) for two years, and also with the Coordination Committee on Disappearances in Punjab (CCDP) for a year, gathering data from victims families during the peak of terrorism in Punjab (1984-1994). Along with few like-minded friends she formed a human rights organization called ‘AHSAAS’ and engaged herself in human rights education and providing legal aid to marginalized people in Punjab. In 2000, she was awarded a British Chevening scholarship to study human rights law in London. She worked with ‘Interights’ – a London-based human rights organization - on a research project on honour killings in Asia and with Amnesty International on a campaign on domestic violence. Since 2003 she worked as a Senior Research Officer with Centre for Enquiry into Health and Allied Themes (CEHAT) for five years on issues of health and human rights of women, especially on the issue of sex-selective abortions. She is now the South Asia Advocacy Coordinator for Women’s Health rights partnership project of Asia Regional Pacific Resource and Research Centre for Women (ARROW), based in Malaysia. She has also conducted training programmes on gender with police, judges, students and civil society activists. She can be contacted at kamayni@gmail.com

Ms. Saumya Uma is a human rights advocate and activist. She is a British Chevening scholar on human rights (1998-99). She graduated from National Law School of India, Bangalore in 1994; completed her first LL.M. in family law and human rights from Bombay University in 1998, and completed her second LL.M. in international human rights from the University of Nottingham, U.K. in 1999. From 1994 to 1998, she practised as a lawyer representing women in cases of domestic violence in the Bombay High Court and Family Court. She has earlier worked with Majlis – a women’s organization - and with India Centre for Human Rights & Law. She has worked as the Coordinator of ICC-India: the Indian campaign on International Criminal Court since its inception in 2000 till date. Since 2001, she has served as a Co-Director of Women’s Research & Action Group (WRAG). Since January 2009, she works in WRAG as its Executive Director. As part of her work, she conducts information dissemination programmes on law and human rights with varied groups including lawyers, academics, police, students of law and social work, human rights activists, women, adolescent girls and youth, particularly from underprivileged and minority communities. She has also been closely associated with the campaign on Communal Violence Bill and the Campaign for Implementation on Srikrishna Commission report that made findings on the Mumbai communal violence of 1992-93. She has authored two books on the International Criminal Court and India, which have been published in 2004 and 2005 respectively and a
publication on Supreme Court judgments on Muslim law and women’s rights titled ‘Supreme Court Speaks’ in 2007. Her field of specialization is women’s rights, human rights and the law. She can be contacted at saumyauma@gmail.com

Ms. Shweta Shalini is a Mumbai-based human rights lawyer. She has a masters degree in human rights and criminal law from the Bombay University and an LL.B. from Symbiosis Law College, Pune. She has been working with Documentation, Research & Training Centre (DRTC), as the Coordinator of the Human Rights Watch Cell, since January 2003, where her primary responsibility involves conducting and organizing human rights education programmes. She is also an active member of the Mumbai Initiative for Human Rights Education (MIHRE). She has earlier worked with the Mumbai-based India Centre for Human Rights and Law, Delhi-based Public Interest Legal Support and Research Centre (PILSARC), Jamshedpur-based Free Legal Aid Committee (FLAC) and as a lawyer in the Supreme Court. She was a visiting professor in Utica College, New York, where she taught ‘Human Rights in India’ to undergraduate students for a semester. Shweta has an extensive experience in conducting human rights awareness programs among various strategic groups, including the police, representatives of non-profit organizations, students, youth and underprivileged women. She has also written and produced information kits and training materials to spread human rights education through formal and informal means, particularly on issues including Indian Constitution and fundamental rights, Hindu law, rape and rights of deserted women. She can be contacted at shwetashalini@yahoo.com.
Publishers

*Documentation, Research and Training Centre (DRTC)* is a non-profit organization established in 1993, whose aim is to build a culture of peace based on the principles of justice, love and charity. It aims at creating a society in which the dignity of all human beings is respected and their holistic growth encouraged, but in a special way it caters to the marginalized. The focus is empowerment of the community, especially those who are vulnerable and marginalized, and the establishment of a society in which the dignity of all human beings is respected, their human rights protected, and their holistic growth encouraged. The DRTC also networks with community based organizations and socially committed individuals who have a similar vision. This vision of the DRTC is brought about through the following departments:

- **Documentation**: It has a number of books and magazines on Faith and Justice
- **Training**: It conducts and organizes training programs.
- **Human Rights Watch Cell**: Networks with other human rights groups.
- **Legal Aid Cell**: It offers aid to marginalized persons, especially women.
- **Research**: It conducts evaluations of centres and congregations.
- **Publication**: It publishes books and other reading material.

*Women’s Research and Action Group (WRAG)* is a non-profit organization, and was founded in Mumbai in April 1993. It is registered as a public trust under Bombay Public Trusts Act and is based in Mumbai, India. Its work focuses on protecting and promoting social and legal status of women, especially those from underprivileged and marginalized communities, through community empowerment and the law. It consists of a group of feminists who engage actively with the women’s movement in India, constantly re-examining and questioning established norms and ideologies within. It also focuses its activities towards situating women’s concerns and interests within a human rights framework, both at the grassroots and policy levels. The organization has three parallel programmes: a) capacity-building; b) campaign & advocacy; and c) research, publication & documentation. More information about the organization is available at [www.wragindia.org](http://www.wragindia.org)
Jointly published by
WRAG & DRTC
MUMBAI