

RESOURCE MATERIAL

Training on Human Rights to Professional College Students

(Students of Social Work, Medicine, Law, Journalism,
Rehabilitation, Arts & Science)

Supported by:



National Human Rights Commission, India

Compiled by

Human Rights Advocacy and Research Foundation, Chennai



People's Watch, Madurai



Training on Human Rights to Professional College Students

Introduction

People's Watch, Madurai and the Human Rights Advocacy and Research Foundation, Chennai welcome you to the **Human Rights Orientation and Training Program for Professional College Students, 2013!**

This session of human rights training will be conducted in 7 places across the state of Tamil Nadu by People's Watch, a program unit of Center for Promotion of Social Concerns, working in the field of Human Rights and Protection for over 15 years in collaboration with Human Rights Advocacy and Research Foundation and supported by the National Human Rights Commission, India.

We have carefully selected the materials to be used, resource persons and participants for this session to ensure that together we learn and understand human rights to the best of our abilities.

India, a member of the United Nations Human Rights Council is in a prestigious position to boast of a plethora of legislations and measures protecting human rights. Our Constitution is truly unique and modern as it imbibes a whole range of rights from civil, cultural, economic, social, political and collective rights and makes them entitlements of each and all citizens.

However, the human rights realities of the state speak of a sorrowful story. India continues to struggle with poverty, rampant inequality, need for police reforms, extra judicial killings, abuse of women and children, cast based oppression and discrimination, torture, child labour and attacks on human rights defenders among several others violations.

Despite concerted efforts by several human rights organizations and the relentless support from the National Human Rights Commission human rights violations continue to persist. There is a widespread lack of awareness about the concept of human rights and legal provisions. Victim groups such as children, detainees, bonded labourers and those suffering from sexual abuse sometimes also face the added disadvantage of being illiterate, as a result of which they are farther removed from accessing justice.

There is thus an imminent need for greater participation of the general public, and more specifically the student population in matters relating to human rights and upholding of the Constitution and its deep values.

Several national and international bodies have recognized and emphasized the need for human rights education for university students and youth. The UN Special Rapporteur for Human Rights Defenders has also held that students as a category are also human rights defenders, in her 2012 report to the United Nations.

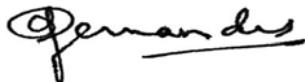
Young and to-be professionals in the fields of medicine, law, media, rehabilitation, social work and the arts are especially central to this endeavor. There is an obvious need to sensitize this section of the youth and inculcate a culture of human rights and respect among them.

As doctors, lawyers, journalists, media persons, social workers, and other experts you will face several situations and human rights violations. Often you will be in a position to protect these victims or aid in the process of their protection.

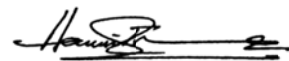
The aim of this series of training which will take place in 7 places across Tamil Nadu is to bring together students and help them understand the basics of human rights and empower them with techniques for protecting human rights in their everyday interactions and environment.

Along with this training manual you will be presented a CD containing detailed materials on human rights, UN Conventions / Declarations, status of violations in India, legislations and practical guides. For further reads, information and guidance please visit the website of People's Watch www.peopleswatch.org.

We acknowledge the assistance provided by Gayatri Khandhadai in putting together this manual and reading material.



Ossie Fernandez
Executive Director,
Human Rights Advocacy & Research Foundation,
Chennai



Henri Tiphagne
Executive Director,
People's Watch,
Madurai

Materials available on the CD

Readings

1. Child Protection and Juvenile Justice System, Child line Foundation
2. Human Rights – A basic Handbook for UN Staff, United Nations
3. A Guidebook for Human Rights Defenders, People's Watch
4. Your Guide to Using the RTI Act, Common Wealth Human Rights Initiative
5. The Right to Information: An Aid for Litigation - for lawyers and human rights defenders, Common Wealth Human Rights Initiative
6. The Human Rights Based Approach to Journalism, United Nations Educational, Scientific and Cultural Organization
7. UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions
8. SILENCING THE DEFENDERS: Human Rights Defenders in the Commonwealth, Common Wealth Human Rights Initiative
9. Reporting Human Rights a Practical Guide for Journalists, Media Trust
10. Note on SC/ST Act, Common Wealth Human Rights Initiative
11. National Human Rights Institutions, Office of the High Commissioner for Human Rights
12. Human Rights and Social Work, A manual for Schools of Social Work and Social Work Professionals, Office of the High Commissioner for Human Rights
13. Resource Materials for Lawyers and Criminal Justice Administrators - PWTN Excerpts
14. Resource Materials for Doctors, Psychiatrists and Psychologists - PWTN Excerpts
15. Human Rights in India - AN OVERVIEW, Joint Stakeholders' Report, to the United Nations, Universal Periodic Review by the Working Group on Human Rights
16. Human Rights in India – Status Report 2012, Updated and Revised, Working Group on Human Rights
17. Report Submitted by India for SECOND UNIVERSAL PERIODIC REVIEW, 2012
18. Guidelines for Stakeholders on UPR, WGHR
19. Report of Justice Verma on Amendments to Criminal Law, 2013

NHRC Publications

1. Know Your Rights, NHRC
2. Handbook on International Human Rights Conventions, NHRC
3. About NHRC

International Treaties

1. Universal Declaration of Human Rights
2. Convention Against Torture
3. Convention on Migrant Workers
4. Convention on the Rights of the Child
5. Convention on the Elimination of All Forms of Discrimination
6. Convention on the Rights of Persons with Disabilities
7. International Convention for Protection of All Persons from Enforced Disappearances
8. International Covenant on Civil and Political Rights
9. International Covenant on Economic, Social and Cultural Rights
10. Convention Against all Forms of Discrimination Against Women
11. 1st Optional Protocol on the Rights of the Child
12. 2nd Optional Protocol on the Rights of the Child
13. Optional Protocol on the Convention Against all Forms of Discrimination Against Women
14. 1st Optional Protocol on ICCPR
15. 2nd Optional Protocol on ICCPR

National Legislations

1. Constitution of India
2. The Protection of Human Rights Act and Rules
3. Right to Education Act
4. Protection of Women from Domestic Violence Act
5. Protection of Children from Sexual Offences Act
6. The Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act
7. The Juvenile Justice Act
8. The Commission for Protection of Child Rights Act
9. The National Commission for Women Act

S.No	Topic	Page No.
1.	What are Human Rights	1
2.	International Human Rights System	5
3.	India and Human Rights – The Constitution of India	19
4.	National and State Human Rights Institutions	24
5.	Specific Rights	
a.	Custodial Rights	29
b.	Right To Information	33
c.	Right To Education	35
d.	Dalit Rights	36
e.	Child Rights and Juvenile Justice	41
f.	Protection of Women	46
g.	Environmental rights	54
6.	Role of Professionals on Human Rights – Doctors / Lawyers / Journalists/ Forensic Medicine experts	58
7.	Who are Human Rights Defenders	60
8.	Students as HRDs	65

Chapter I

What are Human Rights?

In India it has become common practice to accept and normalize every day violations on the human and their dignity. One of the primary reasons for India's poor record in human rights is attributable to the lack of knowledge and awareness, especially among the youth with regards to what constitutes human rights and what amounts to human rights violations.

- Human Rights are natural rights which belong to all persons and every person simply because they are human. Human rights do not have to be given, bought, earned or inherited, they belong to people. It is an inherent entitlement of all people by virtue of their very existence and fact of birth.
- They are rights, which every human being is entitled to enjoy and have protected. Human Rights are not defined by status of the country as it is universal, indivisible and inalienable. Often times repressive laws, governmental policies, actions and inactions amount to human rights violations.
- Human rights are embodied in the constitution of India, National Human Rights Instruments, decisions of the High Courts and Supreme Court.
- Human Rights are generally accepted principles of fairness and justice. Human rights are the same for all human beings regardless of race, sex, religion, ethnicity, caste, gender, political or other opinion, national or social origin.
- All people are born free and equal in dignity and rights-human rights are 'universal', indivisible and inalienable. Human rights are universal because they apply to everyone in the world. All human rights belong to all people.
- They are fundamental principles and standards that should be respected in the treatment of all men, women and children. They are universal and indivisible.
- Human rights guarantee all people freedom from fear and want, freedom of expression and thought, justice, equality and peace and the right to life, liberty and a political democracy among other guarantees.
- Human rights cannot be taken away-no one has the right to deprive another person of their human rights, for any reason, including non-state actors such as the corporate sector. People have rights even if the law does not specify them. In fact people are entitled to human rights and protection even if the law of their country specifically states otherwise. For instance even if the laws of the country permit the practice of slavery and bonded labour, these persons are still entitled to rights and protection.

Why are Rights Important

- Human rights is integral for the development of a democratic society. It is the central nerve that ensures that all sections of society develop together in order to create a stronger, secure and just world.
- It is a guarantee for all persons, communities and oppressed peoples the right to live in dignity and security. Human rights denies any form of inhuman existence or practices.
- Rights are significant for monitoring actions and institutional decisions of the state and its agencies, the corporate sector.
- Including human rights standards that are internationally accepted helps alleviating the oppressed from their miseries. International standards also help evaluate a country and ensure that its government is accountable.
- Human Rights are also customary rights that are not discriminatory and unequal. These rights are not always respected or recognised by state law. Yet they are important human rights for the oppressed and marginalized peoples especially in third world countries.
- Rights are important for adults and children-it creates a democratic thinking and culture-it supports efforts for transparency and accountability.
- Human Rights are especially significant in our country for the articulation of the voices of oppressed and exploited, of indigenous peoples, fishing communities, women, dalits, children, workers, artisans and peasants - it is essential for the voices from, below against exploitation, domination and corruption of the ruling classes and castes.
- Human Rights are important for the creation and continuance of decent standard of living and sustainable ecosystems in all regions and across class, caste, gender, ethnicity and nationality. It is concerned about an economic and cultural system that does not undermine the sustainability of ecology and livelihoods for the present and future generations. Central Human Rights are political systems which do not repress their own citizens and a system of national and international supervision which can prevent government from infringing human rights standards.
- Increasingly today the state subverts its own laws meant for the promotion and protection of human rights the state indulges in torture, killings, discrimination and neglect lawlessness and secrecy in decisions. Security forces have been given unlimited powers to shoot and kill or detain persons and a host of anti-terrorist laws under preventive detention laws like "Goondas" Act, National Security Act etc. In these conditions human rights of persons to resist and protect themselves against state oppression is very significant.

- To enable victims of human rights violations to seek justice and human right protection-Rights are essential for seeking justice for the victims and services such a obtaining compensation, counselling, rehabilitation, shelter, etc.
- In societies where inequalities exploitation and social injustice prevails human rights of persons and communities who are discriminated against are exploited this culture of rights to resist and dissent.
- Right to life and liberty is the core of all human rights, to defend and gain new rights we need a human rights approach.
- The core of democracy is information - we need rights to be able to gain access to information and disseminate the same.
- Very importantly rights are important to create a culture and understanding of our Constitution - to ensure that resources are equally shared and all actions by the propertied classes / castes to concentrate wealth and resources is a violation of human rights.

Three Categories of Rights

Human Rights can generally be classified into three categories.

- a) Civil and Political Rights
- b) Social, Cultural and Economic Rights
- c) Collective rights

a) Civil and Political Rights

These are sometimes referred to as "liberty oriented " or "first - generation" rights. They give people the freedom to think and have access to information, the right to vote, the right to be protected from state arbitrariness and infringement the freedom to act and to choose what to do, and freedom to join in the political life of their community and society.

b) Social Cultural and Economic Rights

These are sometimes referred to as "Security - oriented", "livelihood or quality of life oriented" or second generation rights and give people social, economic and cultural security. These rights provide people with guarantees for basic needs in life such as food security, shelter, health care, education, nutrition, living wages etc.

c) Collective rights

All along human rights have been regarded as rights relating to the individual. However, with the evolution of collective rights this ideology has been replaced. Right relating to the environment and development for instance can be asserted by a group of people as a collective.

They recognise that people / communities have the right to live in an environment that is safe and that groups of people should have the right to determine their cultural, political and economic development which is sustainable and based on participatory democracy.

Environmental and Development Rights - (Collective Rights)

Examples of Collective Rights to sustainable development and a safe environment are:

Right of people

- To Information and right of people to the media.
- To form associations and right to strike or organise various forms of protest including hartals and bardhs.
- Right of people to be human to a present & future development that is sustainable based on peoples historical and cultural conditions; right to defend our homeland.
- To be heard and to participate in all developmental decisions including decisions in local-government bodies. This includes matters regarding public policy, laws, changes in law and budgetary allocations.
- To our sovereignty, control and regeneration of natural resources, common lands, water bodies and the ocean.
- To live in an environment that is clean and protected from destruction and to stop hazardous and polluting industrial projects.
- To stop destructive development projects including those of Transnational Corporations.
- To their traditional practices and knowledge, bio-diversity, forest, common resources, water bodies etc.
- Not to be evicted from their residence and homeland.
- To decide what commodities should be in the market and how it should be distributed and at what prices.
- To stop patenting of any form of living organisms against harmful genetic engineering practices.
- Right of people to be protected from corporate crime, etc.

-Contributed by the Human Rights Advocacy and Research Foundation

Chapter II

International Human Rights Systems

Human rights have been guarded at the international level. Several systems and instruments have been developed by the United Nations setting standards and holding nations responsible for protecting human rights.

Introduction

Article 1(3) of the UN Charter provides for the pursuit of international cooperation by resolving international problems of an economic, social, cultural or humanitarian character, promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. To this end, the United Nations has embarked on the continuous process of articulating human rights in order to translate them from morality and principles into binding international law. These standards are the result of a gradual evolution over several decades with the participation of United Nations bodies, many nations, non-governmental organizations and individuals.

The adoption of the Universal Declaration of Human Rights (Universal Declaration), in 1948, was the first step towards the progressive codification of international human rights. In the 50 years that have elapsed since then, the extraordinary visions enshrined in the principles of the Declaration have proved timeless and enduring. The principles have inspired more than 100 human rights instruments which, taken together, constitute international human rights standards. Outlined below are some significant international human rights instruments and developments.

- **Core instruments**

There are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

These treaties are the most significant documents clearly elucidating rights of the people on concerned subjects.

1. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
3. The International Covenant on Civil and Political Rights (ICCPR), 1966
4. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979

5. The Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment (CAT), 1984
6. The Convention on the Rights of the Child (CRC), 1989
7. The International Convention on the Rights of Migrant Workers and All Members of their Families (ICRMW), 1990
8. The Convention on the Rights of Persons with Disability (CRPD), 2006
9. The International Convention for the Protection of All Persons from Enforced Disappearances (ICPED), 2006

1.1 The International Bill of Human Rights

On 10 December 1948, the Universal Declaration of Human Rights was adopted and was followed by the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights, in 1966 setting out the legal obligation of states to protect human rights. Together these 3 instruments form the International Bill of Rights.

a. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights consists of a Preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind.

The Universal Declaration recognizes that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. It recognizes fundamental rights which are the inherent rights of every human being including, inter alia, the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and enjoy asylum from persecution in other countries; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment. These inherent rights are to be enjoyed by every man, woman and child throughout the world, as well as by all groups in society. Today, the Universal Declaration of Human Rights is widely regarded as forming part of customary international law.

b. The International Covenant on Economic, Social and Cultural Rights

The ICESCR was adopted by the General Assembly in 1966 and entered into force in January 1976. In many respects, greater international attention has been given to the promotion and protection of *civil and political* rights rather than to *social, economic and cultural* rights, leading to the erroneous presumption that violations of economic, social and cultural rights were not subject to the same degree of legal scrutiny and measures of redress. This view neglected the underlying principles of human rights that rights are indivisible and interdependent and therefore the violation of one right may well lead to the violation of another.

Economic, social and cultural rights are fully recognized by the international community and in international law and are progressively gaining attention. These rights are designed to ensure the protection of people, based on the expectation that people can enjoy rights, freedoms and social justice simultaneously.

The Covenant embodies some of the most significant international legal provisions establishing economic, social and cultural rights, including, inter alia, rights relating to work in just and favourable conditions; to social protection to an adequate standard of living including clothing, food and housing; to the highest attainable standards of physical and mental health; to education and to the enjoyment of the benefits of cultural freedom and scientific progress.

Significantly, article 2 outlines the legal obligations which are incumbent upon States parties under the Covenant. States are required to take positive steps to implement these rights, to the maximum of their resources, in order to achieve the progressive realization of the rights recognized in the Covenant, particularly through the adoption of domestic legislation.

Monitoring the implementation of the Covenant by States parties was the responsibility of the Economic and Social Council, which delegated this responsibility to a committee of independent experts established for this purpose, namely the Committee on Economic, Social and Cultural Rights. As at March 2000, 142 States were parties to the Covenant.

c. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights addresses the States traditional responsibilities for administering justice and maintaining the rule of law. Many of the provisions in the Covenant address the relationship between the individual and the State. In discharging these responsibilities, States must ensure that human rights are respected, not only those of the victim but also those of the accused.

The civil and political rights defined in the Covenant include, inter alia, the right to self-determination; the right to life, liberty and security; freedom of movement, including freedom to choose a place of residence and the right to leave the country; freedom of thought, conscience, religion, peaceful assembly and association; freedom from torture and other cruel and degrading treatment or punishment; freedom from slavery, forced labour, and arbitrary arrest or detention; the right to a fair and prompt trial; and the right to privacy.

There are also other provisions which protect members of ethnic, religious or linguistic minorities. Under Article 2, all States Parties undertake to respect and take the necessary steps to ensure the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Covenant has two Optional Protocols. The first establishes the procedure for dealing with communications (or complaints) from individuals claiming to be victims of violations of any of the rights set out in the Covenant. The second envisages the abolition of the death penalty. Unlike the Universal Declaration and the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights authorizes a State to derogate from, or in other words restrict, the enjoyment of certain rights in times of an *official* public emergency which threatens the life of a nation. Such limitations are permitted only to the extent strictly required under the circumstances and must be reported to the United Nations. Even so, some provisions such as the right to life and freedom from torture and slavery may never be suspended.

The Covenant provides for the establishment of a Human Rights Committee to monitor implementation of the Covenants provisions by States parties. As at March 2000, 144 States were parties to the Covenant, 95 States were parties to the Optional Protocol and 39 States were parties to the Second Optional Protocol.

1.2 International Convention on the Elimination of all Forms of Racial Discrimination

The phenomenon of racial discrimination was one of the concerns behind the establishment of the United Nations and has therefore been one of its major areas of attention. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the General Assembly in 1965 and entered into force in 1969.

Article 1 of the Convention defines the terms .racial discrimination as:

“any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in any field of public life, including political, economic, social or cultural life..

The Committee on the Elimination of Racial Discrimination was established by the Convention to ensure that States parties fulfil their obligations. As at March 2000, 155 States were parties to the Convention.

1.3 Convention on the Elimination of all Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 and entered into force in 1981. Despite the existence of international instruments which affirm the rights of women within the framework of all human rights, a separate treaty was considered necessary to combat the continuing evident discrimination against women in all parts of the world. In addition to addressing the major issues, the Convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to participation in public life, marriage, family life and sexual exploitation.

The objective of the Convention is to advance the status of women by utilizing dual approach. It requires States parties to grant freedoms and rights to women on the same basis as men, no longer imposing on women the traditional restrictive roles. It calls upon States parties to remove social and cultural patterns, primarily through education, which perpetuate gender-role stereotypes in homes, schools and places of work. It is based on the premise that States must take active steps to promote the advancement of women as a means of ensuring the full enjoyment of human rights. It encourages States parties to make use of positive measures, including preferential treatment, to advance the status of women and their ability to participate in decision making in all spheres of national life .economic, social, cultural, civil and political.

States parties to the Convention agree, inter alia, to integrate the principle of the equality of men and women into national legislation; to adopt legislative and other measures, including sanctions where appropriate, prohibiting discrimination against women; to ensure through national tribunals and other public institutions the effective protection of women against discrimination; and to refrain from engaging in any discriminatory act or practice against women in the private sphere.

Article 17 of the Convention establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions. When the 1999 Optional Protocol enters into force, the Committees functions will be expanded (see part 3). As at March 2000, 165 States were parties to the Convention.

1.4 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Over the years, the United Nations has developed universally applicable standards against torture which were ultimately embodied in international declarations and conventions. The adoption, on 10 December 1984 by the General Assembly, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was the culmination of the codification process to combat the practice of torture. The Convention entered into force on 26 June 1987. Article 1 defines “torture” as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity..

The overall objectives of the Convention are to prevent acts of torture and other acts prohibited under the Convention and to ensure that effective remedies are available to victims when such acts occur. More specifically, the Convention requires States parties to take preventive action against torture such as the criminalization of acts of torture and the establishment of laws and regulations to promote respect for human rights among its public servants for both the alleged victim and the accused.

Despite these measures, there may be incidents where individuals are, or claim to have been, tortured. Governments that are committed to eliminating torture must also be committed to providing an effective remedy to alleged victims. This can be seen from the manner in which Governments address complaints of torture. The Convention requires that complaints of torture be promptly and impartially investigated wherever there are reasonable grounds to believe that an act of torture may have been committed. In many cases, the most important evidence is physical marks on the body, which can fade or disappear, often within days. The existence of a functional system for the administration of justice is thus critically important for victims of torture.

The implementation of the Convention established a monitoring body, the Committee against Torture. As at March 2000, 118 States were parties to the Convention.

1.5 Convention on the Rights of the Child

Both the League of Nations and the United Nations had previously adopted declarations on the rights of the child and specific provisions concerning children were incorporated into a number of human rights and humanitarian treaties. In recent years, reports of the grave afflictions suffered by children such as infant mortality, deficient health care and limited opportunities for basic education, as well as alarming accounts of child exploitation, prostitution, child labour and victims of armed conflict, led many worldwide to call on the United Nations to codify children's rights in a comprehensive and binding treaty. The Convention entered into force on 2 September 1990, within a year of its unanimous adoption by the General Assembly.

The Convention embodies four general principles for guiding implementation of the rights of the child: non-discrimination ensuring equality of opportunity; when the authorities of a State take decisions which affect children they must give prime consideration to the best interests of the child; the right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development; and children should be free to express their opinions, and such views should be given due weight taking the age and maturity of the child into consideration.

Among other provisions of the Convention, States parties agree that children rights include: free and compulsory primary education; protection from economic exploitation, sexual abuse and protection from physical and mental harm and neglect; the right of the disabled child to special treatment and education; protection of children affected by armed conflict; child prostitution; and child pornography.

Under article 43 of the Convention, the Committee on the Rights of the Child was established to monitor the implementation of the Convention by States parties. As at March 2000, an unprecedented 191 States were parties to the Convention: the largest number of ratifications of all international instruments.

1.6 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

Throughout history, people have moved across borders for a variety of reasons, including armed conflict, persecution or poverty. Regardless of their motivation, millions of people are living as migrant workers, as strangers in the States in which they reside. Unfortunately, as aliens, they may be targets of suspicion or hostility and this inability to integrate into society often places them among the most disadvantaged groups in the host State. A vast number of migrant workers are uninformed and ill-prepared to cope with life and work in a foreign country.

Concern for the rights and welfare of migrant workers led to the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention was adopted by the General Assembly on 18 December 1990 and will enter into force following ratification or accession by 20 States. As at March 2000, only 12 States had ratified the Convention.

The Convention stipulates that persons who are considered as migrant workers under its provisions are entitled to enjoy their human rights throughout the migration process, including preparation for migration, transit, stay and return to their State of origin or habitual residence. With regard to working conditions, migrant workers are entitled to conditions equivalent to those extended to nationals of the host States, including the right to join trade unions, the right to social security and the right to emergency health care. State parties are obliged to establish policies on migration, exchange information with employers and provide assistance to migrant workers and their families.

Similarly, the Convention stipulates that migrant workers and their families are obliged to comply with the law of the host State. The Convention distinguishes between legal and illegal migrant workers. It does not require that equal treatment be extended to illegal workers but rather aims to eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation.

Optional Protocols

Very often, human rights treaties are followed by "Optional Protocols" which may either provide for procedures with regard to the treaty or address a substantive area related to the treaty. Optional Protocols to human rights treaties are treaties in their own right, and are open to signature, accession or ratification by countries who are party to the main treaty.

These protocols can either be substantive i.e dealing with or creating new right or procedural. Examples include Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

International Human Rights Mechanisms

The Human Rights Council

- The same day that the General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948, it mandated the UN Commission on Human Rights to embark on the process of drafting a legally binding covenant on human rights.
- This body was replaced by the UN Human Rights Council in 2006.
- The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It has the ability to discuss all thematic human rights issues and situations that require its attention throughout the year. It meets at the UN Office at Geneva.
- The Council is made up of 47 United Nations Member States which are elected by the UN General Assembly.
- Its first session took place from 19 to 30 June 2006. One year later, the Council adopted its "[Institution-building package](#)" to guide its work and set up its procedures and mechanisms.
- Among them were the [Universal Periodic Review](#) mechanism which serves to assess the human rights situations in all United Nations Member States, the [Advisory Committee](#) which serves as the Council's "think tank" providing it with expertise and advice on thematic human rights issues and the [Complaint Procedure](#) which allows individuals and organizations to bring human rights violations to the attention of the Council.

- The Human Rights Council also works with the UN [Special Procedures](#) established by the former Commission on Human Rights and now assumed by the Council. These are made up of special rapporteurs, special representatives, independent experts and working groups that monitor, examine, advise and publicly report on thematic issues or human rights situations in specific countries.

Universal Periodic Review

- The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States.
- The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations.
- As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.

Special Procedures

- A diverse range of procedures established to promote human rights and prevent violations in relation to specific themes or to examine the situation in specific countries.
- Currently, there are 36 [thematic](#) and 12 [country](#) mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates.
- When mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories it is known as [country mandates](#)
- The same examination on major phenomena of human rights violations worldwide is known as [thematic mandates](#).
- Special procedures are either an individual (called "Special Rapporteur" or "Independent Expert") or a working group usually composed of five members (one from each region)

Treaty Bodies

The core treaties - Each treaty creates an international committee of independent experts tasked to monitor, by various means, implementation of its provisions. These committees are also known as UN human rights treaty bodies.

Treaty Body	Treaty
Human Rights Council	ICCPR
The Committee on the Elimination of Racial Discrimination	ICERD
The Committee on Economic, Social and Cultural Rights (CESCR)	ICESCR
The Committee on the Elimination of Discrimination against Women (CEDAW)	CEDAW
The Human Rights Committee (HRC)	ICCPR & 2 nd optional protocol
The Committee Against Torture (CAT)	CAT
The Committee on the Rights of the Child (CRC)	CRC
The Committee on Migrant Workers (CMW)	ICRMW
The Committee on the Rights of Persons with Disabilities (CPRD)	CPRD

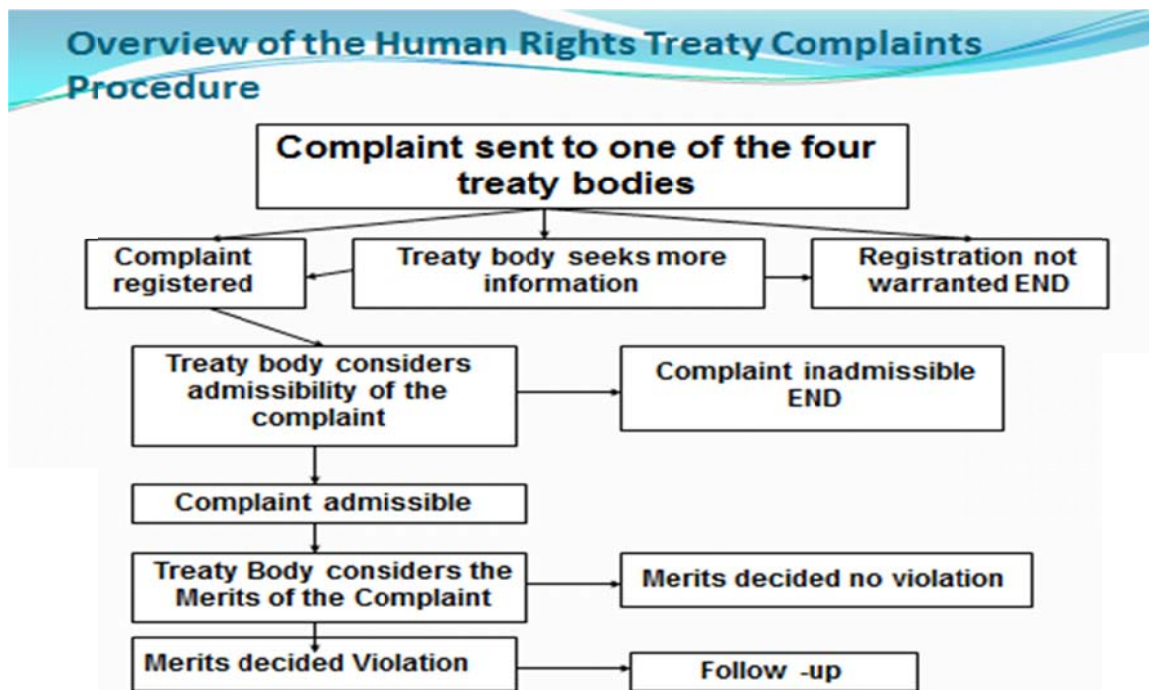
Functions of the Bodies:

- Monitoring how the treaties are being implemented by States parties
- Receive and consider reports submitted
 - State parties are required to submit periodical reports to the bodies setting out legal, administrative and judicial measures taken by the State with regards to the subject in consideration.
 - Submission of shadow reports by NGO's and other non-state actors setting forth their versions is also permitted.
 - National institutions also submit their versions.
 - Larger examination of specific issues.
 - Recommendations given
- Issue guidelines to assist States with the preparation of their reports
- Elaborate general comments interpreting the treaty provisions and organize discussions on themes related to the treaties.
- Inquiries and country visits
- Some of the treaty bodies may consider complaints or communications from individuals alleging that their rights have been violated by a State party, provided that the State has recognized the competence of the committee to this effect

Complaints mechanisms

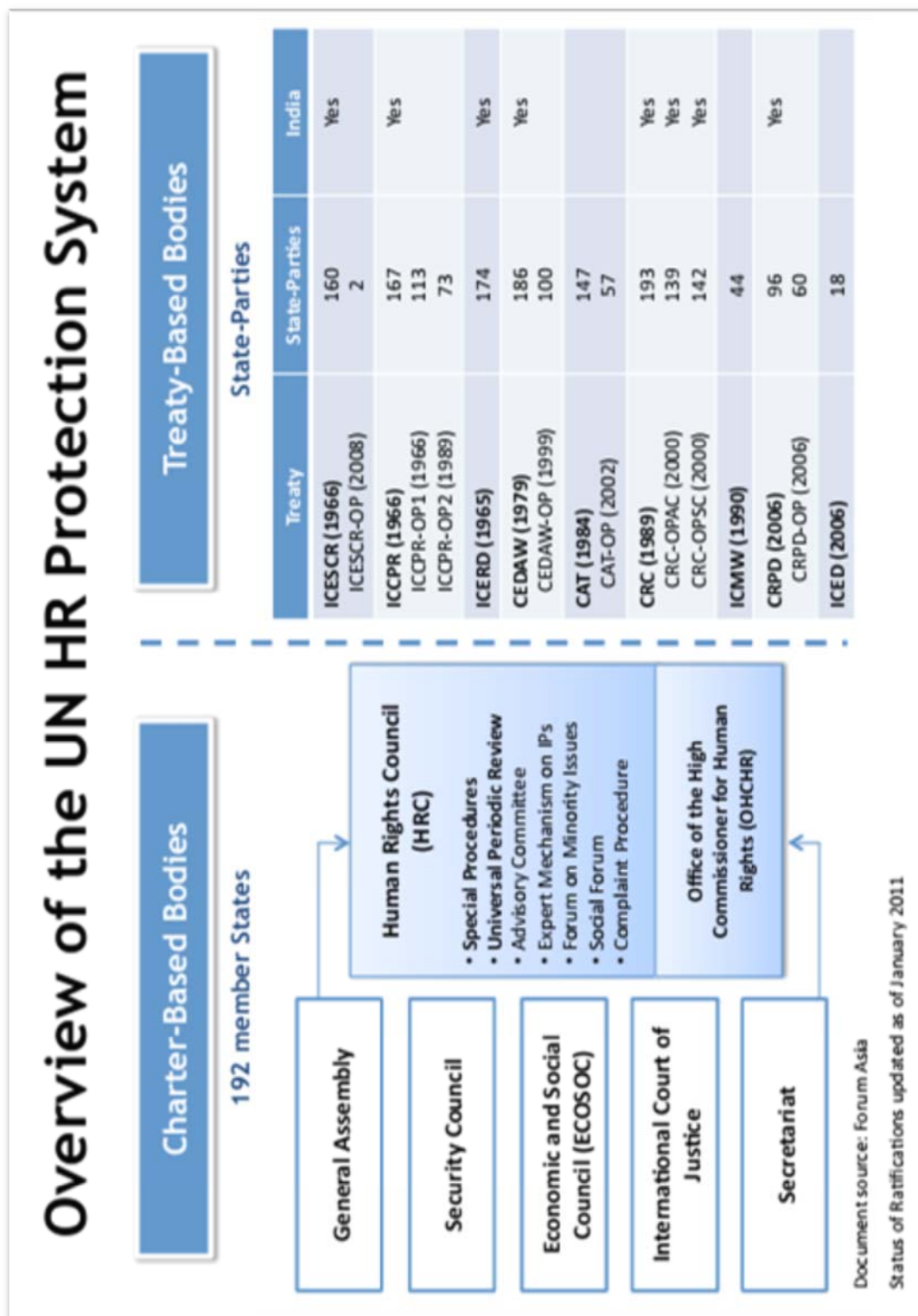
- Anyone may bring a human rights problem to the attention of the United Nations and thousands of people around the world do so every year. However only on acceptance and ratification by a state can the treaty bodies receive individual complaints and communications relating to human rights violations in a country.
- However only on acceptance of specific provisions by a state can the treaty bodies receive individual complaints and communications relating to human rights violations in a country.
- Each of these treaties establishes a quasi-judicial committee to examine complaints. The complaint procedures are designed to be uncomplicated and accessible to the lay person.

- OHCHR website



OHCHR

- OHCHR is part of the Secretariat of the United Nations and is led by the High Commissioner for Human Rights, a position created in 1993.
- It is regarded as one of the most reliable sources on norms and standards relating to human rights.
- It collaborates with a range of actors, including Governments, national human rights institutions (NHRIs), non-governmental organizations (NGOs) and other civil society actors, to instill as broad a commitment to human rights.



Using the International Regime

The International instruments and mechanisms discussed above express the united voice of the world nations and citizens for human rights and protection. The Indian legal system is such that these treaties do not become automatically binding on our courts, however they do hold good persuasive value.

Article 51(a) of the Indian Constitution requires the State to promote and foster respect for the international law and treaty obligations. This ideology is mirrored by the Supreme Court of India in Apparel Export Promotion Council Vs A.K. Chopra A.I.R 626 S.C.1999 where the Court held that courts should remain alive to International Instruments and conventions in cases involving human rights violations. In Vishaka and other Vs state of Rajasthan (SCC, 1997, 6, 241) the Court further elaborated that International conventions and norms consistent with the spirit of fundamental rights can be read into these rights for interpreting them in the larger context to promote the objects of the constitution. In the absence of domestic law, on the particular aspect the court held that these conventions and norms as ratified by India can be relied on by the supreme court to formulate guidelines for enforcement of fundamental rights.

India's Profile

As stated earlier India is a member of the UN Human Rights Council and has signed many of the human rights treaties. Here is an overview:

India and International Human Rights Treaties

Ratification of International Human Rights Treaties – India

Convention	Signature	Ratification / Accession
International Covenant on Economic, Social and Cultural Rights		10 Apr 1979
International Covenant on Civil and Political Rights		10 Apr 1979
Optional Protocol to the International Covenant on Civil and Political Rights	Not signed	
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Not signed	

International Convention on the Elimination of All Forms of Racial Discrimination	2 Mar 1967	3 Dec 1968
Convention on the Elimination of All Forms of Discrimination Against Women	30 Jul 1980	9 Jul 1993
Optional Protocol to the Convention on the Elimination of Discrimination against Women	Not signed	
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	14 Oct 1997	
Convention on the Rights of the Child		11 Dec 1992
Optional Protocol to the Convention on the Rights of the Children on the involvement or children in armed conflicts	Not signed	
Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	Note signed	

The maximum and effective use of international human rights instruments and mechanisms enables bringing about universal protection of our rights and aids the process of evolution of new rights. Right to water, food, protection against violations by corporations and the process of globalization are instances of recent rights that have gained recognition after much international advocacy. This is especially so since India does not have a comprehensive legislation on human rights and thus human rights as a whole gamut of rights and protection needs promotion.

Chapter III

India and Human Rights – The Constitution of India

India is a member of the United Nations Human Rights Council and is party to the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, enacted several legislations dealing with specific subjects such as protection of women, children, the disabled, workers, minorities, migrants, environment health, education, food and other issues.

Further, the state enacted the Protection of Human Rights Act, 1993 creating the National Human Rights Commission, National Commission for Women Act, 1990, *National Commission for Minorities Act*, 1992 and the Commission for Protection of Child Rights Act, 2005 and has set up the National Commission on Schedule Castes and National Commission on Schedule tribes. These commissions are a body of experts and look into the issues pertaining to their respective mandates.

The Supreme Court and High Courts have consciously guarded the enforcement of these rights and have interpreted existing provisions to include a larger gamut of rights. The Courts have also entertained several public interest litigations on matters pertaining to the protection of the public. The courts have also stepped in when there have been a lacuna in the existing laws while protecting the rights of persons.¹

THE CONSTITUTION OF INDIA

The Indian Constitution is the most significant human document of the state, representing the Indian ideology. The Constitution was drafted around the same time as the Universal Declaration of Human Rights. After a century long struggle against the British imperial powers, the new and Free State was charged with the spirit and aim of protecting and furthering freedom, human rights and dignity.

The Constitution encompasses several human rights between Articles 14 to 32 under the heading Fundamental Rights. These include the [right] to equality, non-discrimination, opportunity, freedoms, education, protection of minorities and vulnerable groups, child protection and constitutional remedies, among others, broadly civil and political in nature. The other parts of the Constitution also provide for Directive Principles of State Policy and Fundamental Duties of citizens, for the creation of a more social, political and economically just and equal society. The Directive Principles of State Policy in Part IV which reflects the principles and goals the state must strive for in order to create a just society for the welfare of the citizens, is sometimes considered the real driving force of the Constitution. The provisions of this section resemble Economic, Cultural and Social rights.

¹ For instance, the directions given by the Supreme Court in the case of protection of women from sexual harassment at the work place in *Vishaka vs. State of Rajasthan*, AIR 1997 SC 3011 and while giving directions to the police about custodial violence in *D.K. Basu vs. State of West Bengal*, 997 (1) SCC 416

PREAMBLE

The Preamble of the constitution is much similar to an introductory note. It provides the core and defining principles of the state. It is a great aid in understanding the text of the constitution as a whole. It also gives us a deep insight into the mind of the drafters of this document.

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a '[SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC]' and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the ²[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

Fundamental Rights (Chapter III)

Article 12 - Definition - In this part, unless the context otherwise requires, " the State " includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13 - Laws inconsistent with or in derogation of the fundamental rights.-

Right to Equality and Non-Discrimination

Article 14: Equality before law:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 16: Equality of opportunity in matters of Public Employment

Article 17: Abolition of untouchability

Right to Freedom

Article 19: Protection of certain rights regarding freedom of speech and expression, assembly, associations or unions, movement throughout India and practice of any profession, trade or business.

Article 20: Conviction only under law, no one shall be punished twice for the same offence or forced to be a witness against himself.

Article 21: Protection of life and personal liberty

Article 21 A: Right to education

Article 22: Protection against arbitrary and improper arrest and detention

Right against Exploitation

Article 23: Prohibition of traffic in human beings and forced labour

Article 24: Prohibition of employment of children in factories, etc.

Right to Freedom of Religion

Article 25: Freedom of conscience and free profession, practice and propagation of religion

Article 26: Freedom to manage religious affairs.

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

Article 29: No discrimination in any educational institution on the grounds of religion, race, caste, language and the right of minorities to protect their culture.

Article 30: Right of minorities to establish and administer educational institutions

Right to Constitutional Remedies

Article 32: The right to move the Supreme Court by for the enforcement of the rights

DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy are in Part IV of the Indian Constitution. They elucidate standards that the state must strive to achieve.

Article 37 states that 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 the duty of the State to apply these principles in making laws.

Article 38: State to secure a social order for the promotion of welfare of the people.

Article 39: Principles of equality , best distribution of resources for common good, prevention of concentration of wealth, equality of pay, safe working environment, development and protection of children.

Article 39A: Equal justice and free legal aid.

Article 40: Organisation of village panchayats.

Article 41: Right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 42: Provision for just and humane conditions of work and maternity relief.

Article 43: Living wage for workers.

Article 43A: Participation of workers in management of industries.

Article 44: Uniform civil code for the citizens.

Article 45: Provisions for early childhood care and education to children below the age of six years.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

Article 48: Organisation of agriculture and animal husbandry.

Article 48A: Protection and improvement of environment and safeguarding of forests and wild life.

Article 49: Protection of monuments and places and objects of national importance.

Article 50: Separation of judiciary from executive.

Article 51: Promotion of international peace and security.

- (a) promote international peace and security;
- (b) maintain just and honorable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

FUNDAMENTAL DUTIES

The Indian Constitution in addition to rights and directives has also prescribed duties of the Indian citizens. It is required of every citizen to strive to achieve this goal.

51 A. Fundamental duties.—It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Chapter IV

National and State Human Rights Institutions

There have been several international efforts towards persuading all states to establish independent National Human Rights Institutions to overlook and protect human rights in their respective states.

National Human Rights Commission-India

Establishment and Statute

The National Human Rights Commission (NHRC) of India was established on 12 October, 1993. The statute under which it is established is the Protection of Human Rights Act (PHRA), 1993 as amended by the Protection of Human Rights (Amendment) Act, 2006.

It is in conformity with the 'Paris Principles', adopted at the first international workshop on national institutions for the promotion and protection of human rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations by its Resolution 48/134 of 20 December, 1993.

The NHRC is an embodiment of India's concern for the promotion and protection of human rights.

Definition of Human Rights

Section 2 (1) (d) of the PHRA defines "human rights" as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

The "International Covenants", as per Section 2 (1) (f) means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December, 1966 and such other Covenants or Conventions adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify.

Distinctive Features

- The NHRC is an autonomous and statutory organisation as it has been created by an Act of Parliament.
- It is fully compliant with the Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights, adopted by the United Nations General Assembly in 1993.

- It is independent in taking decisions and expressing its own views on different human rights issues.
- It has a wide mandate and an array of functions catering to all sections of the society.
- It has all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, for summoning and enforcing the attendance of witnesses and examining them on oath; discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; and issuing commissions for the examination of witnesses or documents etc.
- The Chairperson has a fixed tenure of five years or until he attains the age of 70 years and once appointed, may only be removed from office by an order of the President of India only on the ground as laid down in the PHPA.
- Members are also appointed to a five years term, which may be renewed once. They too retire at 70.
- Neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a member may be varied to his disadvantage after his appointment.
- It has the power to recommend to the concerned government or authority to make payment of compensation or damages to the complainant or to the victim(s) or the members of their family as it may deem fit.
- It has evolved transparent procedures and mechanisms over the years for the discharge of its functions and monitoring the implementation of its recommendations.
- The increasing number of complaints received by it each year not only reflects its credibility but also the trust reposed in it by the citizens.

Composition and Structure

NHRC consists of a Chairperson, four full-time Members and four deemed Members. The statute prescribes high qualifications for the appointment of the Chairperson and Members of the Commission.

Appointment of Chairperson and Members

The Chairperson and the Members of NHRC are appointed by the President of India, on the recommendations of a committee.

The Secretariat

The Chief Executive Officer of NHRC is the Secretary General, an officer of the rank of Secretary to the Government of India. The Secretariat of the Commission works under the general supervision of the Secretary General.

There are five Divisions in the Commission:

Law Division

It services the Commission in the receipt and disposal of complaints relating to human rights violations.

Investigation Division

The prime responsibility of the Division is to carry out spot investigations all over the country on behalf of the Commission. It also assists the NHRC in examining complaints, in scrutinizing reports received from the police and other investigative agencies and in looking into reports of custodial violence or other misdemeanors. In addition, the Division analyzes the information and other reports from the State authorities regarding deaths in police and judicial custody, and encounter deaths.

Administration Division

It looks after the establishment, administrative, personnel and other requirements of the Commission.

Training Division

It is responsible for spreading human rights literacy among various sections of the society. It also sensitizes government and non-government officials and functionaries on different human rights issues. Besides, it conducts Internship Programme for college and university students.

Policy Research, Projects and Programmes Division

Whenever the Commission, on the basis of its hearings, deliberations or otherwise, arrives at a conclusion that a particular subject is of importance, it is converted into a project/ programme to be dealt with by the PRP&P Division.

It also undertakes and promotes research on human rights and organizes conferences, seminars and workshops on pertinent issues. In addition, it reviews policies, laws, treaties and other international instruments in force for the protection of human rights. It also aids the Training Division in spreading human rights literacy and in promoting awareness about the safeguards available for the protection of human rights.

Other Mechanisms

The reach of NHRC is greatly enhanced by the appointment of Special Rapporteurs and the constitution of Core Groups and Expert Groups.

Special Rapporteurs are very senior officers who have held high posts in central or State Government or are academicians of repute or eminent persons who have knowledge of or practical experience in, matters relating to human rights. They are either assigned specific subjects to deal with, such as bonded labour, child labour, custodial justice, disability related issues, etc., or a zone comprising a group of States, to look into human rights concerns and violations.

The Core Groups and Expert Groups consist of eminent persons or representatives of bodies working on different human rights issues, who voluntarily agree to serve, in an honorary capacity, as members of those Groups, which render expert advice to the Commission.

Address of the Commission

**National Human Rights Commission,
Faridkot House, Copernicus Marg, New Delhi, PIN 110001
Tel.No. 23384012 Fax No. 23384863
E-Mail: covdnhrc@nic.in, ionhrc@nic.in**

Hon'ble Justice Shri K.G. Balakrishnan	Chairperson	91-11-23382514(O)
	Member	91-11-23387328(O)
Hon'ble Justice Shri Babulal Chandulal Patel	Member	91-11-23385069(O)
Shri Satyabrata Pal	Member	91-11-23387244(O)
	Member	91-11-23382432(O)
Shri Wajahat Habibullah National Commission for Minorities	Chairperson Ex-officio Member	91-11-24690592(O) 91-11-24698410(O)
Shri P.L. Punia National Commission for Scheduled Castes	Chairperson Ex-officio Member	91-11-24620435(O)
Dr. Rameshwar Oraon National Commission for Scheduled Tribes	Chairperson Ex-officio Member	91-11-24635721(O)
Ms. Mamta Sharma National Commission for Women	Chairperson Ex-officio Member	91-11-23230785(O) 91-11-23236204(O)

State Human Rights Commissions

The Human Rights Act facilitates that all State Governments should have their own State Human Rights Commission so as to exercise the power conferred upon and perform functions assigned to it under the Act.

The NHRC has been pursuing with the State Governments, since its inception to set up their own Commissions for better protection and promotion of human rights within their concerned jurisdiction. Till date, only 20 States have set up their own State Human Rights Commissions.

These includes: Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Sikkim and Jharkhand.

The Commissions has been conducting regular meetings with the State Human Rights Commissions for better understanding of the issues whereby they can discharge their role as the protector and promoter of human rights in a more proactive manner. The NHRC has also been writing to the State Governments to provide them all infrastructural facilities, administrative financial autonomy so that they are able to function in a more conducive atmosphere.

Details of the Tamil Nadu State Human Rights Commission

TAMIL NADU STATE HUMAN RIGHTS COMMISSION

"Thiruvarangam" No. 143, P.S. Kumaraswamy Raja Salai, (Greenways Road),
Chennai – 600 028

PH. 044-24951484, FAX: 044-24951486 E-mail: shrc@tn.nic.in Website: www.shrc.tn.nic.in

S.No	Designation	Name	Tel. No.(O)
(1)	Chairperson	VACANT	24951495
(2)	Acting Chairperson/Member	Thiru K. Baskaran	24951487
(3)	Member	Tmt. Jayanthi	24951489
(4)	Secretary	Thiru Dev Raj Dev, IAS	24951490, 9444452179 (M)
(5)	Registrar (Law)	Thiru T. Duraisamy	24951492
(6)	Addl. Director General of Police	Thiru T. Rajendran, IPS	24951491
(7)	Superintendent of Police	Thiru N. Baskaran, IPS	24951494

Besides the National Human Rights Commission and the State Human Rights Commission there are other expert bodies with similar functions such as the National Commission for Women Act, 1990, *National Commission for Minorities* Act, 1992 and the Commission for Protection of Child Rights Act, 2005 and has set up the National Commission on Schedule Castes and National Commission on Schedule tribes which have been created to deal with their specific mandates.

Chapter V

Specific Rights

A. CUSTODIAL RIGHTS

Custodial rights refer to the rights of a person who has been apprehended by the police, or other state authorities, as the case may be and detained.

Our Rights When Arrested In Police Custody

Investigation

- investigation by any police officer of any male below 15 years or any woman can be made only at the place of residence (Sec. 160 Cr. P.C)

Arrest

- Persons arrested must be informed of the full particulars of the offence committed and the grounds for arrest. (Sec.50 Cr. P.C. & Art 22 (1) - Constitution of India)
- All persons arrested / detained must be served a **custody memo** as per Supreme Court directions in D.K. Basu Vs State of West Bengal.
- Persons arrested cannot be detained for more than 24 hours in Police Custody (Sec.56/57 Cr.P.C. & Art 22 (2) Constitution of India.
- An Accused person is entitled to a copy, free of cost, of the Police Final Report, First Information Report (FIR), statements of all persons whom prosecution proposes to examine as its witnesses (Sec 207, Sec. 154, Sec. 161 [3]) confessions and statements if any recorded and any other documents, relevant extracts forwarded to the magistrate.
- The arrested person has a right to consult and be defended by a legal practitioner of his choice (Article 22 (1) of the Constitution of India).
- If the arrested person is poor, he can get free Legal Assistance from the Legal Services Authority (Art 39 A Constitution of India).
- The person arrested, has a right to be examined by a registered medical practitioner (Sec.54) to disprove, the commission of Offence or to prove the ill-treatment of the police or any other suitable reason. (S.54 Cr. P.C).
- In the case of a woman the medical examination has to be made only by a female registered medical practitioner.
- Police are empowered by Sec.41, 42, 151 and 432 (3) of Cr.P.C. to arrest without a warrant.

- Arrest should not be made on mere suspicion (145 Cr. P.C).
- The arrested person is entitled for compensation for groundless arrest / illegal detention.
- The registering of the FIR is not a condition precedent to grant anticipatory bail.
- Warrant of arrest should be in writing and signed by the Presiding officer of the court with seal. Substance of the warrant should be shown or intimated to the person to be arrested.

Police Custody

- Custody includes surrender of accused before the court and submissions to directions.
- A Magistrate may order for the remand of the arrested person to police custody u/s 167 (3) of the Cr.P.C. The Magistrate should be fully satisfied that there is good ground to remand the accused to police custody.
- If a person is released on bail he cannot be remanded to police custody.
- When remand to police custody is granted (subject to Supreme Court orders in D.K. Basu).
 - I. the accused in police custody can be kept in police lock - up.
 - II. can be taken to any place for purposes of investigation within this period.
 - III. can be kept at any place for purposes of investigation within this period.
- there should always be an entry in the Daily Diary (i.e. General Diary) when accused is taken out of police lock-up or readmitted;
- if the accused falls ill in police lock-up, he must be given medical aid or treatment admitted for in a hospital.
- if an accused dies in police custody, officer - in - charge shall immediately inform the nearest Executive Magistrate empowered to hold inquests, for investigation u/s 176 Cr.P.C. and intimated to the National Human Rights Commission within 24 hours.
- detention of accused for longer than 24 hours when not produced for remand and beyond period of remand without orders of Magistrate is illegal and Police Officer is liable u/s 342 IPC and u/s 29 of the Police Act.
- Accused may engage a counsel during proceedings of remand and accused may raise an objection that the police is not entitled to custody.

Bail

- Person accused of a bail able offence has right to be released on bail. It is the duty of the police officer in charge to intimate this. Bail not Jail is the Rule of Law.
- An accused person surrendering before the Magistrate has a right to bail or demand judicial custody.
- The provision of bail to women, sick and old age persons is given priority subject to the nature of the offence.
- Once the accused is granted bail by invoking Sec. 205 Cr.P.C. he need not attend the court (unless it is a condition of bail) before charge sheet is filed and process issued .
- If no charge -sheet is filed before the expiry of 60/90 days as the case may be, the accused in custody has a right to be released on bail.
- If the arrested person is remanded to judicial custody by the Magistrate on Sundays or holidays, the bail application should be considered on the Sunday or the holiday itself.
- In non-bail able offences, the Magistrate has the power to release on bail without notice to the other side if charge sheet is not filed within a period of sixty days.

SUPREME COURT JUDGEMENT (1996) D.K. BASU Versus State of West Bengal

Requirements to be followed In all cases of arrest or detention

- The Police personnel carrying out the arrest and handling the interrogation should bear accurate, visible and clear identification. The particular of all such police personnel must be recorded in a register.
- That the police officer carrying out the arrest of the arrestee shall prepare a memo or arrest at the time of arrest and such memo shall be attested by at least one witness.
- A person who has been arrested or detained shall be entitled to have one friend or relative or other person known to him.
- The time, place of arrest and venue of custody must be notified by the police where the next friend or relative lives through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- The person arrested must be made aware of this right to have someone informed of his arrest or detention

- An entry must be made in the diary at the place of detention regarding the arrest of the person disclosing the name of the next friend and the names and particulars of the police officials in whose custody the arrestee is.

The arrestee should be also examined at the time of his arrest and major and minor injuries, if any present on his her body, must be recorded at that time, the 'Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

- ◆ The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody
- ◆ Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
- ◆ The arrestee may be permitted to meet his lawyer during interrogation.
- ◆ A police control room should be provided at all district and state headquarters, where information regarding the arrest shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest.
- ◆ Information regarding the arrest shall be communicated to all district and state headquarters by the officer causing the arrest, within 12 hours of effecting the arrest.

The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and ***NEED TO BE STRICTLY FOLLOWED.***

B. RIGHT TO INFORMATION

The right to information is a fundamental human right which is made up of different rights and responsibilities, namely:

- Every person's RIGHT to request information from the government - and even private bodies in some cases;
- The DUTY on the government to provide the requested information, unless defined exemptions apply; and
- The DUTY on the government to proactively disclose information that is of general public interest without the need for requests from citizens.

The Constitution of India does not specifically mention the right to information, but it has long been recognised by the Supreme Court of India as a fundamental right necessary for democratic functioning. Specifically, the Supreme Court has recognised the right to information as an integral part of the right to freedom of speech and expression guaranteed by the Constitution (Article 19) and a necessary part of the right to life (Article 21).

The right to access information reflects the fact that government information belongs to the people, not the public body that holds it. Information is not 'owned' by any department or by the government of the day. Rather, information is generated with public money by public servants, paid out of public funds and is held in trust for the people. This means you have the right to access information about governments' actions, decisions, policies, decision-making processes and even information held by private bodies or individuals in some cases.

You can use the RTI Act to take the initiative in making sure that the government provides you with the services you are entitled to and the rights and benefits that are your due as a citizen of India.

The RTI Act applies to the whole country, across all the States and Union Territories (except the state of Jammu and Kashmir which is not covered because of its special status under Article 370 of the Constitution).

The RTI Act gives you the right to access to information held by "public authorities".

Public authorities include bodies which are:

- Established or constituted by or under the Constitution;
- Established or constituted by a law of Parliament or a State Legislature;
- Established or constituted by a notification or order of the State or Central Governments;

Owned, controlled or substantially financed by the State or Central Governments, including non-government organisations which receive substantial government funds.

The RTI Act allows you access to a wide range of information held by public authority's indifferent forms. For example, you can use the Act to get hold of records, manuscripts, files, file nothings, microfilm, microfiche, facsimiles, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data which is in electronic form, any material produced by a computer or any other device, and even information relating to a private body which a public authority can get under an existing law.

Though the RTI Act gives you the right to access a very broad range of information, there are still situations wherein you may not be able to get access to information because it is very sensitive. Such information is "exempt" from being given to you by the government, on the basis that making it public would cause more harm than good to the public. The RTI Act spells out specific cases where information can legitimately be denied to you,¹⁸ namely if:

- a. disclosure would harm national security, scientific or economic interests of India or relations with a foreign State or lead to the incitement of an offence;
- b. any court of law or tribunal has forbidden the information from being published or the release would constitute a contempt of court;
- c. disclosure would cause a breach of privilege of Parliament or the State Legislature;
- d. the information is confidential commercial information, trade secrets or intellectual property or giving it out would harm the competitive position of a third party (such as the company that provided it to the public authority);
- e. the information is available to a person because he has a fiduciary relationship with another person (such as a doctor/patient or lawyer/client relationship);
- f. the information has been given by a foreign government in confidence;
- g. disclosure would endanger the life or physical safety of a person;
- h. disclosure would impede the process of criminal investigation or apprehension or prosecution of offenders;
- i. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, although information should be released after a decision is made;
- j. the information requested is personal information, the giving out of which has nothing to do with any public activity, or which would cause an unwarranted invasion of the privacy of the individual;
- k. disclosure would infringe the copyright of a body other than the State.

How do I request information?

Step 1: Identify the public authority which holds the Information

Step 2: Identify who to submit your application to within the public authority

Step 3: Draft a clearly focused application

Step 4: Submit your application

Step 5: Wait for a decision

The Act also provides for what one should do if their request is turned down. For a more detailed discussion please look at the guide enclosed in the CD.

Excerpts from the Your Guide to Using the Right to Information Act 2005, Common Wealth Human Rights Initiative

C. RIGHT TO EDUCATION

The right to education has been universally recognised since the Universal Declaration of Human Rights in 1948 (though referred to by the ILO as early as the 1920s) and has since been enshrined in various international conventions, national constitutions and development plans.

The landmark passing of the Right of Children to Free and Compulsory Education (RTE) Act 2009 marks a historic moment for the children of India. For the first time in India's history, children will be guaranteed their right to quality elementary education by the state with the help of families and communities. This is provided for by amending the Indian Constitution making Article 21A guaranteeing all children the right to education.

Main Features of the RTE Act:

- Makes Elementary Education Free
- Makes Elementary Education Compulsory for the State to provide
- Mandates education of children along their peer age group ("age-appropriate"); provides for "special training" to facilitate age appropriate education
- Sets quality norms for all schools
- Sets qualification and working norms for Teachers in all schools
- Mandates curriculum in all schools to be in consonance with Constitutional Values
- Mandates a system of evaluation that is free of the oppression of annual exams
- Enhances role of PRIs in implementation as well as grievance redressal.
- Mandates participation of civil society in management of schools, makes teachers accountable to parents & the community
- Democratizes education delivery by mandating 25% reservation for children from weaker sections in private schools.
- Mandates a system of evaluation that is free of the oppression of annual exams
- Protects children from labour, marriage, exploitation, discrimination, abuse, violence and neglect.
- Separates the agency for implementation of the Act (Department of Education) from the agency charged with monitoring the implementation of the Act (NCPCR)

D. DALIT RIGHTS

More than one - sixth of India's population, some 160 million people, live a precarious existence, shunned by much of 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, forced to work in degrading conditions, and routinely abused at the hands of the police and of higher - caste groups that enjoy the state's protection. In what has been called India's "hidden apartheid", entire villages in many Indian states remain completely segregated by caste. This is India's very own version of racism.

Human Rights Violations Against Dalits -Tamil Nadu

- (a) Untouchability Practices
- (b) Manual Scavenging
- (c) Denial of political participation - right to vote in representative forms (parliament / state legislature / panchayat / municipal government)
- (d) State Violence Against Dalits especially in Custodial Institutions.
 - *Foisting of false cases*
 - *Molestation of women*
 - *Police firing, lathi charge*
 - *Destruction and looting of villages / urban poor settlement*
 - *Arbitrary arrest and illegal detention.*
 - *Rape and torture in custody*
 - *Denial of right to education health care, nutrition, food, hygiene in custody.*
- (e) Dalits and the struggle for land and living wages
- (f) Implementation of the SC/ ST (Prevention of Atrocities) Act 1989
- (g) Effectiveness of National Commission for Scheduled Castes and Scheduled Tribes.
- (h) Denial and Destruction of the Right to Housing.
- (i) Dalit Labourers (Workers)
- (j) Oppression of Dalit Women - Sexual assault and violence
- (k) Caste Violence Against Dalits
 - *Denial of temple entry and eviction from villages*
 - *Mass killings*
 - *Social Boycott*
 - *Humiliation and torture.*
 - *Denial of access to common village lands and resources.*

- (l) Status of Reservations - The struggle to maintain and obtain reservation quotas
- (m) Impact of Globalisation on Dalit Communities
- (n) Dalit education and increasing child labour.
- (o) Denial of right to enjoyment of common resources / natural resources /water resources,
- (p) Denial of right to governance of elected dalit representatives to local bodies, (q) Detention Laws and Preventive arrest.

Constitutional Protection for Dalits

The constitution protects the interest of the Dalits in addition to equality, affirmative action, reservations, non discrimination in public employment, reservation of seats in panchayats, municipalities, House of People, Legislative Assemblies and Service Posts.

Article 46 of Constitution particularly provides for the Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

In Addition the Government has enacted the Schedule Caste and Schedule Tribes Prevention of Atrocities Act, 1989.

What is the purpose of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act?

The purpose is:

- to prevent crimes against members of scheduled castes and scheduled tribes; and
- to provide for relief and rehabilitation of victims of such offences.

Who is an offender under this Act?

- Any person who is not a member of a scheduled caste or a scheduled tribe and commits an offence listed in the Act against a member of a scheduled caste or a scheduled tribe is an offender.

Who is a victim and what are the offences under the Act?

The victim is a member of a scheduled caste or a scheduled tribe against who many of the following offences is committed by the offender:

- forced to eat or drink an offensive or uneatable substance;
- caused annoyance, injury or insult by any excreta or waste matter being dumped in his premises or neighborhood;
- paraded naked or with painted face or body;
- wrongfully deprived of cultivation of his land;
- wrongfully deprived of his rights over any land, premises or water;

- forced to do beggar or work as a bonded labourer;
- prevented from exercising his right to vote or according to his wishes;
- subjected to false legal proceedings;
- caused injury or annoyance by a public servant on the basis of false information given to him;
- deliberately insulted and humiliated in public view;
- a woman who is sexually assaulted;
- deprived of his right to clean drinking water;
- deprived of his right of passage to a public place;
- forced to leave his house or village;
- falsely implicated in a criminal case which might result in his imprisonment or execution;
- intended harm or injury by burning a place of his dwelling or worship;
- wrongfully caused injury or subjected to any other offence by a public servant.

Are the offences under the Act cognizable?

All offences listed in the Act are cognizable. The police can arrest the offender without warrant and start investigation into the case without taking any orders from the court.

What is the punishment prescribed under the Act?

The Act prescribes both minimum as well as maximum punishment. The minimum in most cases is six months imprisonment while the maximum is five years sentence and with fine. In some cases the minimum is enhanced to one year while the maximum goes up to life imprisonment or even death sentence

What should you do if any offence is committed under the Act?

You should immediately report the incident to the nearest Police Station.

Who can lodge a complaint under the Act?

Anyone who knows that an offence has been committed under the Act can lodge the complaint. It is not necessary that only the victim of the offence should file a complaint

What should you mention in your complaint?

You should mention:

- Your name and address
- The name and address of the offender;
- Date, time and place of the offence;
- Names and descriptions of the persons involved in the incident;
- True facts of the offence;
- Names and addresses of the witnesses; and
- Any other relevant details.

What is the procedure of filing a complaint under the Act?

The procedure is as follows:

- When information about the commission of an offence is given orally, the police must write it down.
- Please insist that the information recorded by the police is read over to you.
- Once the information has been recorded by the police, it must be signed by the person giving it.
- Verify that the information recorded by the police is as per the details given by you before signing the report.
- You are entitled to get a copy of the report free of cost.

What can you do if your complaint is not registered?

If your complaint is not registered by the police station staff, you can send it to the District Superintendent of Police, who will get it investigated

Who can investigate into an offence under the Act?

An offence under the Act can be investigated by a police officer, who is not below the rank of a Deputy Superintendent of Police.

Is there any time limit to complete the investigation?

The investigating officer has to complete the investigation on top priority within thirty days.

What can you do if you are not satisfied with the action taken on your complaint by the police station?

You should first write to the District Superintendent of Police. If you are not satisfied with the action taken by him, please write to:

The National Commission for Scheduled Castes and Scheduled Tribes, Government of India, 5thFloor, Lok nayak Bhawan, Khan Market, New Delhi-110 003 Telephone: (011) 462 0435, Fax: (011) 462 5378

Can an offender under the Act obtain anticipatory bail?

No. Provisions of Section 438 of the Criminal Procedure Code, 1973, regarding anticipatory bail are not available to any offender under the Act

What is Anticipatory Bail?

When any person has reason to believe that he may be arrested in a non-bailable offence, he applies to the High Court or the Court of Sessions for a direction to the concerned authorities that, in the event of his arrest, he shall be released on bail. Anticipatory bail thus means grant of bail in non-bailable cases to a person apprehending arrest.

Is there any provision for compensation under the Act?

If you are a victim of atrocity under the Act, you are entitled to compensatory relief and other facilities under the rules. The amount of compensation varies from case to case, ranging between Rs.20,000 to Rs.2,00,000. You can contact the District Magistrate or District Social Welfare Officer for details and settlement of your claims. Every victim or his dependents and witness shall be paid travelling and maintenance allowance for visiting the investigating officer, Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate to attend any inquiry, investigation or trial of the case.

- Excerpts from the Common Wealth Human Rights Initiative website.

E. Child Rights and Juvenile Justice

Indian Constitution and Children Rights

Article 23: Prohibition of traffic in human beings and forced labour

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24: Prohibition of employment of children in factories, etc.

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

Article 37 - Application of the principles contained in this part

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 the duty of the state to apply these principles in making laws.

Article 39 (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 necessity to enter avocations unsuited to their age or strength.

Article 39 (f) - That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 - Right to work, to education and to public assistance in certain cases -The state shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45 - Provision for free and compulsory education for children - The State shall endeavor to provide, within a period of ten years from the commencement of this constitution for free and compulsory education for all children until they complete the age of fourteen years. SC. Case - Unikrishnan case.

Article 46 : Promotion of educational and economic interests of Scheduled Caste, Scheduled Tribes and other weaker sections - The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47 : Duty of the state to raise the level of nutrition and the standard of living and improve public health - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

- Child Laws and Conventions
- The Bonded Labour System (Abolition) Act, 1976
- Worst Forms of Child Labour Convention, 1999
- National Commission for Protection of Child Rights Act
- Commission for Protection of Children's Act Amendment 2006
- Abolition of Forced Labour Convention
- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography
- UNICEF World Fit for Children Declaration 2002
- UNESCO World Declaration on Education for All 1990
- The Immoral Traffic Prevention Act, 1956
- Juvenile Justice (JJ) Act, 2000
- Juvenile Justice (JJ) Amendment Act 2006
- Prohibition of Child Marriage Act, 2006
- Persons with Disability Act, 1995
- Right to Information Act, 2005
- Child Labour Act, 1986
- Notification on Banning Child Labour in Domestic, Shops and Establishments
- Indian Majority Act, 1875
- The Indian Contract Act, 1872
- The Guardians and Wards Act, 1872

Juvenile Justice

The Juvenile Justice Act of 1986 introduced the basis for a national uniform juvenile justice system addressing the care, protection and treatment of 'neglected' and 'delinquent' juveniles. Its repeal and introduction of the Juvenile Justice (Care and Protection) Act in 2001 was founded on the basis of addressing significant biases against a child centric system with provisions which were at odds with the delivery of care and protection standards in the best interests of the child. These included in particular adequate separation of processes and infrastructure addressing 'juveniles in conflict with the law' and those in 'need of care and protection' and the need for the elimination of an underlying orientation toward criminalisation and institutionalisation in the judicial and custodial treatment of children.

In this act a child or juvenile is defined as a person who has not completed his/her 18th year of age. It outlines two target groups: Children in need of care and protection and Juveniles in conflict with law. This act protects not only the rights of children, but a person's rights when he/she was a child. Meaning that if a crime or an incident took place while the person was a child, and then during the proceeding the juvenile ceased to be of age the case would continue as if the juvenile has not turned eighteen yet.

The second chapter of the Act addresses Juveniles in Conflict with Law (JCLs). This section calls for the establishment of Juvenile Justice Boards (JJBs) where the State Government sees fit. JJBs must contain a Metropolitan or Judicial magistrate and two social workers where one of the workers must be a woman. The magistrate is required to have a background in child psychology or child welfare. JCL cases can only be heard in the JJB and not by another court. The powers of the JJB can be exercised in a High court or Court of Session when an appeal has been made as part of the act, the state is required to set up a number of institutions where the needs and protection of juveniles may be fulfilled. For the reception and rehabilitation of JCLs the state must set up Observation Homes and Special Homes in every district or group of districts. The state may directly set up these homes or contract a voluntary organisation to do so. Observation homes are for institutions for juveniles while their proceedings are underway. After the proceedings of a particular case are complete, the JJB may decide that the rehabilitation of the child is not complete and hence place them in a Special home for no longer than three years.

When a police officer comes in contact with a juvenile he must place the child with the Special Juvenile Police Unit (SJPU) who must report the child to the board without delay. Bail is available to juveniles in all cases as long as the Board find the release of this child will

not place him in any danger or in the influence of criminals. If the child is not released on bail he is only to be placed into the custody of an Observation Home. The SJPU are responsible for informing the juvenile's parents of the arrest, as well as inform the Probation Officer who will make the necessary enquires about the child.

The JJB must make an inquiry into the case and if they determine the child is guilty of the crime then they may release the child after advice and counselling. The child can be released either to his parents/guardians or into an institution, with or without a bond. The Board may also make the child pay a fine (if he is above fourteen and earns) or complete hours of community service. A social investigation report from the probation officer is required for the child to be discharged. The probation officers may be required to continue a follow up of the child even after discharge. A child cannot be charged with the death penalty, imprisonment which can extend to life imprisonment or committed to prison for inability to pay a fine or providing a security for the bond.

Under this act juvenile cases cannot be processed with non-juvenile cases. A juvenile cannot be rendered unfit or 'disqualified'. Juveniles are not exposed to the media as magazines, newspapers and visual media are not permitted to release the information about the juvenile. Juveniles who run away from the Observation or Special homes can be brought back without a warrant and without punishment. Cruelty (such as assault or neglect) towards juveniles in the home or by any person in charge of him/her is a punishable offence. This act also has provisions to penalize people who exploit children for a crime. A person, who employs a child in a hazardous industry, employs him/her for begging or provides a child with drugs or alcohol is liable to serve prison time and pay fines.

Chapter III address Children in Need of Care and Protection (CNCP). In place of a JJB, CNCP cases are heard by the Child Welfare Committee (CWC). The committee is meant to have a chairperson and four other members of whom at least one should be a woman and at least one expert in children's issues. The purpose of the CWC is to provide for the care, treatment, protection, rehabilitation and development of the child and in doing so uphold the rights of the child. The child may be brought in front of the CWC by a police office, public servant, social worker, CHILDLINE, the child or anyone public citizen. The committee may commit a child to the Children's home or a Shelter home if the child has no immediately available family or support system.

Like in the case of JCL, CNCP are provided with Children's Homes and Shelter Homes. The state may directly set up these homes or contract a voluntary organisation to do so. Shelter homes are for children whose family cannot be located or whose case has been completed.

Children who come from a different area or state are meant to be transferred to an institution and CWC that is closest to his/her residence. The main aim of this system is to restore the child to his family or family environment after determining the safety of the environment.

The fourth chapter discusses the importance of rehabilitation and social integration as the purpose of this act. This section discusses certain non-institutional solutions such as adoption, foster care, and sponsorship. Orphaned and abandoned children are eligible for adoption. The CWC may declare a child fit for adoption and refer him/her to an adoption agency (set up by the government) for placement. Foster care in this act is only for looking after infants before adoption takes place. Sponsorship programmes are to help provide supplementary educational, nutritional, medical and other services to families, guardians, and homes. After-care organisations are also to be set up to take care of children after they leave the homes.

The last chapter of the act contains many miscellaneous provisions. Some of the notable provisions are as follows. The act allows for children with special needs such as a mental or physical disease to be given the necessary attention at an approved institution that specialises in the form of care. Under this act the government can set up advisory boards at different levels to advise them about various implementation aspects of the act. The JJB and CWC have the authority to release a child to his/her parents or give the child leave because of a death in the family, a wedding, a school examination, etc. For the carrying out of this act, the state shall create a Child Protection Unit, whose officers are responsible to ensure that the act is properly implemented. Rules for this act are to be made by each State Government.

F. Protection of Women

The situation of women in India is one that can be characterized with formal equality. Despite a plethora of legislations and policy measures in place, women still face severe discrimination. India is regarded as the world's largest democracy. This is a great title given the largely complex cultural and social context in which the state exists. With an astounding population of over 1.2 Billion¹ people the state struggles with various human rights issues including use of torture, abuses by armed forces, police excesses, abuse of office by those in power, delay in justice delivery, custodial violations, child labour, suppression of women, targeting of human rights workers, marginalization of vulnerable groups and rampant poverty.

Women constitute about 48.26% of the population³ with 960 females per 1000 males. Yet the life and lived experiences of women are often silent in the public discourse. The discrimination women face in India has a long and complex history, ingrained in socio cultural outlook and practices. Religious texts and their interpretations by religious fundamentalist worsened the situation. The woman has been traditionally looked at as a domesticated care giver, constantly under the guidance, protection and supervision of a male family member – father then husband and then sons. There never was a space for the woman to think of herself as an individual. This is further compounded by poverty, illiteracy and invisibility.

- The legal framework has been ever conscious about protecting women with special safeguards in the Constitution.⁵ Article 15 of the constitution deals with non discrimination and empowers the state to make special provisions for the empowerment of weaker sections of society and any such measures made in favor of women and children cannot be challenged as being discriminatory. \
- Article 14 and¹⁶ discuss equality and nondiscrimination in employment based on sex.
- Article 325 prohibits discrimination in elections for public office on the grounds of sex. There are several legislations, penal laws⁶ and special provisions that have been enacted to safeguard the interest of women.
- Yet, the ground realities are far removed from these safeguards. The broad violations faced by women in India include preference for sons leading to female infanticide, violence – sexual, physical and emotional, social construct reinforcing the notion of inferiority, lack of freedom of movement, inability to voice their opinion, imbalanced political representation, lesser economic opportunities, forced marriages, honor killings, dowry harassment, discrimination in education, no control over the body or in the decision making processes, human trafficking and living in constant fear.

- The state courts and the Supreme Court Act as judicial safeguards for women, while the bodies set up under the Protection of Human Rights Act, 19938 - the National Human Rights Commission, National Commission for Women Act, 19909 and the Commission for Protection of Child Rights Act, 200510 work toward reflecting the position of women and implementing policies for their betterment.
- Despite all these measures the root cause of abuse of women is inadequately addressed.
- This relates to the attitude of society and its people towards women; the continued belief that the problems of women are a private matter and that the primary role of a woman is motherhood¹¹. The consistent depiction of women in stereo typical gender roles¹² and the inferior treatment that girl children face in school help retain the oppressive system in place.

Women and the Constitution

Art 14 confers on men and women equal rights and opportunities in the political, economic and social spheres.

Art 15 prohibits discrimination against any citizen, among others, on the grounds on sex.

Art 15 (A) (e) imposes a fundamental duty on every citizen to renounce practices derogatory to the dignity of women.

Art 15 (3) makes special provision enabling State to make affirmative discriminations in favour of women.

Art 16 provides for equality of opportunities in matters of public appointments for all citizens.

Art 24 prohibits the employment of children (below 14 years) in factories, or in any hazardous employment.

Laws Related to Women

- WOMEN-SPECIFIC LEGISLATIONS
 1. The Immoral Traffic (Prevention) Act, 1956
 2. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
 3. The Indecent Representation of Women (Prohibition) Act, 1986
 4. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
 5. Protection of Women from Domestic Violence Act, 2005
- WOMEN-RELATED LEGISLATIONS

1. The Indian Penal Code, 1860
2. The Indian Evidence Act, 1872
3. The Indian Christian Marriage Act, 1872 (15 of 1872)
4. The Married Women's Property Act, 1874 (3 of 1874)
5. The Guardians and Wards Act, 1890
6. The Workmen's Compensation Act, 1923
7. The Trade Unions Act 1926
8. The Child Marriage Restraint Act, 1929 (19 of 1929)
9. The Payments of Wages Act, 1936
10. The Payments of Wages (Procedure) Act, 1937
11. The Muslim Personal Law (Shariat) Application Act, 1937
12. Employers Liabilities Act 1938
13. The Minimum Wages Act, 1948
14. The Employees' State Insurance Act, 1948
15. The Factories Act, 1948
16. The Minimum Wages Act, 1950
17. The Plantation Labour Act, 1951 (amended by Acts Nos. 42 of 1953, 34 of 1960, 53 of 1961, 58 of 1981 and 61 of 1986)
18. The Cinematograph Act, 1952
19. The Mines Act 1952
20. The Special Marriage Act, 1954
21. The Protection of Civil Rights Act 1955
22. The Hindu Marriage Act, 1955 (28 of 1955)
23. The Hindu Adoptions & Maintenance Act, 1956
24. The Hindu Minority & Guardianship Act, 1956
25. The Hindu Succession Act, 1956
26. The Maternity Benefit Act, 1961 (53 of 1961)
27. The Beedi & Cigar Workers (Conditions of Employment) Act, 1966

28. The Foreign Marriage Act, 1969 (33 of 1969)
29. The Indian Divorce Act, 1969 (4 of 1969)
30. The Contract Labour (Regulation & Abolition) Act, 1970
31. The Medical Termination of Pregnancy Act, 1971 (34 of 1971)
32. Code of Criminal Procedure, 1973
33. The Equal Remuneration Act, 1976
34. The Bonded Labour System (Abolition) Act, 1979
35. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
36. The Family Courts Act, 1984
37. The Muslim women Protection of Rights on Dowry Act 1986
38. Mental Health Act, 1987
39. National Commission for Women Act, 1990 (20 of 1990)
40. The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006–No. 43 of 2006]
41. Juvenile Justice Act, 2000
42. The Child Labour (Prohibition & Regulation) Act
43. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act 1994

Some Protective Welfare Legislations for Women (Summary)

Protection of Women from Domestic Violence Act, 2005

Protection of Women from Domestic Violence (PWDV) Act 2005 is a central Act which has come into force from 26.10.2006. This Act is aimed at providing protection to wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives. The Law extends protection to women who are sisters including adopted sisters and mothers. Domestic violence under the Act includes actual abuse or threat of abuse, whether physical, sexual, verbal, emotional, or economic. Harassment by way of unlawful dowry demands to women victims or her relatives would also be covered under the definition of Domestic violence.

As per the provisions of the Act, Protection Officer is the key officer working under Magistrate, who would be providing various relieves to aggrieved women in terms of

monetary relief, counselling, legal aid, protection from the accused, social and economic security after investigating into the cases and preparing safety plan.. Based on these Domestic Incident Reports, the protection orders are obtained from the Magistrates to provide relief to aggrieved women.

The Dowry Prohibition Act 1961

Bans the giving or taking of dowry defined as valuable property, security, etc., given as consideration for the marriage.

Under Sec 3, any giving, taking or abetting dowry can be imprisonment not less than 5 years, and fine not less than Rs. 15,000/-.

Under Sec 4, penalty for demanding dowry, either directly or indirectly, can lead to imprisonment for 6 months to 2 yrs, and fine upto Rs. 10,000/-.

Under Sec 5, any agreement for giving/taking or dowry is void.

Under Sec 7, a Magistrate of the first class can take cognizance on a complaint made by police, aggrieved person or parent or relative or recognized welfare institutions organisation within 1 year of the date of offence.

Under Sec 8 - A, in the prosecution of person under Sec 3 or 4, the burden of proof rests on the accused.

Under Sec 8 - B, dowry prohibition officers can be appointed by the state to help implement the law.

Indecent Representation of Women (Prohibition) Act 1986 bans titillating pictures on hoardings, packages, books, films, etc.

Depiction of a woman's body, etc., likely to have the effect of being indecent or likely to corrupt public morality is punishable with a first conviction of up to 2years, and fine up to Rs.2000 and second conviction with fine from Rs.10,000 to 1lakh rupees, and jail from 6 month to 5 years.

Commission of Sati (Prevention) Act 1987

Makes glorification of sati a crime. Even earlier, glorification of sati was held to be abetment to suicide and a crime under IPC.

The new Act provides a stiff penalty for abetment - death or life imprisonment with a fine also.

The Medical Termination of Pregnancy (MTP Act- 1971)

Under Sec 3 Pregnancy does not exceed 12 weeks. If the pregnancy is 12-20 weeks, opinion of 2 RMPs is required (unless it is of immediate risk).

Under Sec 4, MTPs can be performed only in a place or hospital approved by Govt, for this Act.

Records have to be kept secret and cannot be revealed to any source.

An MTP can be performed only if continuing the pregnancy entails risk to the life of the pregnant woman or grave injury to her physical or mental health (this could be in the cases of rape, failure or contraception in married women) or if the child is likely to be handicapped. The MTP can be performed only if the women gives consent.

Pre-natal Diagnostic Techniques (regulation and prevention Act) 1994.

- Regulated the various types of pre-natal diagnostic techniques like ultrasound and prescribes penalties for the doctor in case he/she reveals the sex of the foetus to the pregnant women or her relatives

Immoral traffic (Prevention) Act 1986

- Here a girl is defined as one below 21 years of age.
- Prostitution is not banned, what is banned is commercializing it.
- Penalties exist for keeping a brothel, living on the earnings of a prostitute, procuring or inducing a woman for prostitution, any prostitution in public places, any soliciting in public places and custodial seduction.
- Punishment ranges from 6 months for a first conviction to 5 years for a second with or without fine ranging from Rs.500 to 2,000.

Maternity Benefit Act 1961

- Is an Act regulate the employment of women in certain establishments for certain periods before and after childbirth to provide for maternity and other benefits.
- Sec 2, declares that the Act applies to every establishment - factory, mine or plantation.
- Under Sec 4, no employer can employ a woman for 6 weeks following the date of delivery or miscarriage; no pregnant woman can be employed in work of arduous nature or involving long hours of standing or any other likely to interfere with her pregnancy or growth of foetus, or otherwise adversely affect here health.

- Under Sec 5, the right to payment of maternity benefit (wages) is for a minimum of the day before day of delivery and six weeks after.
- A women is entitled to maternity benefit if she has worked for more than 160 days in the period immediately preceding the date of expected delivery.

The Equal Remuneration Act 1976

- Is an Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination against women, the work being same or of a similar nature.
- **Under Sec 5.** no discrimination is to be made while recruiting, or in any condition subsequent to recruitment like transfer, promotion, training, etc.
- **Under Sec 6.** the State Government is to constitute one or more Advisory Committees to advise it with regard to extent to which women may be employed in employments, so that the Central Government may notify in this behalf, with the view to increasing employment opportunities for women.
- Out of 10 members nominated by Government, half must be women.
- **Sec 16** authorizes Government to provide for restrictions regarding salaries if Government decides that the difference arises on a factor other than sex.
- Government did issue such a notification and declared that differences in wages of flight stewards and airhostesses is not based on sex the Supreme Court accepted the same.
- The Court of the First-class magistrate is the authorized one, and the Labour Officer has the power to inspect, file complaints, etc.
- A claim may be made by the worker herself, a registered Trade Union or the Labour Officer before the ACL.
- Penalty for recruiting staff violating ERA/paying unequally can be a fine up to Rs.10,000.
- Failure for not keeping registers can be punished with a fine up to Rs.1,000.
- The 1988 amendment provides for voluntary organisations to file complaints regarding violations of the Act.

The Child Marriage Restraint Act 1929

- Was passed to restrain the solemnization of child marriage.
- Under this Act a child is defined as a male below 21 years and a female under 18 years. All child marriages are banned.

- A male adult, above the age of 18 years, marrying a female child is punishable with simple imprisonment extending to 3 months and fine extending to Rs.1000 or both.
- Anyone solemnizing a child marriage, including the parents or guardian are also culpable.
- The women cannot be punished with imprisonment.
- A magistrate of the first class can try offences under this Act.
- The magistrate also has powers to issue an injunction to restrain such a marriage if the fact is brought to his notice.
- While there is a penalty for arranging/solemnizing child marriages, the marriage itself is not rendered void.
- The absence of non-compulsory registration of marriages places the burden of detecting and prosecuting offenders under this Act totally on the police.
- The state of Gujarat has an interesting amendment: that of appointing Child Marriage Prevention Officers whose duty would be that of preventing child marriages, prosecute accused persons, etc.

G. ENVIRONMENTAL RIGHTS

Constitution of India Right to a Clean and Safe Environment

- ◆ To our sovereignty, control and regeneration of natural resources, common lands, water bodies and the ocean.
- ◆ To live in an environment that is clean and protected from destruction and to stop hazardous and polluting industrial projects.
- ◆ To stop destructive development projects including those of Transnational Corporations.
- ◆ To their traditional practices and knowledge, bio-diversity, forest, common resources, water bodies, etc.

Some of the important Articles of the Constitution of India which have relevance to the subject of environmental protection.

1. Fundamental Rights:- Articles 14,19(1)(g), 21, 32 an 226 etc,
2. Directive Principles of State Policy:- Articles 47, 48, 48 A, 49.
3. Fundamental Duties: (Part IV-A), 51 A(g);

The Forty-second Amendment to the Constitution was enacted in 1978, whereby it has been made a fundamental duty on every citizen for improving and protecting Environment.

4. Seventh Schedule;

List I - Entries 52 to 55 and 57.

List II - Entries 6, 14, 18, 21, 24, 25.

List III - Entries 17-A, 7B, 20(c) and (d).

5. Articles 136, 137, 226, 227, 246, 249, 250, 252, 253, 254, 356 (right to writ remedy, special leave appeal, power of Parliament to make laws, etc.,)

Article 51 A (g):

"It shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures."

Provisions as to fundamental duties cannot be enforced by writs. They can be promoted only by constitutional methods.

The obligation to improve the environment and to safeguard the forest and wildlife has been imposed on the State by way of laying down the same in the Chapter on directive principles.

Article 48A:

Protection and improvement of environment and safeguarding of forest and wild life:-The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

(Articles 14, 21 and 51A(g) are to be read together;) **Article 14:**

Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 48A: Protection and improvement of environment and safeguarding of forests and wild life:

Article 21: Protection of life and personal liberty

The judicial enthusiasm went to the extent of finding out the right to a clean environment in the right to life in Article 21.

Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Right to life: includes

- The right to livelihood the right to live in dignity;
- Right to healthy environment;

Right to [healthy environment], itself includes the following:-

- > Pollution free water and air
- > Protection against hazardous industries

Article 38:

(1) State to secure a social order for the promotion of welfare of the people

(2)The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in Status, facilities and opportunities.

Article 39: Certain Principles of policy to be followed by the State:- The State shall, in particular, direct its policy towards securing-

- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

Laws on Environment

Apart from the constitutional mandate to protect and improve the environment, there are a plenty of legislations on the subject but more relevant enactments for our purpose are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; Public Liability Insurance Act, 1991; the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997; the Wildlife (Protection) Act, 1972; the Forest (Conservation) Act, 1980.

Protecting the Environment

- ◆ Constitutional Provisions and the Environment.
- ◆ Environmental Protection and Fundamental Rights.
- ◆ The Environment (Protection) Act, 1986.
- ◆ The Environment (Protection) Rules, 1986.
- ◆ State and Central Pollution Control Boards.
- ◆ Notification Declaring the Coastal Stretches as Coastal Regulation Zone (CRZ) with Amendments.
 - National Coastal Zone Management Authority
 - State Coastal Zone Management Authorities.
 - Coastal Zone Management Plan.
- ◆ Notification requiring Environment Impact Assessment for Development projects, 1994.
- ◆ Scheme of labelling Environment Friendly Products.
- ◆ Notification for declaration of Environment Friendly Products.
- ◆ The Aquaculture Authority Bill, 1997.
- ◆ The National Environment Tribunal Act, 1995.
- ◆ Rules for the Manufacture, use, import, export and storage of Hazardous Micro Organisms genetically Engineering Organisms or cells.
- ◆ The Hazardous Wastes Part II (Management and Handling) Rules, 1989.
- ◆ Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.

- ◆ The Air (Prevention and Control of Pollution) Act of 1981.
- ◆ The Water (Prevention and Control of Pollution) Act of 1974.
- ◆ Protecting water, protecting life (sand mining impact, ground water depletion, protecting rivers, reservoirs and irrigation tanks).

3 Main Legal Principles Laid Down by the Supreme Court:

- *Principle of Sustainable development* as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own need."
- *The "Polluter Pays" Principle*: "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The "Polluter Pays" Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Precautionary Principles means:

- Environmental measures - by the Central / State Governments and the statutory authorities-must anticipate, prevent and attack the causes of environmental degradation.
- Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- The "Onus of proof is in the actor or the developer / industrialist to show that his action is environmentally benign.

Chapter VI

Role of Professionals on Human Rights – Doctors / Lawyers / Journalists/ Forensic Medicine experts

The most obvious human rights defenders are those whose daily work specifically involves the promotion and protection of human rights, for example human rights monitors working with national human rights organizations, human rights ombudsmen or human rights lawyers.

However, what is most important in characterizing a person as a human rights defender is not the person's title or the name of the organization he or she works for, but rather the human rights character of the work undertaken. It is not essential for a person to be known as a "human rights activist" or to work for an organization that includes "human rights" in its name in order to be a human rights defender. Many of the staff of the United Nations serve as human rights defenders even if their day-to-day work is described in different terms, for example as "development". Similarly, the national and international staff of NGOs around the world working to address humanitarian concerns can typically be described as human rights defenders. People educating community's on HIV/AIDS, activists for the rights of indigenous peoples, environmental activists and volunteers working in development are also playing a crucial role as human rights defenders.

Many people work in a professional capacity as human rights defenders and are paid a salary for their work. However, there are many others who work in a professional capacity as human rights defenders but who are volunteers and receive no remuneration. Typically, human rights organizations have very limited funding and the work provided by these volunteers is invaluable.

Many professional activities do not involve human rights work all of the time but can have occasional links with human rights. For example, lawyers working on commercial law issues may not often address human rights concerns and cannot automatically be described as human rights defenders. They can nevertheless act as defenders on some occasions by working on cases through which they contribute to the promotion or protection of human rights. Similarly, leaders of trades unions undertake numerous tasks, many of which bear no relation to human rights, but when they are working specifically to promote or protect the human rights of workers they can be described as human rights defenders. In the same way, journalists have a broad mandate to gather information and disseminate it to a public audience through print, radio or television media. In their general role, journalists are not human rights defenders.

However, many journalists do act as defenders, for example when they report on human rights abuses and bear witness to acts that they have seen. Teachers who instruct their pupils in basic principles of human rights fulfill a similar role. Doctors and other medical professionals who treat and rehabilitate victims of human rights violations can also be viewed as human rights defenders in the context of such work; and doctors have special obligations by virtue of the Hippocratic oath.

Those who contribute to assuring justice—judges, the police, lawyers another key actors—often have a particular role to play and may come under considerable pressure to make decisions that are favorable to the State or other powerful interests, such as the leaders of organized crime.

Where these actors in the judicial process make a special effort to ensure access to fair and impartial justice, and thereby to guarantee the related human rights of victims, they can be said to be acting as human rights defenders.

A similar “special effort” qualification can be applied to other professions or forms of employment that bear no obvious relation to human rights. The individuals who hold these jobs may sometimes choose to conduct their work in a way that offers specific support to human rights. For example, some architects choose to design their construction projects in a way that takes into consideration relevant human rights, such as the right to adequate (temporary) housing for the people who will work on the project, or the rights of children to be consulted on the design, if the building is of particular relevance to them.

- Excerpt from Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No: 29, United Nations

The fact remains that all individuals encounter human rights violations every day and hence all individuals are presented with an opportunity to become human rights defenders in their own capacity.

However, there is a dearth for professions in the in the field of media, medicine, law, education, social work and government committed to the fight for human rights. In fact these are fields having proximate relations and power to implement change. In fact there is a need for EVERY professional and worker in these fields to acquaint themselves with the principles of human rights and implement them in their every day workings and environment.

Chapter VII

HUMAN RIGHTS DEFENDERS

Supporting the rights of human rights defenders is one of the most important ways to ensure human rights for all.

Who is a human rights defender?

The term has been used increasingly since the adoption of the UN Declaration on Human Rights Defenders alongside other terms such as human rights activist, human rights advocate or human rights worker.

Human rights defenders are legal and legitimated by international and national communities. The definition of who is a 'human rights defender' provided by the UN Declaration on Human Rights Defenders and reiterated by the EU Guidelines on Human Rights Defenders is:

“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 are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work at the term can best be explained”

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.

Human rights defenders include:

- Journalists exposing human rights violations
- Community workers teaching human rights education
- Trade unionists defending workers' rights
- Women working for the promotion of reproductive rights
- Environmentalists highlighting the impact of development projects on Indigenous Peoples land rights

Human rights defenders are individuals, groups of people or organizations who promote and protect human rights through peaceful and non-violent means. They:

- uncover violations
- subject violations to public scrutiny
- press for those responsible to be accountable
- empower individuals and communities to claim their basic entitlements as human beings.

Throughout history, courageous and visionary people have sought to extend the boundaries of human rights protection to those outside its boundaries, whether it be those living in slavery, workers unprotected against exploitation or women denied the vote.

Today, despite international laws that protect them, human rights defenders are needed all over the world to monitor and challenge abuses and violations.

Obstacles

Because of this work, human rights defenders face a range of challenges. In many countries they are:

- subjected to death threats and torture
- persecuted through the use of the judicial system
- silenced by restrictive laws
- murdered or disappear

This is why human rights defenders need support.

Human rights defenders have several characteristics in common. They all:

- 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
- respect the rights and freedoms of others in their own actions

The actions taken by human rights defenders must be peaceful in order to comply with the Declaration on Human Rights Defenders and to fall within the scope of the term as used by Amnesty International.

What rights do they defend?

Human rights defenders work for the realization of any or all of the rights set out in the Universal Declaration of Human Rights or in the number of human rights standards which the Declaration has given rise to in the form of conventions, declarations, bodies of principles and authoritative interpretations.

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 and social rights (such as the right to the highest attainable standard of health or the right to education)
- cultural rights (such as the right of indigenous people to have control over their land and resources).

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 transgender people.

Responsibility to protect

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.

How do human rights defenders work?

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

- representation of victims and survivors of human rights violations in their fight for justice and redress ;
- 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 livelihood ;
- grassroots campaigning ;
- advocacy ;
- lobbying of 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 ;
- working through legal and quasi-legal processes. ;

Working through legal processes

Many human rights defenders work through legal process to claim justice and redress for people whose rights have been violated. There are countless examples of victories secured by defenders invoking the protective principles of international human rights standards in domestic courts. An increasingly effective international legal system has also provided avenues for redress where justice is denied at home. The continents of Africa, the Americas and Europe have elaborate regional mechanisms where survivors of human rights violations and those working with them can hold their governments to account.

Thanks to the long-standing efforts of human rights lawyers from countries around the world working together in coalition, 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. The Court has jurisdiction over the most serious crimes under international law, including genocide, crimes against humanity and war crimes.

Universal jurisdiction

Another significant development brought about by defenders working together across borders is the evolution of universal jurisdiction, enabling the courts of one country to try such crimes even if committed elsewhere. Despite their advantages, court cases are, however, expensive, time consuming and can seem inaccessible, which often make other means of asserting rights more feasible.

Truth commissions

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 who was responsible, and providing reparation. Despite their shortcomings, such commissions can represent important steps towards justice and reconciliation, and a powerful validation of the experiences endured by survivors.

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.

Defenders forging new frontiers for human rights are often the most exposed to risk, ridicule and resistance.

Those working to redress the historical neglect of economic, social and cultural rights risk making powerful enemies when they question the distribution of economic resources and call for greater accountability of those whose actions fuel poverty and inequality.

Similarly, women and men fighting for the right to have control over one's sexuality and reproductive capacity free from discrimination, coercion or violence may face formidable resistance from politically-motivated religious fundamentalists who deny that such a right exists in all cultures.

The fact that a huge variety of social movements increasingly use the language of rights to articulate their demands, and the vehemence with which such demands are challenged and suppressed, reflects not only the degree of moral authority attached to human rights claims; it highlights the extent to which the meaning and scope of human rights is still a battleground.

The boundaries of human rights change

Human rights is not a static project, its boundaries cannot be fixed for all time. Rights claims arise from the denial of human dignity in whatever form. 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 transgender 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 rights-defenders will continue to challenge orthodox interpretations of human rights and articulate new claims. Those alerting us to the impact of climate change on the sustainability of life on the planet, or to the implications of biotechnological and genetic advances on what it means to be human, are already pointing to some of the issues that may feature increasingly on the human rights agenda of the future

Chapter VIII

Students as Human Rights Defenders

The youth in India, belonging to the age group of 16 to 30 years, form about 40% of the total population. This is the highest number ever seen in Indian history and this youth bulge or demographic dividend could work in favour of the nation if the skills of the youth are properly channeled.

This section of the population has a pivotal role to play in the development and direction of the nation. They become the care givers to the aged and other dependent sections of society. It is thus important to help them understand the significance of care for the nation and its people.

Reality however shows that this is the group of persons that largely partakes in human rights violations and abuses. It is found that youth often foster negative ideas in relation to caste, class, gender and other divisions. This group is prone to being easily influenced, often miscreants in society use this to their advantage and entice the youth into engaging in dangerous activities to further their personal interest. Youth are found to be engaging in domestic violence, demands for dowry, hate crimes, caste related violence, drug and intoxication related crimes, eve teasing, gender related crimes, offences for monetary gains, politically motivated crimes, violent behavior and other offences.

India has had a prestigious history of student engagement in social activism. There is now a need to keep this tradition alive and provide encouragement and protection to student human rights defenders. There is thus an imminent need to inculcate and promote mutual understanding, peace, friendship, respect for human dignity and human rights, non-violence and non-discrimination among the youth and help them stand up against violations of human rights. The Draft National Youth Policy announced by the states as one of their significant objectives is to sensitize the youth about human rights.

The realities of student human rights defenders must also be pointed out at this point. There have been several reports pointing out that student human rights defenders are severely discouraged by their families, educational institutions, society and governments. Further they are also faced with repression and are subjected to human rights violations for the stand taken by them.

These are portions from the Report of the Special Rapporteur on the situation of human rights defenders dealing with students and youth.

Excerpt from the Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Human Rights Council, and United Nations 2011

“3. Youth and student defenders

(a) International human rights framework and the approach of the mandate holder

93. Article 2 of the Universal Declaration on Human Rights, article 2 of the International Covenant on Civil and Political Rights and article 2 of the International Covenant on Economic, Social and Cultural Rights provide for the universality of human rights and the equality of all human beings. Everyone is entitled to the rights provided for in these human rights instruments without discrimination.
94. While age is not mentioned as a specific ground for discrimination in the international bill of human rights, the Human Rights Committee, in its general comment No. 18 (1989) on non-discrimination, specified that discrimination “should be understood to imply any distinction, exclusion, restriction or preference ... which has the purpose or effect of nullifying or impairing the recognition, exercise or enjoyment by all persons, on an equal footing, of all rights and freedoms” (para. 7). The International Covenant on Civil and Political Rights also recognizes that young people below 18 years of age should not be sentenced to death under any circumstance.
95. The Convention on the Rights of the Child provides every person below 18 years of age with specific rights along the same principles as other international human rights conventions, while recognizing children’s specific needs. The Convention on the Rights of the Child contains four guiding principles: non-discrimination; best interests of the child; the right to life, survival and development; and the views of the child, which should be taken into consideration based on the age and maturity of the child in all matters affecting him or her.
96. These rights, among others, are reiterated in the Declaration on Human Rights Defenders. The Declaration applies to every person acting to promote and protect human rights as long as they accept and apply the principles of universality and of non-violence.
97. Despite recognition in international human rights law of the legitimacy of their work, youth and student defenders continue to face severe violations of their human rights as a result of that work. The mandate holder has been monitoring the situation of youth, particularly student, activists working to protect human rights, since the mandate’s inception, with their situation and challenges having already been assessed in several reports from the mandate holder.

98. In her report to the General Assembly in 2007 (A/62/225), the former Special Representative addressed the situation of student activists in the context of the right to freedom of assembly. She noted a trend of acts of repression and retaliation against student activists engaged in protests and expressed particular concern about the brutality of the violations against this group, which in many cases amounted to torture. The young age of the students adds to the severity of the violations suffered and leaves them particularly vulnerable. Noting the high educational value of student protests as a first experience of public participation and defence of human rights, the Special Representative argued that “ensuring a conducive environment for student protests is a social investment in addition to a legal obligation” (paras. 70 and 101 (b)).
99. When the Special Rapporteur set out her vision for the mandate in 2008 (A/63/288), defenders engaged in student protests were included as a priority. In the light of recent events, notably in the Middle East and North Africa, the Special Rapporteur has decided to take a broad approach to the assessment of youth, including students, working to defend human rights. The number of communications related to this group is relatively low compared to other groups of defenders discussed in this report, but the mandate holder has observed that they are at particular risk, which is likely to increase given recent events, unless specific attention is devoted to their situation. A/HRC/19/5517
100. With reference to article 7 of the Declaration on Human Rights Defenders, which states that “everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance”, the Special Rapporteur finds the contributions of youth and student defenders of particular importance. The concept of new human rights ideas and principles must be viewed in relation to the local context of human rights. The history of human rights and particularly recent events show that youth and students have a key role to play in putting new human rights ideas and principles on the national and international agenda and advocating for increased respect for human rights without discrimination.(b) Activities, risks and challenges faced by youth and student defenders
101. Between December 2006 and 31 May 2011, the Special Rapporteur sent 60 communications related to violations against youth and student defenders. In 34 of the cases reported, the victims were male. In 12 instances, the victims were female. Nine cases concerned victims of both sexes, while in six cases the sex of the victim(s) was not mentioned.

102. All 60 cases raised by the mandate holder during the period reported related to violations against youth and student defenders working on a very wide range of issues, including torture, arbitrary detention, enforced disappearances, impunity, freedom of religion, minority rights, students' rights, youth rights, education, women's rights and gender issues, trade policies and other economic issues, environmental and land issues, peace building and democracy promotion.
103. Of the 60 communications issued by the Special Rapporteur between 2007 and 2011, 47 involved violations of physical integrity, including killings, physical attacks, torture, ill-treatment, enforced disappearances, forced labour and excessive use of force by police and security forces during demonstrations. It should also be noted that excessive use of force related to arrests and detention led to numerous such cases being coded as violations of physical integrity.
104. Thirteen of the cases involved violations of a judicial nature. They included criminalization of the activities of human rights defenders, arrests, fines, prison sentences and concerns about due process, including under anti-terrorism legislation and broad, vague and/or allegedly fabricated criminal charges.
105. Six communications involved raids/searches of offices, confiscation of materials (including computers and paper files) and surveillance of defenders, their organizations, their homes and/or offices. Five communications included violations of psychological integrity including death threats, harassment by police, security forces and non-State actors and, in some cases, these actions targeted defenders' family members.
106. Communications issued by the mandate holder indicate that violations were often preceded by students' and youth's organization of and participation in peaceful demonstrations, public appearances and speeches or the publication of articles or blog entries. General perception of youth in society, also conveyed by established media outlets, often points to their young age and lack of maturity as grounds for not giving them a say in public affairs. Youth and student movements are seen as troublemaking rather than serious actors that can fruitfully contribute to public debate.
107. In this regard, the Special Rapporteur is concerned by recent trends in several countries towards passing legislation that prohibits young people, typically below 18 or 21 years of age, from participating in public assemblies. Further legislative moves pertain to the Internet, social media and instant messaging, which are increasingly subject to control by Governments. As these tools are extensively used by youth and student defenders, restrictions are likely to create particular obstacles to their human rights work. A/HRC/19/5518

108. Information received by the mandate holder indicates that youth and students often work outside established structures, including established NGOs, to defend and promote human rights. Youth organizations and student movements are often informal structures with limited organizational capacity. Extensive registration processes for NGOs in several countries add to the isolation of youth organizations and may discourage them from registering as NGOs. This, in turn, limits the organizations' possibilities for obtaining funding and making connections, including with the United Nations human rights system. Youth and students generally have limited knowledge of the United Nations human rights system and regional human rights mechanisms.
109. The lack of an enabling environment for meaningful youth participation also extends to civil society. The Special Rapporteur is concerned about the lack of capacity of NGOs to address the human rights issues of young people or to effectively mobilize young people and include them in their organizations.”

“Conclusions and Recommendations to the States

C. Youth and student defenders

127. Youth and student defenders seem to be targeted for their involvement in peaceful demonstrations and protests or the publication of articles or blog entries. They also seem to be highly exposed to physical attacks.
128. States should refrain from having their security personnel use excessive force during demonstrations. Law enforcement officials should be trained in international human rights standards and child/youth protection measures, particularly regarding crowd control during public assemblies.
129. States are encouraged to invest more in youth development and facilitate participation of youth in public affairs, e.g. through simplification of registration procedures for NGOs or providing support to youth organizations in the registration process.
130. States should facilitate and simplify notification/registration procedures for the participation of youth and students in public assemblies, including by removing prohibitions preventing youth, and in some cases children, from participating.
131. Youth and student defenders should be equipped with knowledge about human rights protection mechanisms, risk assessment skills and connections with national and international organizations.
132. NGOs should try to be youth friendly and cater to youth's needs; they should try to look at ways in which youth are mobilized, what sort of change youth expect, etc”

National Human Rights Institutions

National Human Rights Commission,

Faridkot House, Copernicus Marg, New Delhi - 110001
Tel.No. 23384012
MADAD : 91-11-23385368
Mobile: 919810298900, Fax No. 011-23384863
E-Mail: covdnhrc@nic.in ionhrc@nic.in
Website: <http://www.nhrc.nic.in/>

National Commission for Scheduled Castes,

B Wing, 5th Floor,
Lok Nayak Bhawan, New Delhi 110 003.
Tel : 011-24632298 / 24620435 (O), Fax: 011-24625378
E.mail: chairman-ncsc@nic.in
Website: <http://ncsc.nic.in>
Toll Free No: 1800118888

National Commission for Protection of Child Rights (NCPCR)

5th Floor, Chanderlok Building,
36, Janpath, New Delhi - 110 001
Phone: 011-23478200, 23724030, Fax: 011-23724026
Complaints: complaints.ncpcr@gmail.com
General: ncpcr.india@gmail.com
Chairperson: shantha.sinha@nic.in
Website: <http://www.ncpcr.gov.in/index.htm>

Central Information Commission

R.No.326, C-Wing, II Floor
August Kranti Bhavan
Bhikaji Cama Place
New Delhi - 110 066
Phone: 011-26161137 Fax: 26186536
Website: <http://cic.gov.in/>

National Commission for Women,

4, Deen Dayal Upadhyaya Marg, New Delhi-110 002.
Phone: 011-23237166, 23236988 Fax: 91-11-23236154
Complaint Cells 011-23219750
E.mail: ncw@nic.in,
Complaint Cell: complaintcell-ncw@nic.in
Website: <http://ncw.nic.in/>

National Commission for Scheduled Tribes

6th Floor, 'B' Wing, Lok Nayak Bhawan,
Khan Market, New Delhi-110003
Tel: 011-24635721 (O), Fax: 011- 2462462
Mobile: 09868180394
E.Mail:chairperson@ncst.nic.in
Website: <http://ncst.nic.in> Toll Free: 1800117777

National Commission for Minorities

5th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi 110 003
Tel: 011-24615583
Fax: 011-24693302, 24642645, 24698410
E-mail: ro-ncm@nic.in
Website: www.ncm.nic.in
Toll Free: 1800110088

Office of the Chief Commissioner for Persons with Disabilities

Sarojini House, 6 Bhagwan Dass Road, New Delhi 110001
Phone No: 011- 23386154, 23386054, 23384762
Fax: 23386006
Email: ccpd@nic.in
Website: <http://www.ccdisabilities.nic.in/>

Human Rights Institutions - Tamil Nadu

State Human Rights Commission

Thiruvarangam, 143, P.S. Kumarasamy Raja Salai,
(Greenways Road), Chennai 600 028,
Phone : 91-44-2495 1484, Fax : 91-44-2495 1486
E.mail: shrc@tn.nic.in
Web: <http://www.shrc.tn.nic.in/>

State Commissioner for the Differently Aabled,

First Floor, Social Resource and Training Centre (SRTC),
Behind Government Peripheral Hospital,
Jawaharlal Nehru Inner Ring Road, KK Nagar,
Chennai- 600 078
Phone: 044-24719945 , Fax: 044-24719947
E.mail: scd@tn.nic.in

Tamil Nadu State Commission for Women,

Ground Floor,
Agriculture Office Building,
Chepauk,
Chennai - 600 005
Phone: 044 - 28592750

Directorate of National Commission for Scheduled Castes,

2nd Floor, Block-5,
ShastriBhawan,
Chennai-600006.
Phone: 044-28276430, 28312851
Toll Free: No.1800 1800 345
(for all State Offices of the NCSC)

Tamil Nadu Information Commission

No.2, TheagarayaSalai, Near Aalai Amman Koil,
Teynampet, Chennai - 600 018
(Post Box No. 6405, Teynampet,
Chennai - 600 018)
Phone: 044- 24347590, Fax: 044 - 24357580
email : sic@nic.in, Website: <http://www.tnsic.gov.in/>