KNOW YOUR RIGHTS

BONDED LABOUR

NHRC

National Human Rights Commission

Bonded Labour

There still exists in different parts of our country a system under which the debtor or his descendents have to work for the creditor and without reasonable wages or with no wages in order to discharge a debt. This system originated from the uneven social structure characterized by feudal and semi-feudal conditions. It is an outcome of certain categories of indebtedness, like customary obligations, forced labour, *begar* or indebtedness which have been prevailing for a long time involving certain economically exploited, helpless and weaker sections of society. They agree to render service to the creditor in lieu of a debt. At times, several generations work under bondage for the repayment of a paltry sum, which had been taken by some remote ancestor, often at high rates of interest. The system is an infringement of basic human rights and a disgrace to the dignity of labour.

Magnitude of Bonded Labour

Though the National Sample Survey Organisation undertook some surveys, there is no authentic data available on the number of bonded labourers in the country. Initially 172 districts in 13 states were identified as bonded labour prone even though the practice exists in most of the States. As more states were found to have prevalence of bonded labour, more districts were identified. Presently there are 190 districts in 17 States that have been identified as bonded labour prone states (Source: Ministry of Labour, Government of India).

Causes of Bonded Labour

Indebtedness of the rural populace mainly in the agricultural sector is found to be a major causal factor with the SCs/STs suffering extreme vulnerability. The problem of bonded labour is closely linked to the broader socio-economic problems of limited economic opportunities, landlessness, irregular and low wages, poor conditions of agricultural land, inherently faulty policies and land reforms, caste based discrimination/ social exclusion, illiteracy, exploitative share cropping system, cultural and religious belief and historical legacy.

The factors that trigger off bonded labour are: crisis and death in the family, natural calamity/accident, sudden loss of employment, cheating and loan design by money lender, non-sustainable expenses on wedding and other social functions, alcoholism, migration and trafficking.

In varying degrees the State governments tend to ignore or refuse the existence of bonded labour in their respective States. Authorities are found unresponsive to the complaints of bonded labour brought to their notice. Instead of acting promptly on such complaints and effecting the identification and release of bonded labourers, they are even found helping the keepers of bonded labourers to arrange the dispersal and disappearance of bonded labour after hurriedly settling their accounts.

Sectors of the Economy where Bonded Labour is Prevalent

Though the bonded labour system is deeply embedded in feudal and semi-feudal social structure, it is also prevalent in advanced agriculture with capitalistic feature and in the non-agricultural sectors.

- High incidence of bonded labour in the agriculture sector is an established fact in the States of Andhra Pradesh, Bihar, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Tamilnadu and Madhya Pradesh.
- In the non-agriculture sector, its practice is rampant in brick kilns, stone quarries, beedi manufacturing, carpet-weaving, match and fire crackers industry, pottery, construction projects and bonded child labour in the sericulture processing industry.
- Migrant bonded labour involving States such as Bihar, Jharkhand, Chattisgarh, Tamilnadu, Madhya Pradesh, Orissa, Rajasthan, present an aggravated form of deprivation and exploitation.
- Domestic workers, *jogins* and *devdasis* are subjected to exploitation in the form of bonded labour.

Characteristics of the Bonded Labour System

Bonded labour system means the system of forced or partly forced labour under which a debtor enters, or is presumed to have entered into an agreement with the creditor to the effect that –

- In consideration of an advance obtained by him or by any of his lineal ascendants or descendants [whether or not such advance is evidenced by any document] and in consideration of the interest, if any, due on such advance or ….
- He would render, by himself or through any member of his family or

any person dependent on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages or

- Forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period or
- Forfeit the right to move freely throughout the territory of India or
- Forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him.

Pronouncements / Decisions of Apex Court on Bonded Labour

The issue of bonded labour was raised in the Supreme Court in the form of Public Interest Litigations. The Supreme Court through its judgments has held as under:

In the *Bandhua Mukti Morcha* case, the Supreme Court held that whenever it is shown that a labourer is made to provide forced labour, the Court would raise the rebuttable presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, bonded labour (*Bandhua Mukti Morcha v. Union of India and Others* 1984 2 SCR).

The bonded labourers must be identified and released and on release they must be suitably rehabilitated. Any failure on the part of the State Government in implementing the provisions of the *Bonded Labour System (Abolition) Act, 1976* would be violative of Articles 21 and 23 of the Constitution of India (*Neerja Choudhary v. State of M.P*. 1984 3 SCC 243).

Whenever a person was forced to provide labour for no remuneration or nominal remuneration, the presumption would be that this was a bonded labour unless the employer or State Government was in a position to prove otherwise (*Neerja Choudhary v. State of MP*).

In *PUCL v. State of Tamil Nadu* case, as per the directions of the Supreme Court a survey was conducted by all the State Governments during October-December 1996 to identify the bonded labourers. Only seven State Governments namely Arunachal Pradesh, Bihar, Karnataka, Madhya Pradesh,

Maharashtra, Uttar Pradesh and Tamil Nadu reported identification of 28, 335 bonded labourers through the affidavits filed in the Apex Court.

Constitutional and Legal Safeguards

Constitutional Provisions

The Constitution of India guarantees all its citizens – justice - social, economic and political; freedom of thought, expression, belief, faith and worship; equality of status and of opportunity and fraternity, dignity of individual and unity of the nation.

Article 23
Prohibition of traffic in human beings and forced labour

(1) 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.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 39
Certain principles of policy to be followed by the State

Article 39(a) provides that the citizens, men and women equally, have the right to an adequate means of livelihood; Article 39 (d) provides that there is equal pay for equal work for both men and women and Article 39 (e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

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

The State shall make provision for securing just and humane conditions of work and maternity relief.

Article 43
Living wage etc. for workers

The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Legal Provisions in the National Context

The issue of 'bonded labour' came to forefront in national politics, when it was included in the old 20-Point Programme in 1975. Thereafter based on the Constitutional provision, *The Bonded Labour System (Abolition) Ordinance* was promulgated in 1975 which was subsequently replaced by *The Bonded Labour System (Abolition) Act, 1976*.

Any person who was a bonded labourer on 24th October 1975 stood freed and discharged from any obligation to render bonded service and repay debt with effect from this date. He is to be set at liberty regardless of loans/ debts/advances he might have owed.

Section 374
Unlawful Compulsory Labour

Whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Salient features of *The Bonded Labour System (Abolition) Act, 1976*

The Act provides for the abolition of the system of any custom, agreements or instruments requiring any person to render any service as bonded labour void. The liability to repay bonded debt is deemed to have been extinguished from the date of commencement of the Act and the property of the bonded labour freed from mortgage. Civil prisoners stood freed as a consequence of the Act.

The law provides that (a) no suit or other proceedings shall be instituted in any Civil Court for the recovery of any bonded debt (b) every attachment

made before the commencement of the Act for the recovery of any bonded debt shall stand vacated and (c) such movable property shall be restored to the bonded labourer.

The role of the District Magistrate is extremely important in view of the special sensitivity of the issue relating to bonded labour as under the Act, powers of a Judicial Magistrate are vested in the District Magistrate.

The district and sub-divisional magistrates have been entrusted with certain duties/responsibilities towards implementation of statutory provisions. The Act also provides for constitution of Vigilance Committees at the district and sub-divisional level for implementation of the provisions of the law. Under the Act—

- Executive Magistrates are vested with the powers of a Judicial Magistrate
- The responsibility of identification, release and rehabilitation of bonded labour has been assigned to the Vigilance Committees constituted at District and Sub-Divisional level in the States and Union Territories.
- Functions of Vigilance Committees have been spelt out.
- The Committees are required to be constituted in each district and sub-division under the Chairmanship of the DM and SDM respectively.

The Act provides for imprisonment upto 3 years and fine upto Rs. 2000/- to whoever advances any bonded debt. An offence under the Act may be tried in a summary manner. Every offence under the Act is cognizable and bailable.

The Responsibility for the Implementation of the Act

Though *The Bonded Labour System (Abolition) Act, 1976* is a central legislation, the responsibility of identification and release of bonded labourers and rehabilitation of freed bonded labourers is the direct responsibility of the State Government concerned. The District Magistrates have a fundamental role to play in the implementation of the Act as they have been conferred with judicial powers under the Act.

International Safeguards

- According to the Forced Labour Convention of 1930 (No.29) [Article 2 (1)] – the term "forced or compulsory labour" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. The ILO Convention states that member countries are to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. (India ratified the ILO Convention on Forced Labour (No.29) in 1953).

- Article 4 of the Universal Declaration of Human Rights, 1948 states that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

- The UN Supplementary Convention on the Abolition of Slavery (1956) – defines debt bondage as "the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined."

- In the ILO Report on Stopping Forced Labour (2001) – the term, bonded labour refers to a worker who rendered service under condition of bondage arising from economic consideration, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage, the implication is that the worker (or dependents or heirs) is tied to a particular creditor for a specified or unspecified period until the loan is repaid.

Practical Realities

- Many States take a stand that there are no bonded labourers in their states
- Eradication of bonded labour is not a one-time event. It can recur any time in any industry/occupation/process.
- Though bonded labour is largely found in agriculture, it is also present in several other industries/occupations.

- There could be inter-state migrant workers who could also come in the category of bonded labourers.
- The problems of bonded child labour are as complex as are those of women bonded labour and migrant bonded labour.
- Issues relating to land, employment generation and extension of credit facility are not addressed properly.
- Unless the rehabilitation process is completed with promptness there is every likelihood of bonded labourer relapsing into bondage again.

Checklist for Identification of Bonded Labour

To detect bonded labour, some of the questions, which need to be addressed to the employers, are

- Whether the various labour laws like the *Minimum Wages Act*, the *Payment of Wages Act*, etc. are being observed.
- Whether the registers are being maintained.
- Whether the Employer is registered under the *Contract Labour Act* or any other law that requires it.

Safeguards for Release of Bonded Labourers and Prevention from their lapsing into bondage again

- Identification, release and rehabilitation have to be a continuum.
- Between identification and release, there should not be a big gap, and in the same way between release and start of rehabilitation measures.
- It is important to ensure that release certificates are issued properly.
- Prosecution of employers must go hand in hand with identification and release of bonded labourers.
- Panchayati Raj Institutions should be involved in the identification of bonded labourers.

Scheme for Rehabilitation of Bonded Labour

In order to assist the State Governments in their task of physical and psychological rehabilitation of released bonded labourers, the Ministry of Labour launched a Centrally Sponsored Scheme on 50:50 basis in May

1978 for rehabilitation of bonded labourers. The scheme has undergone qualitative changes from time to time and has been progressively liberalized. The rehabilitation assistance has since been enhanced to Rs. 20,000/- per bonded labourer w.e.f. May, 2000 and in the case of seven North Eastern States, 100% central assistance if they express their inability to provide their share. The modified scheme also provides for financial assistance to the State Governments/UTs for conducting survey of bonded labourers, awareness generation activities and impact evaluation.

Detailed guidelines have been issued to the State Governments for implementing the scheme. The State Governments have also been advised to integrate/dovetail the Centrally Sponsored Scheme for rehabilitation of bonded labourer with other ongoing poverty alleviation schemes such as Swaran Jayanti Gram Swaraj Rozgar Yojana (SJGSRY), Special Component Plan for Scheduled Castes, Tribal Sub Plan etc. so as to pool resources for meaningful rehabilitation of bonded labourers.

Components of the Scheme for Rehabilitation of Bonded Labour

The Centrally Sponsored Scheme for rehabilitation of bonded labour [modified in May 2000] has the following components:

- Each State Government is required to identify sensitive districts where bonded labour has taken deep roots, find reasons for the existence and suggest remedial measures.
- Conduct surveys on a regular basis – to find incidence of bondage, causes and forms of bondage, etc.
- Government of India provides a sum of 2 lakhs per sensitive district to conduct such surveys. This amount is provided to a particular district once in 3 years.
- An annual grant of Rs. 10 lakhs per State Government is provided for awareness generation purposes.
- Each State Government is required to conduct five Evaluatory Studies in 5 districts/regions of the state every year through reputed research organizations/ academic institutions/ NGOs.
- Rehabilitation grant has been enhanced to Rs. 20,000/- per freed bonded labourer, which is to be shared by the Central and State Government on 50:50 basis. Out of this, Rs. 1000/- are required to be

paid immediately on release of a bonded labourer as subsistence allowance.

Role of District Magistrates in Rehabilitation

- District Magistrates have to ensure the release of identified bonded labourers on the basis of the reports examined through the Vigilance Committees.
- They would also identify suitable schemes for the rehabilitation of bonded labour – land based, non-land based, skill/craft based occupations.

Checklist for State Governments

- Has the State Government issued the relevant notification authorizing Executive Magistrates to try the offences u/s 21 of the Act?
- Are the surveys being conducted periodically to identify bonded labour?
- Have Vigilance Committees been constituted at District and Sub-Divisional level and whether they are meeting regularly? What kind of supervision is being exercised over their activities?
- Are the funds being allocated on time by State Government to DMs for rehabilitation?

The Supreme Court's Directive

The Apex Court in its order dated 11-11-1997 in *Public Union for Civil Liberties v. State of Tamil Nadu & Others* (Writ Petition Civil No. 3922 of 1985) case directed that the National Human Rights Commission (NHRC) should be involved in dealing with the issue of bonded labour. The NHRC is monitoring the bonded labour situation in the country.

In the *Bandhua Mukti Morcha* case the Supreme Court issued certain directions to the Central Government, the State of Haryana and various authorities. In order to ensure compliance of the above directions, the Ministry of Labour constituted a Task Force, comprising officers of the Central Government and the Government of Haryana who are responsible for enforcement of various labour laws. The Task Force is required to undertake periodic visits and inspections of the stone quarries and crushers to ascertain facts about working and living condition of the workers. The task force is

carrying out its assignment regularly and submitting reports to the Central as well as the State Government indicating therein status of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

Role of the National Human Rights Commission

- The Supreme Court in the Writ Petition (No.3922/1985) – *Public Union for Civil Liberties v. State of Tamil Nadu & Others* - requested the NHRC to get involved in the monitoring of the implementation of the *Bonded Labour System (Abolition) Act, 1976*.

- The Supreme Court stated that the NHRC should follow the manner indicated in the order passed by the Supreme Court on 11-11-1997 in Writ Petition No.1900 of 1981 requesting the NHRC to be involved in the supervision of the working of the Agra Protection Home to "ensure that the Home functions in the manner as is expected for achieving the objects for which it has been set up" and that "the concerned authorities would promptly comply with the directives given by the NHRC".

- The NHRC views the responsibility assigned to it from the angle of the constitutional guarantee [Article 23(1) of the Constitution of India] incorporated in the *Bonded Labour System (Abolition) Act, 1976*.

- The NHRC took up the monitoring of implementation of the *Bonded Labour System (Abolition) Act, 1976* in early 1998.

- It focused attention on 13 states – Andhra Pradesh, Arunachal Pradesh, Bihar, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh, identified as bonded labour prone areas by the Union Labour Ministry on the basis of several study reports.

- Commission has been monitoring the implementation of the Bonded *Labour System (Abolition) Act, 1976* through its Special Rapporteurs.

- Several reviews in the States have been conducted by the Chairperson and Members of the Commission.

- The Commission keeps the Supreme Court informed about the steps taken by it to discharge the responsibility entrusted.

- In the year 2000, the Commission constituted an expert group to prepare a report on the status/improvement of the existing scheme and recommendation to effectively implement laws for the abolition of the bonded labour system.

- The group in its report gave its findings on the present status, the position of the existing schemes and recommendations relating to the law. It also gave an Action plan for the NHRC indicating that the task of monitoring entrusted to the NHRC by the Supreme Court requires the Commission's involvement in all the three functions, namely **Identification**, **Release** and **Rehabilitation** of bonded labour.

- The Commission is pursuing the States/UT Governments to complete the mandatory measures under the *Bonded Labour Act*, namely –

  (i) Specifying authorities for implementing the provisions of the Act (Section 10);
  (ii) Constitution of Vigilance Committees in each district and each sub-division (Section 13);
  (iii) Authorizing the Executive Magistrates to exercise powers of Judicial Magistrates for the trial of the offences under the Act (Section 21);
  (iv) Identifying the sensitive districts and industries where bonded labour system is being practised in one form or the other.

Progress made by the States

- Vigilance Committees have been constituted in most of the districts and sub-divisional headquarters of the States.
- Workshops on bonded labour to sensitize the district officials have been conducted and more such workshops are planned.
- Quarterly information relating to release and rehabilitation of bonded labourers is being furnished by the States to the NHRC.
- A status report is submitted to the Supreme Court from time to time.

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bonded labour

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SEXUAL HARASSMENT OF WOMEN AT THE WORK PLACE

NHRC

National Human Rights Commission

Sexual Harassment of Women at the Work Place

Introduction

Sexual harassment, an insidious form of violence against women, is common to all cultures. The stories are strikingly similar from country to country; only the names and the places change. Sexual harassment can take a variety of forms. It includes both physical violence and subtle forms of non-physical violence such as emotional and psychological harm or suffering to women, including economic and professional injuries. Like other forms of violence, sexual harassment at the work place is a demonstration of power and control, and above all it exemplifies a form of gender discrimination or gender inequality.

Examples of sexual harassment from around the world have shown that the elimination of this problem is a difficult task. Women often fear retribution if they report inappropriate conduct. Hence they rarely report instances of sexual harassment. The victims are ashamed or embarrassed about their experiences and they feel that their claims will not be taken seriously. Even if a woman does report sexual harassment, it is often difficult to prove the occurrence of sexual harassment due to lack of circumstantial evidence and witnesses unwilling to testify in support of the victim. This is because either the conduct occurs when the two parties are alone or other employees are afraid of jeopardizing their own jobs. Employers too, often fail to treat the problem of sexual harassment seriously or appropriately. Often organizations do not take measures for prevention of sexual harassment at their premises until it becomes unbearable for some of their female employees or another crisis arises.

This booklet provides a general understanding of the problem of sexual harassment of women at the work place, the existing international safeguards, the legal approaches adopted by different countries, the Indian approach to the problem and the initiatives taken by the National Human Rights Commission (NHRC).

Protection Against Sexual Harassment in International Law

In countries that provide legal protection against sexual harassment, two types of conduct in work place have generally been prohibited:

1. *Quid pro quo* sexual harassment, and
2. Harassment that creates a hostile work environment.

1. Quid pro quo Sexual Harassment

Quid pro quo is a Latin phrase meaning 'something for something'. *Quid pro quo* sexual harassment refers to a demand of sexual favour and the threat of adverse job consequences if the demand is refused.

To establish a *prima facie* case of *quid pro quo* sexual harassment, a plaintiff must show that:

1. the employee belongs to a protected class;
2. the employer subjected the employee to unwelcome conduct in the form of sexual advances or requests for sexual favours;
3. the harassment was based upon sex; and
4. the employee's acceptance or rejection of the harassment was an express or implied condition to the receipt of a job benefit or the cause of a tangible job detriment.

If a plaintiff in a sexual harassment case is able to establish each of the above elements, then the burden to prove otherwise shifts to the employer. If the employer is able to provide a legitimate reason for its actions, the employee must then establish that the reasons provided by the employer are not the real reasons for the employment decision and are merely a pretext for unlawful discrimination.

2. Hostile Work Environment Sexual Harassment

Sexual harassment also occurs when an individual experiences unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature where such conduct has the purpose or effect of unreasonably interfering with that individual's work performance or creating an intimidating, hostile, or offensive working environment. To establish a *prima facie* case of sexual harassment based on hostile work environment, a plaintiff must show that:

1. the plaintiff belongs to a protected class;

2. the plaintiff was subjected to unwelcome sexual harassment;
3. the harassment was based on sex;
4. the harassment affected a term, condition, or privilege of employment; and
5. the employer knew or should have known the conduct was occurring.

The United Nations and other international organizations have all recognized that women's rights are human rights, and that violence against women is a violation of the human rights of women. These organizations have specifically condemned sexual harassment in a series of international instruments as a prohibited form of violence against women. As sexual harassment violates the right to just and favourable conditions of work, this fact has been recognized by the United Nations in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In addition, a government's failure to provide an effective remedy to the victims of sexual harassment violates the right to an effective remedy for the violation of fundamental human rights guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the UDHR.

As such the United Nations has emphasized the responsibility of member states to create conditions that protect the human rights of individuals and in particular of women in public and private life, and has acknowledged that governments may be made responsible for inaction in the face of human rights abuses by private actors just as they are for abuses committed by state actors. This express condemnation of human rights violations commonly experienced by women reflects a growing recognition in the international community that the traditional human rights work of international organizations and non-governmental organizations, largely ignored the experiences of women by focusing mainly on violations of civil and political rights.

Notwithstanding the serious limitations in these documents with respect to sexual harassment the strong international condemnation of sexual harassment may provide the necessary legitimacy to people at large working to adopt national legislations to prohibit sexual harassment in countries that have not yet addressed the problem.

The following paragraphs look into a few of the prominent United Nations Conventions, which address the issue of sexual harassment.

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The CEDAW, adopted by the United Nations in 1979, does not categorically mention violence against women or sexual harassment. It does, however, prohibit discrimination in employment. Article 11 states:

"States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

a) The right to work as an inalienable right of human beings;
b) The right to the same employment opportunities,…
f) The right to protection of health and to safety in working conditions,…"

The CEDAW has created a Committee on the Elimination of Discrimination Against Women to monitor states parties' implementation of the Convention (Article 17). States parties to CEDAW, as per Article 18, are required to submit a report to the Committee within a year of ratifying or acceding to the Convention and, thereafter, they must submit additional reports every four years and when specifically requested by the Committee.

In 1992, the Committee issued **General Recommendation 19**, which addresses violence against women and sexual harassment in employment. It notes, "equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place" (Para 17). **General Recommendation 19** recognizes both *quid pro quo* sexual harassment and hostile work environment sexual harassment as forms of discrimination. Sexual harassment is defined to include "such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography, and sexual demands, whether by words or actions" (Para 18). This conduct is identified as discriminatory when a woman has reasonable grounds to believe that her objection would result in adverse employment action or it creates a hostile working environment.

General Recommendation 19 also recognizes that sexual harassment may constitute a health and safety problem. It calls on states parties to implement effective procedures for filing complaints and remedies, including compensation, for sexual harassment. Needless to mention, states parties are also encouraged to include information about sexual harassment and measures to protect women from sexual harassment in the work place in their reports to the Committee.

General Recommendation 19 recognizes that gender-based violence, "….that is directed against a woman because she is a woman or that affects women disproportionately," includes acts that inflict physical, mental, or sexual harm or suffering as well as threats of such acts or coercion (Para 6). The Committee recommends that states parties take all legal and other measures necessary, including preventive measures, penal sanctions, and compensatory provisions to protect women against sexual harassment in the work place. **General Recommendation 19**, although not technically binding, is important because it represents a consensus opinion of the Committee that sexual harassment is an impediment to equality in the work place and that it is the obligation of states parties to take actions to eliminate it.

Sexual harassment is an egregious form of employment discrimination. It comprises the health and safety of women workers.States parties to the CEDAW that do not have laws protecting women against sexual harassment are in violation of their obligations under the Convention to prohibit discrimination in employment, to provide equal opportunity, and to protect the health and safety of women workers.

The Nairobi Forward Looking Strategies for the Advancement of Women

The Nairobi Forward Looking Strategies for the Advancement of Women adopted in July 1985 was the first United Nations document to directly address the issue of sexual harassment. It states:

"The working conditions of women should be improved in all formal and informal areas by the public and private sectors. Occupational health and safety and job security should be enhanced and protective measures against work-related health hazards effectively implemented for women and men. Appropriate measures should be taken to prevent sexual harassment

on the job or sexual exploitation in specific jobs, such as domestic service. Appropriate measures for redress should be provided by governments and legislative measures guaranteeing these rights should be enforced. In addition, Governments and the private sector should put in place mechanisms to identify and correct harmful working conditions" (Para 139).

It further states that governments should recognize and enforce the rights of young women to be free from sexual violence, sexual harassment and sexual exploitation. Particular attention should also be given to sexual harassment and exploitation in employment, especially those areas of employment such as domestic service, where sexual harassment and exploitation are most prevalent (Para 287).

The Forward Looking Strategies do not, however, identify sexual harassment as a human rights violation or as a form of discrimination or violation against women.

The Vienna Declaration and Programme of Action

At the World Conference on Human Rights in Vienna in 1993, immense progress was made in the recognition of women's human rights with the adoption of the Declaration and Programme of Action. The Programme of Action recognizes that the "human rights of women and of the girlchild are inalienable, integral and indivisible part of universal human rights." This document articulates that the "full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex," are priorities of the international community (Para 18).

The Vienna Declaration, 1993, recognizes that sexual harassment is a practice incompatible with human dignity. It stresses the importance of working towards the elimination of violence against women in "public and private life." The Programme of Action includes specific provisions condemning sexual harassment:

"Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of human person, and must be eliminated. This can be achieved by legal measures and through

national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support" (Para 18).

The World Conference on Human Rights further called upon the General Assembly to adopt the draft Declaration on Violence Against Women and urged States to combat violence against women in accordance with its provisions.

The Vienna Declaration thus reflects a new understanding that violence against women, including sexual harassment, is a violation of women's human rights and that this violence should be examined within the context of human rights standards and gender discrimination.

Declaration on the Elimination of Violence Against Women

Subsequent to the Vienna Declaration, the General Assembly adopted the Declaration on Elimination of Violence Against Women (DEVAW). DEVAW condemns violence against women, including sexual harassment, as a violation of the fundamental human rights of women.

Violence against women is defined broadly to include all forms of private and public violence. Article 2 of DEVAW states that violence against women encompasses:

"Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution."

Article 3 of the Declaration enumerates the human rights and fundamental freedoms to which women are entitled. Some of these are:

- The right to equal protection under the law;
- The right to be free from all forms of discrimination;
- The right to the highest standard attainable of physical and mental health;
- The right to just and favourable conditions of work;

- The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

Article 4 of the DEVAW calls on the member states of the United Nations to:

- Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

- Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.

At the time of adoption, DEVAW contained the strongest language ever used by General Assembly to condemn violence against women, including sexual harassment. It, however, fails to define sexual harassment or provide specific recommendations for addressing this problem.

Beijing Declaration and Platform for Action

The Beijing Declaration and Platform for Action, adopted in 1995 at the United Nations Fourth World Conference on Women, also condemns sexual harassment of women. It defines violence against women in a language similar to the DEVAW.

It declares that violence against women is an obstacle to the achievement of the objectives of equality, development and peace as it violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.

Paragraph 121 of the Beijing Declaration concedes that the lack of documentation and research on domestic violence, sexual harassment and violence against women and girls in private and in public, including the work place, impedes efforts to design specific intervention strategies. It also states that experience in a number of countries has shown that women and men

can be mobilized to overcome violence in all its forms and that effective public measures can be taken to address both the causes and the consequences of violence.

Paragraph 126 and **Paragraph 127** of the Declaration further gives details of the integrated measures that need to be taken by the governments, including local governments, and community organizations, non-governmental organizations, educational institutions, the public and private sectors, particularly enterprises, and the mass media, to prevent and eliminate violence against women. This includes developing programmes and procedures to eliminate sexual harassment and other forms of violence against women in all educational institutions, work places and elsewhere.

With respect to women in paid work, **Paragraph 163** of the Declaration states that the experience of sexual harassment is an affront to a worker's dignity and prevents women from making a contribution commensurate with their abilities. **Paragraph 180 (c)** necessitates governments, employers, employees, trade unions and women's organizations to enact and enforce laws and develop work place policies against gender discrimination in the labour market, especially on issues relating to discriminatory working conditions and sexual harassment.

Paragraph 209 (j) stresses the need for the development of improved gender-disaggregated and age-specific data on the victims and perpetrators of all forms of violence against women, such as domestic violence, sexual harassment, rape, incest and sexual abuse, and trafficking in women and girls, as well as on violence by the agents of the State.

This document thus creates a minimum acceptable standard for all states to achieve in relation to protection of women against sexual harassment at the work place. However, like previous United Nations documents, this too fails to provide a detailed definition of sexual harassment or a mechanism to address the problem.

Regional Organizations

The European Union

The European Union has been the most active international organization in defining the specific obligations of its member countries to

provide legal protections against sexual harassment. Through a series of recommendations and resolutions, the Council of Ministers, the European Parliament and the European Commission have developed a comprehensive definition of sexual harassment and enumerated specific steps that member states can take to work towards the elimination of sexual harassment. According to the Council, the European Parliament and the Commission, sexual harassment constitutes a breach of the principle of equal treatment and is an affront to the dignity of women and men at work.

In 1990, the Council of Ministers adopted the Resolution on the Protection of the Dignity of Women and Men at Work. The Resolution affirms that sexual harassment is unacceptable and violates the protection of the dignity of women and men at work:

"whereas unwanted conduct of a sexual nature,.....is unacceptable ... if (a) such conduct is unwanted, unreasonable and offensive to the recipient; (b) a person's rejection of, or submission to, such conduct on the part of employers or workers (including superiors or colleagues) is used explicitly or implicitly as a basis for a decision which affects that person's access to vocational training, access to employment, continued employment, promotion, salary or any other employment decisions; and/or (c) such conduct creates an intimidating, hostile or humiliating work environment for the recipient;....."

The Resolution requires member states to develop information and awareness raising campaigns for employers and workers besides developing appropriate positive measures in accordance with national legislation in the public sector which may serve as an example to the private sector.

The European Commission also developed a detailed Code of Practice on Measures to Combat Sexual Harassment. This Code of Practice provides practical guidance to employers, trade unions and employees to clamp down on sexual harassment, and ensures that adequate procedures are readily available to deal with the problem and prevent its recurrence. Besides, it encourages men and women to respect one another's integrity.

Further, it sets out recommendations to employers for prevention of sexual harassment which include training for managers and supervisors as an important means of combating sexual harassment and developing clear and precise practical guidance on how to deal with this problem.

However, the measures taken by the European Union relating to sexual harassment are not binding on its member states. These measures only provide a more detailed recommendation for addressing the problem than previous international documents have provided.

Organization of American States

In June 1994, the Organization of American States (OAS) adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. This Convention is the first binding regional instrument to directly address violence against women. In order to protect the right of every woman to be free from violence, the Convention requires the States Parties to include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as report any difficulties they observe in applying those measures, and the factors that contribute to violence against women (Article 10). Moreover, the Convention is also noteworthy as Article 12 provides a mechanism by which any person or group of persons, or any non - governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of this Convention by a State Party.

Article 2 of the Convention states that violence against women shall be understood to include physical, sexual and psychological violence that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the work place, as well as in educational institutions, health facilities or any other place.

The commitment of States to provide a legal remedy to women victims of violence (Article 7) is especially significant for victims of sexual harassment. Often, it is seen that, a perpetrator's conduct happens to have debilitating consequences for victims but does not constitute physical assault or some other commonly recognized form of unlawful conduct. This aspect has been taken care of by this Convention.

The Convention also states the need for public education, research, and specific programmes to eliminate the problem of sexual harassment.

Sexual Harassment Laws Around the World

It is essential that every nation develops a legal mechanism – be it penal, civil, labour or some kind of administrative sanctions in their respective national legislations so as to provide women access to justice besides just and effective remedies for the harm that they have suffered.

Most countries do not provide legal protection against sexual harassment at the work place. Generally the countries that provide legal protection for sexual harassment, except for United States and Great Britain, developed the laws in the 1980s and the 1990s. Legal protection against sexual harassment can take the form of laws prohibiting discrimination, labour laws, or criminal laws. In addition some courts have also applied traditional tort laws to obtain redressal for sexual harassment in the work place.

Some countries like Philippines, Russia and France have expressly codified sexual harassment as a separate criminal offence, which in extreme cases could also include rape and other forms of sexual assault. In Japan women have sought recourse under tort laws. Some countries have provisions in their labour codes that prohibit sexual harassment. For example, in Spain, sexual harassment is prohibited under the Worker's Charter. New Zealand provides a detailed statutory framework prohibiting sexual harassment in its Labour Code. It is generally felt that labour codes prohibiting sexual harassment at the work place may be the most effective method of holding employers and harassers accountable for sexual harassment.

It is also essential that legal provisions in the national laws of countries must be combined with the efforts of individual employers to eliminate sexual harassment at the work place by developing appropriate employment policies which clearly state that sexual harassment will not be tolerated at the work place. Besides, every establishment should organize awareness programmes and develop training strategies to prevent sexual harassment of women at the work place.

Sexual Harassment of Women at the Work Place in India

The Constitution of India provides equal opportunities for both men and women workers. However, in reality women in India are often subject to severe discrimination at the work place. Cases of sexual harassment at the

work place are on a rise in India due to societal forces encouraging power-based relationship between men and women, besides the low economic status of women.

Women who are victims of sexual harassment at the work place have in extreme cases even quit their jobs. However, most women ignore sexual harassment, hoping that it would be a one-time incident or avoid the harasser or avoid going to places where the harasser could be. This affects her work performance. She may also shield herself by seeking protection of a senior or a powerful person within or outside her work place, which in some cases may also prove to be disadvantageous to the victim. There are very few women who make a formal protest in the organisation against the harasser.

Women do not report cases of sexual harassment for fear of losing employment or due to threats from the harasser. In many cases they might feel embarrassed, helpless and powerless. The victim might also feel that she could have misunderstood the situation or might blame herself for the situation. There might be a lack of family support too. Also women might not complain as they do not trust the system or feel that their reporting will not change the system anyway.

Constitutional Protection in India

Sexual harassment of any woman at the work place is a gross violation of Fundamental Rights guaranteed under Part III of the Constitution of India. Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under **Articles 14, 15** and **21** of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under **Article 19 (1)(g)** "to practice any profession or to carry out any occupation, trade or business". Such violations therefore attract the remedy under **Article 32** for the enforcement of these fundamental rights of women. The fundamental right to carry out any occupation, trade or profession depends on the availability of a "safe" working environment. Various Supreme Court judgments have also time and again emphasized that right to life means right to life with dignity. Apart from the above, **Article 42** also provides for just and humane conditions of work and maternity relief.

India is also a party to various international conventions and human rights instruments aimed at securing the 'Rights of Women'. Key amongst them is the CEDAW adopted by the United Nations in 1979 which was ratified by the Government of India in the year 1993 with some reservations. At the Fourth World Conference on Women in Beijing, the Government of India had also made an official commitment to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's Rights to act as a public defender of women's human rights and to institutionalize a national level mechanism to monitor the implementation of the Platform for Action. Therefore, it becomes mandatory on the part of the State to protect women who are subjected to sexual harassment.

The Domestic Law on Sexual Harassment

The *Indian Penal Code (1860),* which contains laws for punishment of offences committed within India, lacks specific provisions to deal with instances of sexual harassment of women at the work place. Except for certain sections in the *Indian Penal Code* such as **Section 294** (obscene acts and songs) , **Section 354** (assault or criminal force to woman with intent to outrage her modesty), **Section 375** (rape), **Section 509** (word, gesture or act intended to insult the modesty of a woman) etc. and the relevant provisions of the Acts like the *Industrial Disputes Act, 1947*; *Factories Act, 1948*; *Plantation Labour Act, 1951; Mines Act, 1952; Maternity Benefit Act, 1961; Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Equal Remuneration Act, 1976; Indecent Representation of Women (Prohibition) Act, 1987; Delhi Prohibition of Eve-Teasing Act, 1988*; etc., there does not exist any specific complaint mechanism system to deal with cases of sexual harassment of women at the work place. As such, any woman who is victimized has no recourse but to take shelter under the *Indian Penal Code*.

The *Vishaka* Judgment

It was only in August 1997 that a landmark Supreme Court judgment *Vishaka v. State of Rajasthan* (1997 VII AD S.C. 53) recognized sexual harassment of woman at the work place as a human rights violation, keeping in view India's obligations under CEDAW and other human rights instruments.

This judgment laid down detailed guidelines and norms keeping in mind the definition of ' human rights' in **Section 2 (d)** of the *Protection of Human Rights Act, 1993*. It further paved the way for setting up a complaints mechanism system, which makes it mandatory for every organization, government, private, industrial or educational to have a sexual harassment Complaints Committee.

In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places or institutions, the *Vishaka* guidelines are to be treated as the law under **Article 141** of the Constitution which states that the law declared by the Supreme Court shall be binding on all courts. It thus becomes necessary and expedient for employers in work places as well as other responsible persons or institutions to observe *Vishaka* guidelines to ensure the prevention of sexual harassment of women at work places.

The Supreme Court also held that it is necessary for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

i. Definition of Sexual Harassment

The *Vishaka* judgment states that sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a) physical contact and advances;

b) a demand or request for sexual favours;

c) sexually coloured remarks;

d) showing pornography;

e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The Court further stated that an act would be considered as 'sexual harassment' if the victim:

1) apprehends in relation to her employment or work, whether she is drawing salary, or honorarium or voluntary, whether in Government,

public or private enterprise and such conduct is humiliating and would result in health and safety problems;

2) feels that her objection would disadvantage her in connection with her employment or work including recruitment, promotion, or create a hostile working environment or result in adverse consequences.

- Physical contact and advances could include 'accidentally' brushing against a woman's body, unwelcome touching, hugging and leaning over, sexual assault, stalking or any other physical conduct which is unwelcome.
- Demand or request for sexual favours may involve a conduct wherein the victim is forced to submit to sexual favours and has reasonable grounds to believe that her objection might result in adverse consequences in connection with her employment or work including recruitment or promotion.
- 'Sexually coloured remarks', perhaps the most common form of sexual harassment at the work place includes sexually coloured / insulting graffiti, inappropriate invitations, obscene phone calls, wolf whistles, etc.
- Display of pornography at the work place is another common form of harassment that women face. Women often encounter situations where pornographic materials like sexually explicit letters, or pictures are displayed at their work place, in washrooms, etc., which are humiliating and embarrassing for all women.
- Other forms of verbal or non-verbal conduct could be leering, inappropriate invitations, obscene phone calls, etc. which is unwelcome.

ii. Preventive Steps

All employers or persons in charge of work place whether in public or private sector are required to take the following appropriate steps to prevent sexual harassment:

(a) Express prohibition of sexual harassment at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating

to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the *Industrial Employment (Standing Orders) Act, 1946*.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that the environment is not hostile towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

iii. Criminal Proceedings

Where sexual harassment amounts to a specific offence under the *Indian Penal Code* or under any other law, the employer is required to initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

The employer is also required to ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victim of sexual harassment should have the option to seek the transfer of the perpetrator or their own transfer.

iv. Disciplinary Action

Where sexual harassment amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

v. Complaint Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such a complaint mechanism should ensure time bound treatment of complaints.

vi. Complaints Committee

The complaint mechanism, referred to above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women.

Further, to prevent the possibility of any pressure or influence from senior levels, such Complaints Committee should involve a third party, either an NGO or other body that is familiar with the issue of sexual harassment.

The Complaints Committee is required to submit an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge are also required to report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

vii. Workers' Initiative

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in the Employer-Employee Meetings.

viii. Awareness Generation

Awareness of the rights of female employees in this regard should be created by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

ix. Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge should take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

x. Steps to be taken by the Government

The Central/State Governments have been requested to consider adopting suitable measures including legislation to ensure that the guidelines

laid down in the *Vishaka* judgment are also observed by the employers in Private Sector.

Further, the judgment states that these guidelines will not prejudice any rights available under the *Protection of Human Rights Act, 1993*.

Accordingly, the Supreme Court directed that the above guidelines and norms should be strictly observed in all work places for the preservation and enforcement of the right to gender equality of working women. These directions would be binding and enforceable in law until a suitable legislation is enacted.

Further the Supreme Court in *Apparel Export Promotion Council v. A.K Chopra* (1999 (1) SCC 759) stated that:

- Sexual harassment can take place even if there is no physical contact.
- Witness or documentary evidence is not always necessary to prove a sexual abuse charge.
- If the evidence provided by the victim inspires confidence, the court would be obliged to rely on it. Ordinarily no sympathy would be shown in favour of the superior officer.

Amendment to the Government Rules

Pursuant to the *Vishaka* judgment, the *Central Civil Services (Conduct) Rules 1964*, were amended in 1998 to incorporate **Rule 3-C** which prohibits sexual harassment of working women. It states that:

1) No government servant shall indulge in any act of sexual harassment of any woman at her work place.

2) Every government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Though not mentioned categorically, this rule invariably applies to all women, whether working in a government set up or coming in contact with a government office/officials.

Presently a woman, in case of sexual harassment at the work place can either approach the Complaints Committee at her work place, or in the absence of it, may file a First Information Report (FIR) against the harasser with the Police Station under whose jurisdiction the work place falls. The police would thereafter take measures under the relevant sections of the *Indian Penal Code*, which have already been mentioned above. Such a procedure is extremely time consuming and it may take years for a woman to get justice.

The other option available to her is to approach a non-governmental organisation that will then fight on her behalf or she may approach the National Commission for Women or the National Human Rights Commission.

Initiatives of the National Human Rights Commission

The National Human Rights Commission receives a number of complaints alleging sexual harassment at the work place. Hence the Commission considered it essential not only to deal with the individual complaints and provide redressal in those instances, but also to take up the issue of sexual harassment at the work place seriously.

The Commission observed that the guidelines issued by the Supreme Court in its landmark judgment in the case of *Vishaka v. State of Rajasthan* were not being implemented adequately, whether in institutions under the public sector or the private sector. Many of them had not set up the Complaints Committees required under the judgment, to deal with complaints of sexual harassment at the work place.

In order to consider and clarify these issues the Commission convened meetings with various departments of the Government of India like the Department of Personnel and Training (DOPT), educational departments/ institutions like the Department of Secondary and Higher Education, Department of Elementary Education and Literacy of the Ministry of Human Resource Development, University Grants Commission (UGC), Central Board of Secondary Education (CBSE), Directorate of Education, National Capital Territory (NCT) of Delhi, etc. besides meetings with the legal fraternity.

Follow-up with the Department of Personnel and Training (DOPT)

A meeting was convened by the Commission with the Secretary,

DOPT on 1 March 2001 to discuss the exact role of the Complaints Committee in government departments/ Public Sector Undertakings (PSUs) as envisaged by the Supreme Court in the *Vishaka* judgment. The decisions taken in the meeting were as follows:

1. The findings of the Complaints Committee in all matters pertaining to sexual harassment at the place of work should be considered as final against the delinquent official as this would lead to early decision on the sensitive issue and save the victim from undue harassment. For this purpose, the inquiry conducted by the Complaints Committee should be deemed to be the inquiry conducted in a departmental inquiry under the disciplinary proceedings drawn up against the delinquent official.
2. The composition of the Complaints Committee should conform to the Supreme Court guidelines in the *Vishaka* case. The Complaints Committee should be a permanent body available to the employees and not a committee constituted to consider a given complaint only.
3. The overall mechanism of the Complaints Committee should be based on the principle of natural justice so that fair and just inquiry is conducted against the delinquent officer.
4. To achieve the above, it was suggested that suitable amendments be carried out in the *Central Civil Services (Classification, Control and Appeal) Rules*, *1965* by the DOPT in addition to the notifications already issued by them.
5. It was suggested that themes, based on the important guidelines prescribed by the Supreme Court in the *Vishaka* case be displayed at prominent places for raising awareness amongst employees, as also for alerting them about the seriousness of the employers towards the issue of sexual harassment at the work place.
6. It should be made clear to the employers that while setting up the complaints mechanism, the complainant is not penalized in any way for filing the complaint.
7. It was agreed that the NHRC would send a list of Ministries and PSUs who have not yet set up the Complaints Committee in their respective Departments to the Secretary, DOPT for necessary follow-up action.
8. It was also agreed that the Department of Women and Child

Development (DWCD) may be requested to organise suitable training programmes in gender sensitization for officials of various Ministries.

9. It was suggested that a Committee headed by the Secretary, DWCD may be constituted, with Secretaries of the Ministry of Labour and the DOPT and representatives of prominent voluntary organisations as members, for monitoring the implementation of the guidelines laid down by the Supreme Court in the *Vishaka* case.

10. In order to ensure that the *Vishaka* guidelines were implemented, the Secretary, DOPT was requested to write to the Secretaries of the Personnel Departments of the States and Union Territories to carry out the necessary amendments in their Rules so that appropriate complaints mechanism could be set up in all States / Union Territory Administrations (UTAs) for the redressal of complaints on sexual harassment at the work place.

11. It was agreed that following the guidelines issued by the Supreme Court, it was necessary to monitor the setting up of Complaints Committees by the employers in the private sector also. The Commission would take the initiative to arrange a series of meetings with the representatives of the Bar Council, Chambers of Commerce, University Grants Commission, educational institutions and organisations of small-scale industries among others.

Thereafter, the DOPT wrote to the Chief Secretaries of all the State Governments and Union Territories requesting them to ensure that necessary provisions were made in the conduct and disciplinary rules prohibiting sexual harassment of women at work places and that the complaints mechanism on the lines prescribed is evolved.

Following the above meeting, the DWCD has through an Order dated 8 June 2001, constituted a Committee to monitor the implementation of the guidelines laid down by the Supreme Court in the *Vishaka* judgment.

To allay the apprehension of the Commission on the issue that the disciplinary authorities may not act promptly on the report / recommendations of the Complaints Committee, the DOPT issued an Office Memorandum dated 12.12.2002 to all the Ministries / Departments of the Government of India clarifying that the findings of the Complaints Committee regarding sexual harassment of the complainant / victim would be binding on the disciplinary authority to initiate disciplinary proceedings against the Government servant(s)

concerned under the provisions of the *CCS(CCA) Rules, 1965*. The report of the Complaints Committee should be treated as a preliminary report against the accused Government servant.

All the Ministries / Departments were requested by the DOPT vide the above Office Memorandum to bring these instructions to the notice of all concerned and ensure that necessary follow-up action was taken on the report of the Complaints Committee without any delay.

Thereafter, another meeting was convened in the NHRC on 1 May 2003 with the DOPT and the Department of Legal Affairs to find out whether there was any bar, legal or otherwise, to the amendment of *CCS (CCA) Rules, 1965* and in particular *Rule 14(2)* in order to avoid duplication of work involved in having the same complaint examined twice – once by the Complaints Committee and again by the Disciplinary Committee. In this meeting it was agreed that:

1. There was need to provide legal semblance to Office Memorandum No. 11013/11/2001-Estt. (A) dated 12th December, 2002 issued by the DOPT with regard to the subject on "Report of the Complaints Committee constituted for prevention of sexual harassment of women at work places – follow up action" in order to ensure that it is implemented by all Ministries / Departments of the Government of India.

2. In cases where the Complaints Committee is headed by an Officer of a level below that of the Officer complained against, then in such cases a senior officer may be appointed by the Disciplinary Authority to be the Chairperson of the Committee for that particular case.

3. Following from above, preliminary steps were required to be taken to make an amendment in *Rule 14(2)* of the *CCS (CCA) Rules* so as to include an explanation that in cases relating to sexual harassment the Complaints Committee shall be deemed to be the Inquiry Authority.

4. Accordingly, a consequential amendment would have to be made in the definition (Interpretation) Clause as well, viz. the Complaints Committee shall be an authority within the meaning of *Rule 14(2)* in cases involving allegations of sexual harassment at places of work.

5. The Complaints Committee should also be given more powers whereby they could take the initiative to sensitize / alter the behaviour of the perpetrator.

Accordingly, the DOPT informed that they had sought the opinion of the Learned Attorney General in the matter keeping in view that the Supreme Court was considering the same issue in the case of *Medha Kotwal Lele & Ors.v. Union of India & Ors.* (WP(Crl.) No. 173-177/1999). In the said case, the Supreme Court on 26. 4. 2004 directed that the Complaints Committee as envisaged by the Supreme Court would be deemed to be an inquiry authority for the purposes of *Central Civil Services (Conduct) Rules, 1964* and the report of the Complaints Committee should be deemed to be an inquiry report under the *CCS Rules*. Thereafter, the disciplinary authority would act on the report in accordance with the rules.

Meeting with Government Educational Departments

In a further step to deal with sexual harassment at the work place, the former Chairperson of the Commission convened a meeting on 25 April 2001 to consider how universities and educational institutions could implement the guidelines and norms prescribed by the Supreme Court in the *Vishaka* judgment. In this meeting the following decisions were taken:

1. The University Grants Commission (UGC) would write to the Vice-Chancellors of universities across the country informing them that they were bound by the judgment to set up Complaints Committees. The Vice-Chancellors would accordingly keep the UGC informed about the working of the Committees, failing which appropriate action would be taken against them.

2. Setting-up of a complaints mechanism should be made a pre-condition for granting assistance to all Aided and Affiliated schools by the Central Board of Secondary Education (CBSE). The UGC and CBSE were requested to instruct all educational institutions to make periodic reviews of the action taken by them in respect of setting-up of the complaints mechanism.

3. A Nodal Officer should be appointed in every educational institution

who could be easily contacted for information/suggestions relating to complaints received.

4. It should be made mandatory for all educational institutions to send their Action Taken/Status Reports to the UGC and the CBSE to facilitate monitoring.

5. The detailed guidelines prepared by the Jawaharlal Nehru University, New Delhi in respect of sexual harassment should be examined by the UGC to see if they could be replicated for other universities as well.

6. A Helpline should be established for women and girls in their work places and that this should be supported by non-governmental organisations, along the lines of the Helpline established for students.

The CBSE, through its letter of 20 August 2001 informed the Commission that a proposal was under consideration to amend the affiliation by-laws in order to make it essential for CBSE affiliated schools to setup complaints mechanism along the lines directed by the Supreme Court. The CBSE further stated that all affiliated schools had been requested to send quarterly "Action Taken Reports" on the subject, for which a proforma was devised covering the instructions of the Apex Court. The modalities for a Helpline were also under consideration.

Pursuant to the Commission's initiatives, an officer of the rank of Joint Secretary was nominated as Nodal Officer for the Departments of Secondary and Higher Education and Elementary Education and Literacy.

Meeting with the Legal Fraternity

In a meeting presided over by the Chairperson of the Commission, a discussion was held in respect of sexual harassment of women in the legal profession. This meeting was attended by the then Attorney General of India, the Chairman, Bar Council of India and Senior Advocates of the Supreme Court. Subsequent to the meeting, the Commission constituted a high-level Committee on 21 December 2001, under the chairmanship of Shri Soli J. Sorabjee in his ex-officio capacity to consider all aspects of the problem of sexual harassment of women in the legal profession and to make suitable recommendations for the penalisation/punishment of those who may be

involved. This Committee was also requested to consider whether amendments were needed to the *Advocates Act, 1961* and the *Bar Council Rules*, and to advise the Commission of its views on the matter.

In order to discuss how the legal fraternity could implement the guidelines and norms prescribed by the Apex Court, a high-level meeting was convened under the chairmanship of Justice Shri J.S. Verma, the then Hon'ble Chairperson, NHRC on 29 July, 2002 in the Commission. This meeting also discussed as to how the Bar Council of India, the Supreme Court Bar Association, the various other Bar Associations and State Bar Councils could be involved in spreading awareness about the guidelines as well as setting-up of an effective complaints mechanism to deal with the problem of sexual harassment in the legal profession. After a detailed discussion, it was agreed that:

1. There was a need to reiterate the guidelines and norms as prescribed by the Supreme Court in *Vishaka v. State of Rajasthan* case in a more forceful manner in the legal profession. It was agreed that the Bar Associations being non-statutory bodies could set up a complaints mechanism without any delay to deal with complaints of sexual harassment of women in the legal profession as well as women litigants.

2. It was agreed that the Bar Council of India should accordingly set up a suitable complaints mechanism. This would not only spread awareness of the guidelines and norms prescribed by the Apex Court in *Vishaka v. State of Rajasthan* judgment but also ensure discipline amongst the legal fraternity.

3 It was decided that there was need to suitably amend the *Advocates Act, 1961* so as to make provision for an appropriate complaints mechanism. It was suggested that till such time the necessary amendments were carried out in the Act, the Bar Council as per the provision laid down in **Section 9** of the *Advocates Act, 1961* could set up a Disciplinary Committee exclusively to deal with cases of sexual harassment and accordingly co-opt an active senior woman Advocate as the Chairperson of that Committee as per the complaints mechanism elucidated under the *Vishaka* judgment. The constitution of such a Disciplinary Committee under **Section 9** of the *Advocates Act, 1961*

would be an effective mechanism as it would have disciplinary implications and act as a deterrent against those who attempt to sexually harass any woman.

4. It was felt that the Complaints Committee proposed to be set up under **Section 9** of the *Advocates Act, 1961* in the Bar Council of India and in various other State Bar Councils would have to be more rigorous so as to take action against the offenders.

5. It was decided that once the complaints mechanism is set up in the Bar Council of India, the Bar Association of India, the Supreme Court Bar Association and the High Court Bar Associations, the NHRC would take the initiative of training all the Complaints Committee members which is one of the statutory functions of the Commission requiring it to spread human rights literacy and promote awareness.

Following a suggestion from the Senior Advocates of the Supreme Court, a letter was written by the former Chairperson to the then Chief Justice of India conveying that the *Vishaka* guidelines be implemented in letter and spirit at all levels of the judiciary as well.

KNOW YOUR RIGHTS

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sexual harassment of women at the work place

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CHILD LABOUR

NHRC

National Human Rights Commission

Child Labour

Children need to grow in an environment that enables them to lead a life of freedom and dignity. Opportunities of education and training are to be provided for them to grow into worthy citizens. Unfortunately a large proportion of children are deprived of their basic rights. They are found working in various sectors of the economy particularly in the unorganized sector. Some of them are confined and beaten, reduced to slavery or denied freedom of movement thus making child labour a human rights issue and a developmental issue.

Definition of a Child

Article 1 of The United Nations Convention on the Rights of the Child defines a child as anyone below the age of eighteen years. The Child Labour (Prohibition and Regulation) Act, 1986 defines child as "a person who has not completed his fourteenth year of age."

Meaning of Child Labour

'Child labour' is defined as any work within or outside the family that involves time, energy, commitment, which affects the ability of a child to participate in leisure, play and educational activities. Such work impairs the health and development of a child.

According to the International Labour Organization, "child labour includes children pre-maturely leading adult lives, working long hours for low wages under conditions damaging to their health and to their physical and mental development." They are often separated from their families and deprived of meaningful education and training opportunities that would offer them a better future.

Rights of Children

The Convention on the Rights of the Child is the outcome of the effort of the international community to arrive at a standard to be followed by all countries in matters relating to children. In the words of the Convention, "in all actions concerning children…the best interests of the child shall be a primary consideration." It lays emphasis on the fundamental freedoms and liberties of the individual, protection against

discrimination, violence, abuse, neglect and exploitation as well as on the positive measures such as upbringing within the family and under parental care, access to health care, social security, education, and to rest and leisure.

Childhood is required to be a period of 'evolving capacities' – of the "development of the child's personality, talents and mental and physical abilities to their fullest potential", primarily through education. During this period, a child has a right "to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

The Convention establishes the right of the child to be an actor in his or her own development, to express opinions and to have them taken into account in the making of decisions relating to his or her life. In a number of areas, the Convention goes well beyond existing legal standards and practices. These include its provisions on

- the right to a name and nationality from birth
- adoption
- the rights of disabled and refugee children
- the rights of those in trouble with the law

It protects children from all forms of exploitation, deals with the question of children of minority and indigenous groups and the problems of drug abuse and of neglect.

Basic to the development of the child are the right to express views in all matters affecting her or him and of their being given due weight, freedom of expression including right to information and ideas, freedom of thought, conscience and religion, as well as freedoms of association and of peaceful assembly. The child has a right to privacy, and to special protection and assistance provided by the State where the child is deprived of family environment.

As regards employment, the child, in view of his physical and mental immaturity, has a special right to be protected from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Article 35 seeks to protect children from trafficking in children for any purpose or in any form.

Child Labour – Denial of Rights

Child labour is a concrete manifestation of denial of rights of children. Working children are denied their right to survival and development, education, leisure and play, opportunity for developing their physical and mental talents, and protection from abuse and neglect.

Decisions relating to employment of children are often taken by adults having control over them, and not always with the concurrence of the children themselves, who under the human rights canons have basic rights and freedoms comparable to adults, with due regard to their age and maturity and parental responsibility.

Worst Forms of Child Labour – Global Scenario

It is estimated that there are about 8.4 million children who are engaged in worst forms of child labour. This includes trafficking 1.2 million, forced bonded labour 5.7 million, armed conflict 0.3 million, prostitution 1.8 million and illicit activities 0.6 million.

(Source: International Labour Organization, 2002)

Magnitude of Child Labour in India

India has the largest number of child labourers in the world. Withdrawing them from work and ensuring their rehabilitation is a major challenge facing the country. The proportion of working children to the total labour force is however lower in India than in many other developing countries.

According to the 1991 census, the total number of children in the age group of 5-14 years was 203.3 million. Of this 11.28 million children were child workers (6.18 million boys and 5.10 million girls). 79.7 million children were neither at school nor at work and came under the category of “nowhere children”.

All children in the age-group of 6-14 years, who should actually be in school but are out of school, are deemed to be **actual or potential child labourers**.Child labour in India is much of a rural phenomenon than urban. 90.87 per cent of the working children were found to be in the rural areas and 9.13 per cent were in the urban areas.

State-wise Distribution of Child Labour:

The distribution of child labour in various states indicates a certain co-relation. States having a larger population living below the poverty line have a higher incidence of child labour. Consequently, higher incidence of child labour is accompanied by high dropout rates in schools.

Extent of Child Labour in India

States	Percentage
Andhra Pradesh	14.5
Uttar Pradesh	12.5
Madhya Pradesh	12.0
Maharashtra	9.5
Karnataka	8.7
Bihar	8.3
Rajasthan	6.9
West Bengal	6.3
Tamil Nadu	5.1
Gujarat	4.6
Orissa	4.0

(Source: Census of India, 1991)

Causes of Child Labour

Child labour is inherent in the vicious circle of poverty, unemployment, under-employment and low wages. Three primary factors are responsible for this: inequitable distribution of resources, a centralized and lopsided economy and the backward nature of agriculture.

Consequently, the main causes for child labour are

- Ignorance of parents about consequences of child labour
- Traditions of making children learn family skills
- Absence of universal compulsory primary education

- Social apathy towards child labour
- Non-availability and non-accessibility of schools
- Irrelevant and unattractive school curriculum
- Preference of employers for children, as they constitute cheap labour
- Unemployment and low family income
- Migration to urban areas
- Large families
- Children supplement the income of the family
- Occupational rigidities of caste system
- Employment structure in unorganized sector
- Ineffective enforcement of the legal provisions pertaining to child labour

Reasons for Economic Exploitation of Children

Employers believe that children have some of the requisite qualities best suited to their industry. Employment of child labourers is considered to be economically viable because a child labourer puts in more hours as compared to an adult worker engaged in similar work for which the child gets paid comparatively low wages. They further believe that:

- Children are quick learners, and pick up skills in doing minute work. For example, in the carpet weaving industry, children are preferred for employment because of their nimble fingers.
- They do not protest, as they are ignorant about their rights. Moreover, they do not absent themselves from work.
- Being gullible and innocent they can be easily manipulated.
- They are unable to bargain or determine their appropriate wages and hence are inexpensive.
- Being ignorant they do not realize the hazards of the job they are doing.
- They can be removed as and when their services are not required.
- Their maintenance cost is very low.

Forms of Child Labour

Children are engaged

- as labourer in both unorganized and informal sectors, which do not come within the purview of the law.
- as migrant labourer from rural area to urban area.
- as bonded labourer pledged by the parent or guardian to the employer in lieu of debts or payments.

Sectors of the Economy in which Children Work

1. Manufacturing Sector

Children are engaged in various manufacturing processes of different home-based industries. Very often they work in sub-human conditions and exploitative situations. Some of these industries are:

- Brassware
- Lock
- Match and fire works
- Diamond cutting
- Gem polishing
- Glass and bangle making industry
- Carpet making
- Stone quarries
- Brick kilns
- Sericulture-silk industry
- Beedi making

2. Agrarian Sector

In rural areas children are engaged in agricultural and allied occupations as a part of family labour or as individual workers.

3. Service Sector

In the service sector, children form part of

- Self-employed labour
- Invisible labour
- Wage-based employment

Adverse Effects of Child Labour on the Health of Children

Children work for long hours often in dangerous and unhealthy conditions and are exposed to lasting physical and psychological harm. They tend to develop

- Respiratory problems such as asthma, tuberculosis
- General weakness, stunted growth, body ache and joint pains
- Poor eyesight and other eye problems such as watering, irritation and reddening of eyes
- Loss of appetite
- Tumors and burns
- Disability by working on looms
- Susceptibility to arthritis as they grow older
- Mental disabilities

Constitutional and Legal Safeguards

1. Constitutional Provisions

The framers of the Constitution of India realized that children are the most vulnerable section of society and thus are at the maximum risk of being economically exploited. In order to safeguard children against economic exploitation the Constitution makes the following provisions:

(i) Fundamental Rights

Article 21 A:
Right to Education

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in a manner as the State may, by law, determine."

Article 23 (1):
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."

(ii) Directive Principles

Article 39:
Certain principles of policy to be followed by the State

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

" .....

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age and strength;

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

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

"The State shall endeavour to provide early childhood care and education for all children until the age of six years."

In addition to the above, the Constitution contains the following Articles under the Directive Principles of State Policy. The Directive Principles are fundamental in the governance of our country and it is the duty of all the organs of the State to apply these principles.

Duty of Parent/Guardian towards the Child

Article 51A(k) on Fundamental Duties states that it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

2. Legislations

Based on the Constitutional provisions and the Directive Principles of State Policy, a number of legislations have been enacted from time to time. The following is the list of such legislations , which aim at elimination of child labour from hazardous industries and regulation of their conditions of employment in other non-hazardous occupations.

- *Factories Act, 1948*
- *Plantation Labour Act, 1951*
- *Merchant Shipping Act, 1951*
- *Mines Act, 1952*
- *Motor Transport Workers Act, 1961*
- *Apprenticeship Act, 1961*
- *Beedi and Cigar Workers (Conditions of Employment) Act, 1966*
- *The Bonded Labour System (Abolition) Act, 1976*
- *Child Labour (Prohibition and Regulation) Act, 1986*

Salient Features of the *Child Labour (Prohibition and Regulation) Act,* 1986:

The Act:

- Prohibits/bans the employment of any person who has not completed his fourteenth year of age in occupations and processes enlisted in Part A and B of the Schedule of the Act.
- Lays down a procedure to decide modifications to the Schedule of banned occupations or processes
- Regulates conditions of work where children are not prohibited from working
- Lays down enhanced penalties for employment of children in violation of the provisions of the Act and other Acts

Section 14 of the Act provides for punishment upto 1 year (minimum being three months) or with fine upto Rs. 20,000/- (minimum being ten thousand) or with both, to one who employs or permits any child to work in contravention of provisions in Section 3.

Children employed in occupations and processes, not banned by the Act are regulated by the following provisions:

- A child shall not be required to work for more than six hours a day which shall be inclusive of his/her half an hour break.
- No child shall be permitted or required to work between 7 p.m and 8 a.m.
- No child shall be required or permitted to work over-time.
- Every child shall get a weekly off.

There is an obligation on the part of the employer to furnish information to the inspector regarding the employment of children. It is mandatory for the employer to maintain a register on this matter.

3. International Safeguards -Convention on the Rights of the Child

India became a party to the Convention on the Rights of the Child, on 11 December 1992. The Convention gives substance to India's concern for the protection of the rights of children in all spheres, including protection from economic exploitation. As a signatory, India is under obligation to take the necessary legislative, administrative, social, and educational measures to ensure the implementation of the Convention.

Besides, India has ratified six ILO (International Labour Organisation) Conventions relating to child labour, three of them as early as the first quarter of the 20th Century. The International Labour Conference adopted a resolution on child labour in 1979. The resolution called for a combination of child labour and measures for humanizing child labour wherever the same cannot be eliminated outright.

The ILO through the Global Technical Co-operation on Child Labour known as the International Programme on the Elimination of Child Labour (IPEC) has been playing an important role in the process of gradual elimination of child labour and protection of children from industrial exploitation. It has focused its attention on five major issues:

1. Prohibition of Child Labour
2. Protecting Child Labour at work
3. Attacking the basic causes of child labour
4. Helping children to adopt to future work
5. Protecting the children of working parents

In June 1999, the ILO adopted the Convention on the Worst Forms of Child Labour. This Convention addresses issues such as rehabilitation and social integration of child labourers.

United Nations International Children's Emergency Fund (UNICEF) acknowledges the importance of child labour prevention and elimination. It accordingly supports Government and civil society in their efforts to redress the needs and rights of all children.

4. National Child Labour Policy

Elimination of child labour demands sustained efforts over a period of time. Enactment of child labour laws, rehabilitation of child labour and preventing entry of children to work should be part of the elimination strategy. Efforts should be made to improve the economic status of their parents through various anti-poverty and employment generation programmes.

The National Child Labour Policy, 1987 includes the following factors:

- Strict enforcement of the provisions of the *Child Labour (Prohibition and Regulation) Act, 1986* and other concerned legislations..
- Rehabilitation of child labour withdrawn from employment.
- Reducing the incidence of child labour progressively
- Providing better and readily accessible education, through formal or non-formal systems of education.
- Improving health conditions for child labourers.
- Providing nutrition through schemes like the “Integrated Child Development Services.”
- Intensifying the anti-poverty programmes such as integrated rural development services.
- Focusing on areas known to have high concentration of child labour
- Adopting a project approach to identify, withdraw and rehabilitate working children.

The National Child Labour Projects (NCLP) launched in 1988 are time bound projects that seek to implement model programmes consisting of key elements such as

- Stepping up the enforcement of the prohibition of child labour
- Providing employment to parents of child labour
- Expanding formal and non-formal education
- Promoting school enrollment through various incentives, such as payment of stipend
- Raising public awareness
- Survey and evaluation

The major activities undertaken under the NCLP are the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend, health care, etc. to children withdrawn from employment. 12 NCLPs were started in Andhra Pradesh (Jaggampet and Markapur), Bihar (Garwah), Madhya Pradesh (Mandasaur), Maharashtra(Thane), Orissa (Sambalpur),

Rajasthan (Jaipur), Tamil Nadu (Sivakasi) and Uttar Pradesh (Varanasi-Mirzapur-Bhadoi, Aligarh and Firozabad).

In order to fulfill the constitutional mandate, a major programme was launched on 15 August 1994 to withdraw children working in hazardous occupations and to rehabilitate them through Special Schools. As a follow up, the Government constituted the National Authority for the Elimination of Child Labour (NAECL) on 26 September 1994. Its aim is

- to formulate policies and programmes for elimination of child labour
- to monitor the progress of programmes, projects and schemes and
- to co-ordinate the implementation of child labour related projects of the concerned Ministries of the Government of India

Currently 100 projects are functioning in the child labour endemic states of the country.

5. Guidelines laid down by the Apex Court to eliminate Child Labour

The Supreme Court in *M.C.Mehta v. State of Tamil Nadu* (AIR 1997 SC 699) has taken certain pragmatic steps towards effective implementation of the policy. They are:

1. Survey for identification of working children.

2. Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions.

3. The offending employer must be asked to pay a compensation of Rs. 20,000/- for every child employed in contravention of the provisions of the Act. The liability of the employer would not cease even if he would disengage the child employed.

4. The sum so collected should be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The Fund shall

form a corpus whose income shall be used only for the concerned child. To generate greater income, the fund can be deposited in a high yielding scheme of any nationalized bank or other public body.

5. As the aforesaid income would not be enough to dissuade the parent/guardian to seek employment of the child, the State owes a duty to discharge its obligation. It should provide a job to an adult member of the family, whose child was employed in a hazardous industry.

6. In cases where it would not be possible to provide a job, the Government would, as its contribution grant, deposit in the Child Labour Rehabilitation-cum-Welfare Fund a sum of Rs. 5000/- for each child employed in a factory or mine or in any other hazardous employment.

7. In either of the cases whether a job is provided to an adult member of the child's family in lieu of the child or not, the child shall not be required to work.

8. In cases where alternative employment could not be made available as aforesaid, the parent/guardian of the concerned child would be paid the income, which would be earned on the corpus of Rs. 25,000/- for each child, every month. The employment given or payment made would cease to be operative if the child would not be sent by the parent /guardian for education.

9. The National Labour Policy announced by the Government of India has already identified some industries for priority action.

10. A district could be the unit of collection so that the executive head of the district keeps a watchful eye on the work of the Inspectors.

11. With respect to non-hazardous jobs, the Inspectors shall have to see that the working hours of the children are not more than four to six hours a day and that they receive education at least for two hours each day. It would also be seen that the entire cost of education is borne by the employer.

The Ministry of Labour is monitoring the implementation of the directions of the Hon'ble Supreme Court.

Role of the National Human Rights Commission

The NHRC is deeply concerned about the employment of child labour in the country. The Commission has observed that even after fifty-seven years of independence, child labour persists in the country. Despite various constitutional provisions, passing of legislations, becoming a party to International Conventions, announcement of a National Child Labour Policy, the constitution of National Authority for the Elimination of Child Labour and the undertaking of National Child Labour Projects, the goal of eradicating child labour remains elusive. Freeing the estimated two million children working in hazardous industries by the year 2000 has not been achieved.

Hence, the Commission focused its attention on the following industries wherefrom rampant reports of child labour were received. These include :

- Bangle/ Glass industry
- Silk industry
- Lock industry
- Stone Quarries
- Brick Kiln
- Diamond Cutting
- Ship-breaking
- Construction work
- Carpet-weaving

The Commission has been monitoring the child labour situation in the country through its Special Rapporteurs, visits by Members, sensitization programmes and workshops, launching projects, interaction with the industry associations and other concerned agencies, co-ordination with the State Governments and NGOs to ensure that adequate steps are taken to eradicate child labour. The Commission is specifically monitoring the carpet belt area in UP, the bangle/glass industry in Ferozabad and silk industry in Karnataka.

Unless the reality of free and compulsory education for all upto the completion of the age of 14 years is realized, the problem of child labour shall continue. To that end the Commission has involved the NGO sector in the non-formal education of child labourers. A number of such schools and training centers are functioning in the districts of the carpet belt. There has also been a distinct improvement in the level of awareness among the general public about child labour issues.

The Commission has been deeply concerned about the employment of children below 14 years as domestic servants by Government employees. It took up the matter with the Central Government and State Governments to amend the *Civil Services (Conduct) Rules* prohibiting such employment. The relevant *Civil Services (Conduct) Rules* have been amended by the Central Government and almost all the State governments to the effect that employment of children below the age of 14 years as domestic servants by Government employees shall be regarded as a misconduct inviting major penalty.

Publication of this booklet on Child Labour under its series 'Know Your Rights' is one more effort of the NHRC to make the public aware of the rights of children, and the denial or violation of such rights implied by child labour.

KNOW YOUR RIGHTS

"I am the child.

All the world waits for my coming.

All the earth watches with interest to see what I shall become.

Civilization hangs in a balance.

For what I am, the world of tomorrow will be.

I am the child.

You hold in your hand my destiny.

You determine, largely, whether I shall succeed or fail.

Give me, I pray you, these things that make for happiness.

Train me, I beg you, that I may be a blessing to the world."

-Mamie Gene Cole

child labour

KNOW YOUR RIGHTS

KNOW YOUR RIGHTS

RIGHTS OF PERSONS WITH DISABILITIES

NHRC

National Human Rights Commission

Rights of Persons with Disabilities

Persons with disability are in fact entitled to the full range of human rights like any other section of people. However, persons with disabilities suffer from a relative "invisibility" and are viewed as "objects" of charity, protection and custodial care rather than subjects of rights.

Definition of Disability

A "Person with Disability" is defined in the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,* 1995 as a person suffering from not less than 40% of any disability as certified by a medical authority. It further defines disability as

(i) blindness
(ii) low vision
(iii) leprosy-cured
(iv) hearing impairment
(v) locomotor disability
(vi) mental retardation
(vii) mental illness

Extent of Disability

According to the United Nations, over 600 million people, or approximately 10 per cent of the world's total population, have a disability of one form or the other. Over two-thirds of them live in developing countries.

In India, a survey conducted by the National Sample Survey Organization in 1991 showed prevalence of disability at the rate of 1.9 per cent. This survey covered visual, hearing, speech and locomotor disability. In the same year a separate sample survey showed that 3 per cent of the population in the age group of 0-14 years suffered from delayed mental development. The average population of persons with disabilities in India is close to 5 per cent. The estimates by Non-Governmental Organizations put this figure at 7 per cent. However, the stigma attached to disability and the tendency to conceal it result in under-reporting.

Denial of Rights to the Disabled

As the United Nations has noted, persons with disability are discriminated against, marginalized and socially excluded in various ways particularly in fields such as education, employment, housing, transport, cultural life and in public places and services. They are denied reasonable accommodation on the basis of disablement. As a result, they are unable to recognize, enjoy and exercise their rights.

Rights based approach to Persons with Disability

Rights of persons with disability are based on international human rights standards and are directed towards promoting and protecting the human rights of persons with disabilities. Strengthening the protection of human rights is also a way to prevent disability.

Constitutional and Legal Provisions

International Human Rights Law is based on the principles of equality, dignity, autonomy and liberty. The Constitution of India has also imbibed the spirit of these values. The Preamble to the Constitution clearly states, "…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 unity and integrity of the Nation…."

Equality

i. Article 14

Under the right to equality, the Constitution of India guarantees equality for all its citizens before law and equal protection of law.

ii. Article 15 and Article 16

These provisions prohibit discrimination on the grounds of "religion, race, caste, sex, place of birth or any of them."

iii. Judicial Provisions

In *Indra Sawhney v. Union of India* (1992 Supp (3) SCC) the Apex Court examined the legality of reservation in favor of the disabled who are not clearly covered under Article 16 of the Constitution. The Court pointed out that "… mere formal declaration of the right would not make unequals equal. To enable all to compete with each other on an equal plane, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the fortunate advantaged. Article 14 and Article 16(1) no doubt would by themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them."

In *Dr. Jagdish Saran & Ors. v. Union of India* (1980 2 SCC 768), Justice Krishna Iyer clarified that even apart from Article 15 (3) and (4), equality is not degraded or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit.

Discrimination

The formal recognition of discrimination on grounds of disability is a recent development. Laws enacted 20 years ago generally did not include disability on the list of prohibited heads of discrimination. For instance, though the Indian Constitution in Article 15 and 16 prohibits discrimination in the matter of employment and access to public facilities on grounds of religion, race, caste, sex and place of birth, it is silent on disability. In fact until 1995 the Service Rules prevented entry of persons with disabilities in higher grades of service. The rule gave the employer authority to force premature retirement in public interest. Often employees who acquire disability during service were either forced out of job or reduced in rank. Their opportunity for career enhancement was suspended forever.

Even in the absence of formal recognition of disability-based discrimination, the Indian Judiciary has been forthcoming in setting aside discriminatory rules. For instance, the rule prescribing physical fitness criteria for entry in the government service disqualified candidates on account of their disability. In *Nandakumar Narayanarao Ghodmare v. State of Maharashtra and Ors.* (1995 6 SCC 720), the Supreme Court directed that the candidate who was rejected because of colour blindness should be

appointed to any of the posts of the Agricultural Class II Service post, other than the 5 out of 35 posts which required perfect vision.

Extra legal safeguards have now been provided in several jurisdictions. The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* has an exclusive chapter titled "Non-Discrimination". Section 45, 46 and 47 clearly enable quasi and judicial bodies to speedily and efficiently dispose cases of discrimination. For example in *Rajbhir Singh v. DTC* (97 2002 DLT 19) the Delhi High Court directed the respondent to "take the petitioner back into service and pay salary from the date when the respondent stopped paying salary in termination of his service." He was reinstated with full back wages and consequential benefits.

State Obligations

The Constitution of India envisages a very positive role of the State towards its disadvantaged citizens. Article 41 enjoins that " 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". However the approach to disability in India has been motivated by charity and viewed as an individual issue. Even the Governments of independent India rely heavily on charitable NGOs to secure basic rights like education, work, shelter and health for persons with disabilities. As a consequence, the entire process of development bypassed people with disabilities.

A distinct self-advocacy movement of people with disabilities that started during the 1970s campaigned for protection and recognition of their human rights. It advocated enactment of a comprehensive legislation having a rights-based approach with special emphasis on social and economic rights. The government recognized the need for such a legislation in 1980. Since the legislative power regarding disability was kept on the State List, the matter could not be pursued. However, Article 253 of the Constitution of India enables the Parliament to override the federal distribution of powers and to give effect to a treaty entered with foreign power or an international body even if the matter of legislation relates to an entry in the State list. With the signing of the Proclamation of Equality and Full Participation of People with Disabilities in Asian and Pacific region, the legislation was enacted by the Parliament in 1995.

Legislations

1. *Disabilities Act, 1995* – A signal Achievement of Disability Movement

The objectives of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* are

- Promoting and ensuring equality and full participation of persons with disabilities and
- Protecting and promoting their economic and social rights.

The Act covers 7 disabilities already mentioned above. The criteria for classification are medical and not based on the social perception of disability.

Further the Act

- Spells out the responsibilities of the various organs of the State.
- Provides policy guidelines.
- Lays down specific provisions for the development of services.
- In case of severe disability and unemployment, lays down programmes for equalizing the opportunity of right to education, work, housing, mobility and public assistance.
- Envisages a Central Coordination Committee and State Coordination Committees representing major development ministries, Members of Parliament, disability NGOs and a woman with disability to execute the mandated responsibilities.

The Act also provides for

- Redressing individual grievances.
- Safeguards to the rights of persons with disabilities.
- Monitoring implementation of disability related laws, rules, regulations.
- Overseeing budget allocated on disability by instituting Chief Commissioner in the Centre and Commissioner for persons with disability in the States.

These quasi-judicial bodies are vested with the powers of a Civil Court.

As a result of this enactment, disability concerns have come into sharp focus. However its weaknesses have also surfaced due to lack of proper implementation. Realizing these weaknesses, the Government constituted a Committee to review the Act. The Committee harmonized views of the disability sector and relevant bodies in its comprehensive report. Unfortunately, no concrete proposal has been moved to the Indian Parliament for carrying out such amendments for plugging the loopholes in the present Act.

2. *Trust Act, 1999*

Certain groups among the disabled are more vulnerable than others. Therefore the enactment of the *National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* aims to fulfill a common demand of families seeking a reliable arrangement for their severely disabled wards. The specific objectives of the Act are:

- To enable and empower persons with disabilities to live as independently and as fully as possible within and as close to the community to which they belong.
- To promote measures for the care and protection of persons with disabilities in the event of death of their parent or guardian.
- To extend support to registered organizations to provide need-based services during the period of crisis in the family of the disabled covered under this Act.

The Act

- mandates the creation of a Local Level Committee comprising District Magistrate along with one representative from a registered organization and one person with a disability. The Committee is vested with the authority to decide upon the applications of legal guardianship.
- provides for the manner in which legal guardians are to be appointed. The conditions of eligibility, the order of eligible applicants, the disqualifications of applicants are contained in Regulations 11-14.
- lays down the duties of the guardian who has to furnish periodic returns

to the LLC about the assets of the ward and their disposal in his hands. Similarly, the Committee too is required to maintain inventory and annual accounts of the property and assets, claims and liabilities submitted by the legal guardians to it.

The overall supervision of this Act is vested with a National Trust Board. The Government has contributed Rs. 100 crores to the trust fund. The interest earned is used in supporting the mandated activities.

3. ***Mental Health Act, 1987***

The *Mental Health Act* is a civil rights legislation that focuses on regulating standards in mental health institutions. Despite the existence of this Act for the protection of the person, property and management of persons covered, until recently many mentally ill persons were consigned to jails. Those living in mental health institutions were no better since the conditions both in prisons and in mental institutions were far below the stipulated standards. The Supreme Court noted the appalling conditions of the mentally ill persons detained in the jails of West Bengal in *Sheela Barse v. Union of India & Anr.* (1993 4 SCC 204) and observed that admittance of non-criminal mentally ill persons in jails is illegal and unconstitutional. In *Chandan Kumar Banik v. State of West Bengal* (1995 Supp. 4 SCC 505) the Supreme Court deplored the inhuman conditions of the mentally ill in a Mental Hospital at Mankundu in the District of Hooghli. The Court ordered for discontinuing the practice of tying up the patients with iron chains and ordered drug treatment for them.

The indifference of State and private authorities caused the tragic death of 26 inmates at Erwadi as they were tied to their beds on the night a fire broke out in August 2001. Following this tragedy, the National Human Rights Commission advised all the Chief Ministers to submit a certificate stating "no persons with mental illness are kept chained in either Government or private institutions". Under Section 12 of the *Protection of Human Rights Act 1993*, the Commission is mandated to visit the Government run mental hospitals to "study the living conditions of the inmates and make recommendations thereon".

In 1997 a project on Quality Assurance in Mental Health Institutions was initiated to analyze the conditions generally prevailing in 37 Government run mental hospitals and departments. The findings of this study (1999)

confirm that mental hospitals in India are still being administered on the custodial model of care with prison like structures, high walls, watch towers, fenced wards and locked cells. The study points out that although the Mental Health Act is in force since 1987, admittances and discharges are still governed by the archaic and inhuman provisions of the *Indian Lunacy Act,* 1912. Percentage of involuntary admissions is high and the provisions of Section 19 permitting admittance under certain special circumstances by a relative or a friend are widely abused. The comprehensive findings of this study along with a set of detailed guidelines for quality assurance in mental health institutions are compiled in a report and have been circulated to all the Health Secretaries in the States.

The NHRC right from its inception has proactively initiated several measures and has been appointed by the Supreme Court to supervise the functioning of a few mental health institutions.

4. ***RCI Act, 1986***

The Rehabilitation Council of India was set up by the Government of India in 1986 to regulate and standardize training policies and programmes for rehabilitation of persons with disabilities. An Act of Parliament in 1993 enhanced the status of the Council to a statutory body with the following aims:

- to standardize training courses for professionals dealing with people with disabilities.
- to prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities.
- to regulate the standards in all training institutions uniformly throughout the country.
- to promote research in rehabilitation and special education.
- to maintain Central Rehabilitation Register for registration of professionals.

The RCI regulates training standards of sixteen categories of rehabilitation workers. The Council promotes training and research initiatives utilizing the experience of specialized as well as mainstream academic institutions.

The National Human Rights Commission focuses on human rights issues of persons with disabilities by integrating their concerns into all aspects of work. The Commission has outlined a broad policy approach and has prioritized 14 areas for intervention with the aim to remove structural inadequacies by encouraging disability inclusive laws, policies and programmes at all levels.

International Norms and Standards on Disability

International initiatives have a positive bearing on the legal protection provided to disabled citizens in India. It has a potential to contribute to the proposed binding convention on disability.In **Resolution 2856 (XXVI)** of 20 December 1971, the General Assembly proclaimed the Declaration on the Rights of Mentally Retarded Persons. According to the Declaration, "the mentally retarded person should enjoy the same rights as other human beings, including the right to proper medical care, economic security, the right to training and rehabilitation, and the right to live with his own family or with foster parents." The Assembly also declared that there should be proper legal safeguards to protect the mentally retarded persons against every form of abuse if it becomes necessary to restrict or deny his or her rights.

1. Declaration on the Rights of Disabled Persons, 1975

The UN Declaration on the Rights of the Disabled Persons, 1975 is a comprehensive instrument which proclaims that "disabled persons have the same civil and political rights as other human beings." The declaration states, "Disabled persons should receive equal treatment and services, which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration." Due to certain inadequacies of content these declarations have not been received enthusiastically by the disability movement.

2. WPA 1981

1981 was the International Year of the Disabled Persons. Its theme was "Full Participation and Equality". The State was held responsible to guarantee enjoyment of full citizenship and fundamental rights by persons with disabilities. To achieve their full participation in all aspects of social and economic life, the UN General Assembly adopted the World Programme of Action in 1982 with "equalization of opportunities" as the theme. To give

recognition to economic, social and cultural rights of persons with disabilities, the period 1983-1993 was observed as the UN Decade of Disabled Persons.

In International Human Rights Law, equality is founded upon non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to the arbitrary denial of opportunities for equal participation. When public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality implies remedying discrimination against groups suffering systematic discrimination in society. It means embracing the notion of positive rights, affirmative action and reasonable accommodation.

3. Standard Rules 1993

The UN Standard Rules on the Equalization of Opportunities for People with Disabilities, 1993 is an instrument based on the principle of material equality. The principle of 'equal rights' in the Standard Rules is described as "the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunities for participation."

The UN Standard Rules, by their very nature, have been recognized as a human rights instrument. In the first operative paragraph of resolution 2000/51, the Human Rights Commission recognizes the UN Standard Rules as an instrument to assess the degree of compliance with human rights standards concerning disabled people. The Commission recognizes that "any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities."

The Standard Rules are classified into four parts:

Part One – "Preconditions for equal participation"

- Awareness raising
- Medical care and treatment

- Rehabilitation
- Support services

Part Two – "Target areas for equal participation" describes the responsibility of society in

- Accessibility
- Education
- Employment
- Income maintenance and social security
- Family life and Personal integrity
- Culture
- Recreation and Sports
- Religion

Part Three – "Implementation measures"

- Information and research
- Policy-making and planning
- Legislation
- Economic Policies
- Co-ordination of work
- Organizations of persons with disabilities
- Personnel training
- National monitoring and evaluation of disability programmes
- Technical and economic cooperation
- International cooperation

Part Four of the Standard Rules lays down a mechanism for monitoring. The Special Rapporteur appointed by the UN monitors the implementation by the States and suggests measures for better implementation of the Rules.

Though eleven years have passed since the adoption of these Standard Rules by the UN General Assembly, their application in countries remains different and uneven. In 1999, WHO (WHO/DAR) in consultation with UN Special Rapporteur on Disability and his panel of experts, developed a questionnaire based on which a study was carried out to assess application of Standard Rules particularly Rule 2 on medical care, Rule 3 on rehabilitation, Rule 4 on support services and Rule 19 on personnel training. According to the study, "the application of Standard Rules requires strengthening in all the four areas of investigation."

4. ICESCR 1966

The Committee on Economic, Social and Cultural Rights under the International Covenant on Economic, Social and Cultural rights (ICESCR) in 1994 assumed the responsibility for disability rights by issuing a **General Comment No 5**, in which the Committee makes an analysis of disability as a human rights issue. The Covenant does not refer explicitly to persons with disabilities. However the requirement contained in Article 2 of the Covenant that the rights enunciated will be exercised without discrimination of any kind based on certain specified grounds or other status, clearly applies to cover persons with disabilities.

To illustrate the relevance of various provisions of the ICESCR, a few Articles can be examined:

Article 6 stipulates that, "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses and accepts."

Article 7 refers to the "right of everyone to the enjoyment of just and favorable conditions of work which ensures adequate remuneration." The concept of reasonable accommodation and barrier free work environment is in fact based on the notion set out in Article 7 of the Covenant. Reasonable accommodation can be defined as "providing or modifying devices, services, or facilities, or changing practices or procedures in order to afford participation on equal terms." Examples of reasonable accommodation include installing a wheelchair ramp and elevators for people with mobility impairments, the introduction of part time work schedules for workers with severe conditions, availability of readers for visual impairments, and sign translation for people with hearing impairments.

Article 11 recognizes that everyone has the "right to an adequate standard of living for himself and his family, including adequate food, clothing and housing." World over this article is violated due to high correlation between disability and poverty. A disproportionate number of disabled children in orphanages, visible presence of maimed, blinded and mentally ill persons amongst beggars are some examples.

Article 15 recognizes the "right of every one to take part in cultural life".

Connectivity and accessibility of places of cultural activities is thus critical for the effective integration of persons with disabilities.

General Comment No.5

The Committee on Economic, Social and Cultural Rights adopted **General Comment No.5** which stresses the meaning of the State party obligations under the ICESCR in the context of disability. It recognizes that "through neglect, ignorance, prejudice and false assumptions as well as through exclusion, distinction or separation, persons with disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, housing, transport, cultural life, and access to public places and services."

With regard to State party obligations vis-à-vis the actions of private parties, it states:

"in the absence of Government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for persons with disabilities, either individually or as a group. In such circumstances it is the responsibility of Governments to step in and take appropriate steps to temper, complement, compensate for, or override the results produced by market forces."

According to **General Comment No.5**, State parties must also ensure that the enjoyment of rights by persons with disabilities is not hampered by third-party actors in the private sphere. Non-public entities, including private employers and private suppliers of goods and services, must be "subject to both non-discrimination and equality norms in relation to persons with disabilities." If State parties fall short of this, "the ability of persons with disabilities to participate in the mainstream of community activities and to realize their full potential as active members of society will be severely and often arbitrarily constrained."

General Comment No.5 notes that the specific measures that State parties have to take in order to implement their obligations in the context of disability are "essentially" the same as those corresponding to any other obligations. They must include "general, as well as specially designed laws,

policies and programmes". They must be developed in cooperation with the representatives of persons with disabilities.

The specific measures needed to realize the rights of persons with disabilities include:

- The need to ascertain, through regular monitoring, the nature and scope of the problems existing within the State
- The need to adopt appropriately tailored policies and programmes to respond to the requirements thus identified
- The need to legislate where necessary and to eliminate any existing discriminatory legislation
- The need to make appropriate budgetary provisions or where necessary seek international cooperation and assistance.

In sum, the philosophy of **General Comment No.5** is geared towards using the ICESCR rights to achieve independence, autonomy and participation. Another significant aspect of **General Comment No.5** is its review of the implications of each ICESCR right for disability.

5. ICCPR 1966

The various civil and political rights contained in the International Covenant on Civil and Political Rights can be classified under four broad categories:

a) Rights that refer to human existence
b) Liberty rights
c) Associational rights
d) Political rights

Article 14 and Article 15 recognize important rights in the context of criminal proceedings such as the right to free hearing, including "to have a free assistance of an interpreter if he cannot understand or speak the language used in court."

Freedom from slavery and servitude mentioned in Article 8 is relevant particularly when children and women are abducted, maimed and disabled to be used for beggary and as domestic and bonded labour.

General Comment No.8 stresses that Article 9, paragraph 1 (the right to liberty and security of person) is applicable to all deprived of liberty, whether in criminal cases or in cases like mental illness, vagrancy, drug addiction, immigration control etc.

Article 25 "establishes the right of everyone to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and be elected at periodic elections by universal suffrage; and to have access, on general terms of equality, to public service in his country." The norms laid down in the International Standards are predominantly protective in nature and do not exclude any individual or class of individuals.

In **General Comment No.8**, the Committee on Human Rights establishes that physical disability can never be a legitimate ground for restricting the right to vote. Neither may any intellectual disability be considered a reason for denying a person the right to vote or hold office. Persons assisting disabled voters should be neutral, their only task being to preserve the independence of the voter. The comment highlights the importance of participation in the political process by persons with disabilities.

6. CRC 1989

Article 2 of the Convention on Rights of the Child (CRC) prohibits any discrimination in respect of the enjoyment of Convention Rights on the ground of disability. However, this is the only Convention which has comprehensive and exclusive provisions regarding rights of the disabled children.

Article 23 of the Convention establishes the rights of a disabled child to effective access and reception of education, training, health care services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development. In paragraph 2 of Article 23, States parties are encouraged and required to ensure assistance to children with disabilities who are eligible to apply for such services.

The Committee on the Rights of the Child has identified four general principles that should guide the implementation of all Convention rights:

a) Non-discrimination

b) Best interests of the child

c) Right to survival and development

d) Right to be heard and to participate.

It is pointed out that "The Committee on the Rights of the Child considers the self-representation and full participation of children with disabilities as central to the fulfillment of their rights under the Convention. Article 12 encourages States Parties to give a face to the invisible and a voice to the unheard, thereby enabling children with disabilities to enjoy a full and decent life in accordance with Article 23. The Committee has expressed its determination to do all it can to encourage governments to prioritize the rights of children with disabilities, and in line with Article 12 to ensure that disabled children participate in devising solutions to their problems."

7. Torture Convention 1984

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is of particular relevance to millions of people with disabilities who are subjected to inhuman and degrading treatment in the institutions meant for their care and development. Mental health institutions, homes for severely and multiply disabled are the breeding grounds of such unlawful practices.

Article 5 of the overarching Universal Declaration of Human Rights and Article 7 of the ICCPR prevent inhuman and degrading treatment including medical treatment without the consent of the individual in question. Countries in the developing world and some in the developed are increasingly routing services through private voluntary organizations. Hence it becomes all the more necessary for the States to regulate standards and working of these institutions to check instances of abuse as States parties are under an obligation to prevent torture (Article 2).

Persons with disabilities who are institutionalized rarely take recourse to legal remedies. This is mainly due to their total dependence for survival on these institutions and State sponsored care providers. Article 4 of the Convention requires each State party to ensure that all acts of torture and criminal offences are covered under the domestic law and their record is maintained category-wise. Reports should, therefore, provide detailed information on criminal laws that prohibit torture. Emphasis should be placed on their applicability to persons with disabilities.

8. CEDAW 1979

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a human rights treaty with the focus on women in general and marginalized and vulnerable women in particular. Disability combined with gender stereotype cause multiple disadvantages. Recognizing this, the treaty monitoring body under this Convention adopted General Recommendation No.18. This urges States Parties to include information on women with disabilities in their periodic reports with respect to their exercise of several rights contained in the Convention. This makes it amply clear that all provisions contained in this Convention are very much applicable to women with disabilities as well. The Treaty Monitoring Body not only analyses the shortcomings in the report but also provides useful suggestions to stimulate appropriate response from the States Parties.

9. Asian and Pacific Decade 1993-2002

The Governments of the ESCAP region proclaimed the Asian and Pacific Decade of Disabled Persons, 1993-2002, by resolution of 48/3 of 23 April 1992, at Beijing. The resolution was intended to strengthen regional cooperation in resolving issues affecting the achievement of the goals of the World Programme of Action concerning Disabled Persons, especially those concerning the full participation and equality of persons with disabilities. The meeting held at Bangkok in June 1995 examined the progress made since the introduction of the decade and adopted 73 targets and 78 recommendations concerning the implementation of the Agenda for Action, including the gender dimensions of implementation. Of the 12 policy areas under the Agenda for Action, the ESCAP has focused its efforts on areas that were not covered by the mandates of other United Nations instruments and bodies. The policy areas include national coordination, legislation,

information (in particular, disability statistics), accessibility, assistive devices and self-help organizations of disabled persons. However despite the achievements of the Decade, persons with disabilities remain the single largest sector of those least-served and most discriminated against in almost all States in the region. Much remains to be done to ensure the full participation and equality of status for persons with disabilities. Therefore, the countries in the region have decided to launch a follow-up Decade 2002-2012, with an aim to create barrier-free rights based society. It is hoped that the extension of the Asian and Pacific Decade of Disabled Persons for another 10 years will complete the achievement of the Decade goal of full participation and equality of people with disabilities.

10. Biwako Millennium Framework 2003-2012

In May 2002, the ESCAP adopted the resolution "Promoting an inclusive, barrier-free and rights-based society for people with disabilities in the Asian and Pacific region in the twenty-first century". The resolution also proclaimed the extension of the Asian and Pacific Decade of Disabled Persons, 1993-2002, for another decade, 2003-2012.

The "Biwako Millennium Framework" outlines issues, action plans and strategies. The seven priority areas include:

(1) Self-help organizations of persons with disabilities
(2) Women with disabilities
(3) Early intervention and education
(4) Training and employment, including self-employment
(5) Access to built environment and public transport
(6) Access to information and communication including ICT
(7) Poverty alleviation through capacity building, social security and sustainable livelihood programme

The next decade will ensure a rights-based approach to protect the civil, cultural, economic, political and social rights of persons with disabilities.

11. ILO Discrimination (Employment & Occupation) Convention 1958

In addition to the UN Human Rights Conventions, the International Labour Organization has developed a number of international conventions relevant to disability. They include:

- ILO Convention No.159 concerning Vocational Rehabilitation and Employment of Disabled Persons
- Convention No. 142 concerning vocational guidance and vocational training in the development of human resources
- Convention No. 168 concerning Employment Promotion and Protection against Unemployment
- Convention No. 102 concerning Minimum Standards of Social Security
- Convention No. 121 concerning Benefits in the case of Employment Injury and related ILO instruments, such as the ILO Code of Practice on Managing Disability at the Workplace.

Of particular note is the ILO Convention No.111, Discrimination (Employment and Occupation) Convention 1958 which defines "discrimination" as:

"any distinction, exclusion or preference" [made on any of the grounds specified in the Convention itself or specified by the State concerned] "which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (for full text see http://www.ilo.org/public/english).

Distinctions in respect of any particular job, based on the inherent requirements of the job, do not constitute discrimination. The Convention also specifies in Article 5 that special measures, including affirmative action, for people with disabilities may be introduced without being prohibited as discrimination against other workers:

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.
2. Any member may, after consultation with representative employers' and workers' organizations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination.

Proposal for Disability Convention

The UN General Assembly in its Resolution 56/168, 2001 recognizes that Governments, UN bodies and NGOs have not been successful in promoting full and effective participation and opportunities for persons with disabilities in economic, social, cultural and political life. Expressing deep concern "about the disadvantages faced by 600 million disabled around the world" the General Assembly passed a resolution to establish an Ad hoc Committee to consider proposal for a comprehensive and integral international Convention taking into account the recommendations of the Commission on Human Rights and the Commission on Social Development.

Contemporary International Law recognizes that all states have a duty under Article 56 of the Charter of the United Nations to ensure respect for and to observe human rights, including the incorporation of human rights standards in their national legislation. The Constitution of India empowers the Government to take necessary measures to honour India's commitment to any international treaty or agreement. In the last 10 years Government has adopted special laws, policies and schemes which are briefly given below.

Endemic Areas and Important Statistics

1. Poverty and Malnourishment

In general, people with disabilities are estimated to make up 15 to 20 percent of the poor in developing countries (UN ESCAP, 2002). Poor families often do not have sufficient income to meet their basic needs. Inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking water combined with poor access to health facilities breed disability. It is estimated that currently 515 million Asians are chronically undernourished, accounting for about two thirds of the world's hungry people (UN ESCAP, 2002). Common micronutrient deficiencies that affect disability include:

- Vitamin A deficiency – blindness
- Vitamin B complex deficiency – beri-beri (inflammation or degeneration of the nerves, digestive system and heart), pellagra (central nervous system and gastro-intestinal disorders, skin inflammation) and anemia
- Vitamin D deficiency – rickets (soft and deformed bones)

- Iodine deficiency – slow growth, learning difficulties, intellectual disabilities, goiter
- Iron deficiency – anaemia, which impedes learning and activity, and is a cause of maternal mortality
- Calcium deficiency – osteoporosis (fragile bones) (ESCAP, 2002b)

Due to lack of food and nutrition security for the poor, about 30 percent of all infants born in India are born weighing less than 2,500 grams, (the WHO cut-off level to determine low birth weight) and thus have a lower chance of survival and high risk of disability (Independent Commission on Health in India, 1997).

2. Crime and Disabilities

Violent crimes underline shortcomings in the social, political and economic arrangements. Such crimes not only leave people with a sense of insecurity and fear but also deprive them of their life and liberty. During 1999, the percentage share of the violent crimes reported in India was 13.5 percent of the total 2,38,081 reported cases under the *Indian Penal Code* (Crime in India 1999). Many children and women are abducted to be used in prostitution, slavery and beggary. The risk of emotional, mental and physical disabilities increase manifold. In the mid nineties, the government of Saudi Arabia repatriated more than 500 maimed Indian children who were used for begging. The case of female domestic workers with amputated finger tips, nose and earlobes also surfaced during the same time. They too were smuggled into Arab countries by powerful mafia gangs operating in various parts of India, Philippines and other developing countries. There are hardly any studies that have analyzed the nexus between disability and crime though at every nook and corner one cannot escape the sight of maimed, blinded and mentally ill persons begging and wandering. Unfortunately, even the law enforcement agencies themselves commit acts of torture and inhuman treatment particularly on persons in detention. Custodial crimes, which include death, rape and disability, have drawn attention of public, media, legislature and human rights organizations. The Bhagalpur blinding case is an illustration of this.

3. Accidents and Disability

According to the Central Bureau of Health Intelligence Report of 1997-98, the number of deaths due to road accidents was 69,800 and railroad

accident deaths were approximately 15,000. An expert in the field, Dr. Leslie G Norman of London estimates that for every road accident death there are 30-40 light injuries and 10-15 serious injuries which may lead to disability. Improvements in vehicle design and medical facilities, as well as stronger enforcement of traffic regulations concerning the compulsory use of seat belts (car use) and helmets (motorcycle use), and restrictions on alcohol consumption and other intoxicants need to be treated more seriously than it has been. Studies estimate that "by 2020, road traffic accidents will be ranked as the third leading cause of disability in the Asian and the Pacific region. Quadriplegia, paraplegia, brain damage and behavioural disorders are some disabilities common among survivors of such accidents".

4. Occupation Hazards and Disability

To maximize profits, production is often located wherever costs are lowest, regulations are loose and workers are least likely to organize for better working conditions and fairer wages. This often results in high rates of accidents, poisoning from toxins, loss of hearing and vision and health deterioration. Occupation-related health problems of workers employed in stone quarrying, leather industry, glasswork, weaving, diamond cutting, hand embroidery etc.; and children employed in the carpet, cracker and match industry, have not received appropriate and sustained attention, as occupation health has not been considered important enough both by the corporates and those responsible to regulate work standards.

Similarly, poor farmers and peasants are very vulnerable to disability as they work for long hours exposed to sunlight, dust and smoke. Amputations, muscular diseases and spinal chord injuries are some common hazards associated with agricultural activities like wheat harvesting, paddy sowing and coconut picking respectively. The efforts to improve the design of agricultural implements have been quite successful in preventing disabilities. However there is no parallel improvement in the primary health system since it lacks the capacity to deal with agricultural accidents which occur at the village level.

5. Employment of the Disabled

Creation of opportunities for gainful employment is a task which governments all around the world perform. The development index is indicative of the employment in a given country. What makes a developed country

different from a developing nation is its capacity to create and maintain unemployment as low as possible and on the other hand, sustain a level of growth which takes care of the employment needs of young adults. According to the 1991 National Sample Survey, there were over 70 lakh persons with disabilities in India in the employable age group. The disability-wise break-up is as follows:

Table 1 Disability-wise break-up of the disabled persons in the employable age group

Type of disability	**Number of persons (in lakhs)**
Locomotor disability	43.87
Visual Disability	10.54
Hearing Disability	12.48
Speech Disability	10.47
Any other physical disability	68.81
Total	**146.17**

The employment scenario regarding persons with Disabilities presents a rather dismal picture. Underemployment and unemployment continue to be rampant among the disabled, despite efforts made to improve employment opportunities for persons with disabilities by the Government of India, State Governments and UT administrations. According to the sample survey, conducted by the NSSO in 1991, the rate of employment among the persons with disabilities in rural areas was 29.1% and in the urban areas 25.2%.

The table below gives classified information:

Table 2 Employment Status of the Disabled (in millions)

Sr.	Status	Rural	Urban	Total
1	Self-Empt. Agriculture	1.65	0.07	1.72
2	Self-Empt. Non-Agricultural	0.52	0.37	0.89
3	Regular Employee	0.25	0.28	0.53
4	Casual Labour	1.18	0.20	1.38
	Total	**3.60**	**0.92**	**4.52**

6. Education

The first school for hearing impaired children was established in Mumbai in 1884 and for the blind at Amritsar in 1887. Between then and now we have not been able to create an educational infrastructure that can cater to the needs of children with disabilities. As a result, more than 80% of them remain uneducated lacking even basic literacy skills. Of the children dropped out in 1991, 43% is said to have acquired disability. This highlights the inadequacies of the education system. The NSSO 1991 yielded 42% rate of education covering blind, hearing, speech and locomotor impaired persons. If 3 percent population of mentally retarded and mentally ill persons is added to 1.9 percent of other four disabilities, the coverage of 42 percent comes down to approximately 20 percent, in fact, even less.

7. Types of Violations

The nature of violations to the rights of persons with disabilities is also reflected in the annual reports of Chief Commissioner for Persons with Disabilities. Subject-wise complaints in the year 2000-2001 was as follows:

Sr. No.	Subject	Percentage
1	Employment	52
2	Education	14
3	Concession/Entitlement	9
4	Harassment	8
5	Housing and Property	4
6	Barrier-Free Environment	2
7	Miscellaneous	12

Despite having a sound legal framework and a plethora of programmes, schemes, rules, regulations etc., corresponding improvements in the circumstances of persons with disabilities are not visible. The rate of illiteracy, unemployment and poverty among persons with disabilities is alarming. Transport, buildings and information systems are designed on the same old standards though the law demands creation of barrier-free facilities. The state governments, local authorities and panchayats have taken little care in fulfilling their obligations under various laws so much so that funds committed by Central Government through a number of schemes have remained grossly underutilized. The recruitment rules and service regulations still have discriminatory provisions. Some improvements could be achieved with court interventions. Fifty five percent of the complaint cases before the Chief Commissioner for persons with disabilities pertain to service matters.

Similarly, the barriers to education are deep-rooted. Many institutions, despite mandatory provision of 3% reservation of seats in educational institutions, denied admission to students on grounds of their disability. The Supreme Court of India in *Rekha Tyagi v. All India Institute of Medical Sciences and Ors.* has given a clear verdict to the academic institutions to provide 3% reservation to students with disabilities according to Section 39 of the *Disabilities Act, 1995.*

International instruments, such as declarations, resolutions, principles, guidelines and rules, are not technically legally binding. They express generally-accepted principles and represent a moral and political commitment

by States. They also can be used as guidelines for States in enacting legislation and formulating policies concerning persons with disabilities.

General policy instruments, such as the outcome documents of world summits and conferences, are applicable to persons with disabilities. These instruments include, for example, the Copenhagen Declaration and Programme of Action adopted at the World Summit for Social Development (6-12 March 1995), and the Millennium Declaration and the Millennium Development Goals adopted at the United National Millennium Summit in September 2000.

Several disability-specific non-binding international instruments have been adopted at the international level. The instruments include:

- Declaration of the Rights of Mentally–Retarded Persons
- Declaration on the Rights of Disabled Persons
- World Programme of Action Concerning Disabled Persons
- Tallinn Guidelines for Action on Human Resources Development in the Field of Disability
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities
- ILO Recommendation concerning Vocational Rehabilitation of the Disabled
- ILO Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons)

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rights of persons with disabilities

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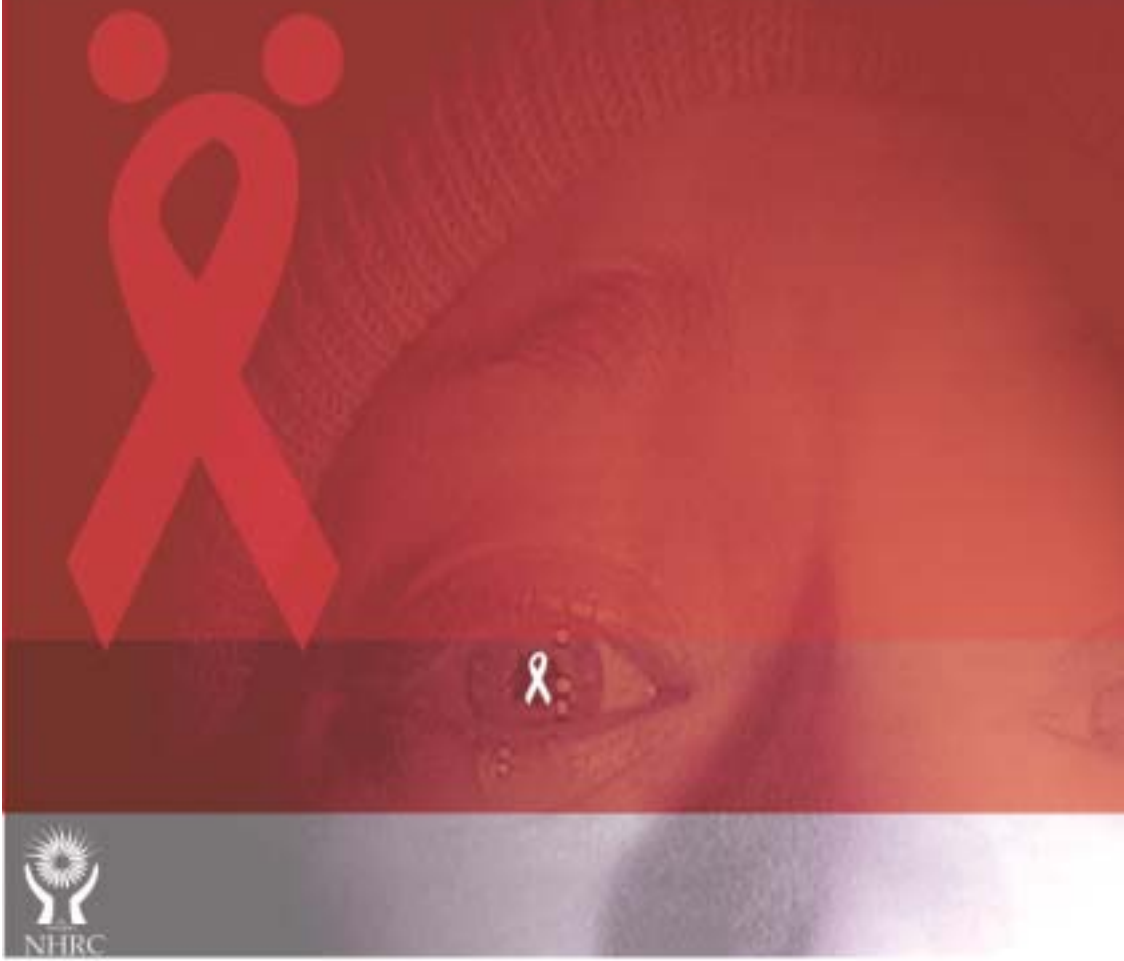
HUMAN RIGHTS AND HIV / AIDS



NHRC

National Human Rights Commission

Human Rights and HIV / AIDS

"Let us resolve to replace stigma with support, fear with hope, silence with solidarity. Let us act on the understanding that this work begins with each and every one of us."

Kofi Annan, UN Secretary General,
World AIDS Day, 1 December 2002

HIV/AIDS is spreading throughout the world at an alarming rate and it has emerged as a serious public health challenge. The stigma, prejudice, fear and silence which surround AIDS make it a difficult problem to address. The widespread abuse of human rights and of fundamental freedoms associated with HIV/AIDS has become a concern in all parts of the world.

What is AIDS?

- **ACQUIRED** -
  must do something to contract it
- **IMMUNO**-
  ability to fight off infectious agents
- **DEFICIENCY**-
  lack of
- **SYNDROME**-
  cluster of symptoms that are characteristic of a disease

H I V is :

- **HUMAN**-
  isolated to the human species
- **IMMUNO- DEFICIENCY**-
  lacking the ability to fight off infectious agents
- **VIRUS**-
  a disease causing agent

Important Features:

- **AIDS** (**A**cquired **I**mmuno-**D**eficiency **S**yndrome) is the last stage of infection with **HIV** (**H**uman **I**mmuno-deficiency **V**irus)

- AIDS can take around 7-10 years to develop after infection with HIV.
- HIV is transmitted through semen and vaginal fluids, infected blood and blood products; and from an infected mother to her baby-before birth, during birth or through breast milk.
- A person who is **HIV positive** has HIV, the virus that causes AIDS. HIV damages the immune system, the part of the body that fights infection. Over time, the immune system becomes very weak. This stage of HIV is called **AIDS**. No one knows for sure when a person with HIV will get AIDS. HIV acts differently in different people. It can take a long time for HIV to make a person sick and many people with HIV stay healthy for years. Understanding what it means to be an HIV positive person helps people with HIV take the best care of themselves and helps others give people with HIV the support they need and deserve.

How does the Infection Spread?

- Infected blood
- Infected needle
- Multiple partners
- From an infected mother to her baby before birth.
- Injectable drug abuse

Statistics

- Unprotected sexual intercourse with a person having the virus accounts for almost 80% of worldwide transmission.
- Injection with contaminated blood and use of non-sterilized equipments account for 3-5% of infections and 5-10% of global infections are due to the reuse of contaminated needles by intravenous drug users.

How is HIV *NOT* Transmitted?

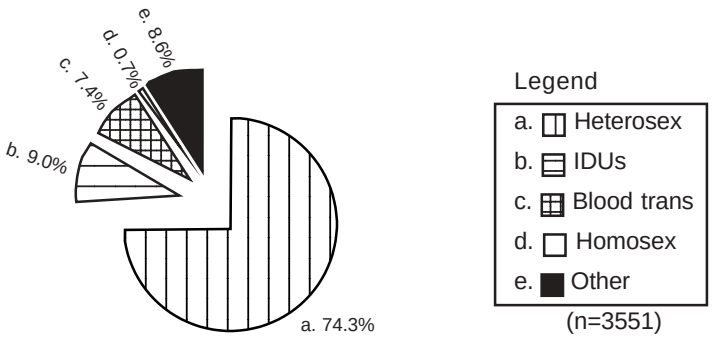
- Through air — sneezing, coughing or breathing.
- Through casual physical contact, such as touching, hugging or kissing.
- Through water — through use of common swimming pools etc.
- Through toilets

- Through mosquitoes
- Through sharing the same utensils, phones etc.

How can HIV Transmissions be Prevented?

- By practising safer sex — keeping to a single partner, use of condoms etc.
- By using clean, sterilized needles and avoiding unnecessary skin piercing
- By never sharing injecting drug equipment
- By receiving blood transfusions only when necessary and only with properly screened blood.

Magnitude of the Problem



Probabale source of Infections in AIDS cases in India

According to UNAIDS data, there were 42 million people in the world living with HIV/AIDS in the year 2002. The major causes of infection of AIDS in India are:

According to the National Aids Control Organization (NACO), the HIV estimates for the year 2002 have been worked out to be 3.82 million HIV infections in the adult population (15-49 years age group in the country). To accommodate an unaccounted number of high-risk groups and other age groups, an upper range of **4.58 million** as HIV infected has been estimated. Thus, in comparison to 3.97 million HIV infections in year 2001, there has been an increase of about 6 lakhs infections (4.58 million) in year

2002. This increase has been noticed primarily from the ANC sites in States of Karnataka, Rajasthan and West Bengal, while in the States of Andhra Pradesh, Tamil Nadu, Gujarat, Bihar, Madhya Pradesh and Rajasthan, the increase has been noticed in STD clinic sites.

Violations of Human Rights of PLWHA (People Living with HIV/AIDS)

- Denial of health care and treatment
- Denial of and/or removal from employment
- Lack of access to and availability of drugs
- Denial of various services including insurance, medical benefits etc.
- Lack of access to information
- Lack of access to legal remedies
- Lack of strong support system including family, spouses, friends and relatives
- Discrimination against children of HIV positive parents including in admission of these children to schools
- Ostracisation of PLWHA from community and family
- Prevention of children from playing, interacting or eating with PLWHA

Ethical Issues Related to HIV/AIDS

- Screening and testing policies, including screening of pregnant women
- Confidentiality and privacy
- Discrimination at the workplace
- Blood safety and related issues
- Access to and delivery of health care
- Bio-medical research (e.g. development of vaccine and drugs and trials; implementation of public health policies in prevention and control)

Human Rights Principles Relevant to HIV/AIDS

Among the human rights principles relevant to HIV/AIDS are:

- The right to non-discrimination, equal protection and equality before the law
- The right to life
- The right to the highest attainable standard of physical and mental health

- The right to liberty and security of person
- The right to freedom of movement
- The right to seek and enjoy asylum
- The right to privacy
- The right to freedom of opinion and expression and the right to freely receive and impart information
- The right to freedom of association
- The right to work
- The right to equal access to education
- The right to an adequate standard of living
- The right to social security, assistance and welfare
- The right to share in scientific advancement and its benefits
- The right to participate in public and cultural life
- The right to be free from torture and cruel, inhuman or degrading treatment.

Statutory Protection

Very few nations in the world—and none in South Asia—have specific statutory laws governing HIV/AIDS or ensuring protections to PLWHA. Fundamental rights guaranteed by national constitutions are, therefore, the prime source of law in South Asia. However, there are also customary and personal laws, particularly in South Asia, that determine the rights of individuals, especially women. Apart from constitutional guarantees, policies and guidelines on HIV/AIDS drawn up by national governments often become the prime basis on which the rights of PLWHA are defined. However, in India, governmental policies/guidelines cannot be enforced by the courts, though many rights of PLWHA are defined through court judgments as India is governed by the system of English common law.

HIV/AIDS Related Litigation

Apart from the United States and Australia, the highest number of HIV/AIDS related litigation has perhaps taken place in India. In 1997, the *Lawyers Collective* challenged the termination of the services of a worker on the ground of being HIV-positive though the person was otherwise functionally healthy. In a landmark judgement of the Mumbai High Court, the worker was reinstated and paid back wages. More importantly, the *Collective* was able to obtain an order of suppression of identity because of which the HIV-positive person could sue under a pseudonym. A study of 130 cases handled

by the *Lawyers Collective* between 1998 and 2001 found that the most important legal issue for men related to employment. In the case of women, the major problem related to maintenance, custody of children and property rights (such as matrimonial or joint property rights). An increase in the number of divorce cases was also noted. It has been suggested that women remain vulnerable within the institution of marriage due to the unjust gender construction of sexuality in various Indian laws.

Excerpt from the National Aids Prevention and Control Policy

HIV/AIDS and Human Rights

The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS. Public health interest does not conflict with human rights. It has been recognised that when human rights are protected, fewer people become infected and those living with HIV/AIDS and their families can better cope with HIV/AIDS. Government recognises that without the protection of human rights of people who are vulnerable and afflicted with HIV/AIDS, the response to HIV/AIDS epidemic will remain incomplete. Government will adopt the following measures to implement an effective rights based response.

(i) Government will review and reform criminal laws and correctional system to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

(ii) Government will strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV/AIDS and people with disabilities from discrimination in both the public and private sectors, ensure privacy, confidentiality and ethics in research involving human subjects, emphasize education and conciliation and provide for speedy and effective administrative and civil remedies.

(iii) Government will ensure widespread availability of qualitative prevention measures and services, adequate HIV prevention and care information and services.

(iv) Government will ensure support services that will educate people affected by HIV/AIDS about their rights, provide legal services to enforce these rights and develop expertise on HIV related legal issues.

(v) Government will promote distribution of creative, educational, training and media programmes explicitly designed to change the attitude of community towards discrimination and stigmatization associated with HIV/AIDS.

(vi) Government will, in collaboration with and through the community, promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

(vii) Government will co-operate with all relevant programmes and agencies of the United Nations System, including UNAIDS, to share knowledge and experience concerning HIV related human rights issues and would ensure effective mechanisms to protect human rights in the context of HIV/AIDS at international level.

International Human Rights Framework

The Universal Declaration of Human Rights has been recognised as the Magna Carta of human rights all over the world. The basic tenets of this declaration are the right to liberty, security and freedom of movement, the right to work, the right to education, the right to social security and services, the right to equality — equal protection before the law, the right to marriage and family and the right to health.

International human rights have been further codified in a number of legally binding international covenants and declarations such as the following:·

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1965)
- International Covenant on Civil and Political Rights (ICCPR-1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR-1966)

- Convention on the Elimination of All forms of Discrimination Against Women (CEDAW-1979)
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT – 1984)
- Convention on the Rights of the Child (CRC-1989)

International human rights instruments play an important role in respect of HIV/AIDS and human rights, since their norms may guide the establishment of procedural, institutional and social mechanisms to counter the HIV/AIDS epidemic.

Two prominent HIV/AIDS-specific international agreements are the Declaration of Commitment passed at the United Nations General Assembly Special Session on HIV/AIDS (UNGASS), June 2001 and the International Guidelines of HIV/AIDS, 1996.

International Guidelines on HIV/AIDS and Human Rights

In September 1996, the Second International Consultation on HIV/AIDS and Human Rights, convened by UNAIDS and the Office of the UN High Commissioner for Human Rights, led to the formulation of the *International Guidelines on HIV/AIDS and Human Rights.* The Guidelines address multi-sectoral responsibilities and accountability, including improving the roles of the government and private sector. In addition, they stress the duty of the States to engage in law reform and identify legal obstacles so as to form an effective strategy of HIV/AIDS prevention and care.

Guideline 1: States should establish an effective national framework for their response to HIV/AIDS which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities across all branches of Government.

Guideline 2: States should ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation and that community organisations are enabled to carry out their activities.

Guideline 3: States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS, that

their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations.

Guideline 4: States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.

Guideline 5: States should enact or strengthen anti-discrimination and other protective laws that protect people living with HIV/AIDS from discrimination in both the public and private sectors, ensure privacy, confidentiality and ethics in research involving human subjects, emphasise education and conciliation, and provide for speedy and effective administrative and civil remedies.

Guideline 6: States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread, sustained and equal availability of qualitative prevention measures and services, adequate HIV prevention, care and information, and safe and effective medication at an affordable price. States should take such measures at both domestic and international levels, with particular attention to vulnerable individuals and populations.

Guideline 7: States should implement and support legal support services that will educate people affected by HIV/AIDS about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilise means of protection in addition to the courts, such as offices of ministries of justice, ombudspersons, health complaint units and human rights commissions.

Guideline 8: States should, in collaboration with and through the community, promote a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups.

Guideline 9: States should promote the wide and ongoing distribution of creative education, training and media programmes explicitly designed to change attitudes of discrimination and stigma associated with HIV/AIDS.

Guideline 10: States should ensure that government and private sectors develop codes of conduct regarding HIV/AIDS that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes.

Guideline 11: States should ensure monitoring and enforcement mechanisms to guarantee the protection of HIV-related human rights, including those of people living with HIV/AIDS, their families and communities.

Guideline 12: States should cooperate through all relevant programmes and agencies of the United Nations system, including UNAIDS, to share knowledge and experience concerning HIV-related human rights issues. They should ensure effective mechanisms to protect human rights in the context of HIV/AIDS at the international level.

United Nations Declaration of Commitment

In June 2001, Heads of State and Representatives of Governments of 189 nations met at the United Nations General Assembly Special Session on HIV/AIDS (UNGASS) and a Declaration of Commitment was adopted by the delegates. The UNGASS Declaration of Commitment provides a framework for an expanded response to the global HIV/AIDS epidemic. The emphasis of Declaration of Commitment is on a multi-sectoral approach. Within the Declaration, specific commitments are made in the areas of

- enhanced leadership
- prevention, care, support and treatment
- protecting human rights, particularly those of PLWHA
- reducing vulnerability, especially of women
- assisting children who have been orphaned and made vulnerable by HIV/AIDS
- alleviating the social and economic impact of HIV/AIDS
- further research and development
- addressing HIV/AIDS in conflict zones and disaster-affected regions
- ensuring new and sustained resources
- and maintaining the momentum and monitoring the progress of responses.

Initiatives Taken by the National Human Rights Commission to Protect Human Rights of those Affected / Infected by HIV/AIDS

- The Commission has taken up a number of individual cases relating to discrimination faced by persons affected / infected by HIV/AIDS with regard to access to medical treatment facilities and education.
- In a recent instance, the Commission's intervention has secured proper medical treatment to an AIDS patient at a Government Hospital in Delhi. The unemployed HIV positive patient had complained to the Commission on 18 September 2003 that he had been denied proper treatment by Government and non-Government hospitals in Delhi. The Commission pursued the case with the hospitals concerned. As a result, the patient is now being given proper medical treatment. In the light of this case, the Commission has directed that in medical cases dealing with HIV positive patients, hospitals should offer proper treatment without the poor patients having to approach the Commission.
- In addition to individual complaints, the Commission in partnership with other key agencies organized the National Conference on Human Rights and HIV/AIDS in New Delhi in November 2000. Based on the deliberations of the National Conference, systemic recommendations on various aspects of 'Human Rights & HIV/AIDS' were sent to the concerned authorities in the Central Government and in various States.
- The Commission has mounted a multi-media campaign to disseminate information on the Human rights and HIV/AIDS to various target groups. The Report on the National Conference on Human Rights and HIV/AIDS was sent to the concerned authorities in all States and in the Centre, NGOs and other key stake-holders. It has also been placed on the Commission's website. This booklet is yet another attempt in this direction. Efforts are on to produce short duration film entitled 'HIV/AIDS – Myth and Reality' from a Human Rights perspective in partnership with Doordarshan.

Recommendations of the National Conference on Human Rights and HIV/AIDS.

This Conference was organized by the National Human Rights Commission in Partnership with the National AIDS Control Organisation,

the *Lawyers Collective*, the UN Children's Fund and the UN Joint Programme on HIV/AIDS in New Delhi on 24-25 November 2000.

The recommendations emerging from the group discussions are presented as a series of ***action points*** that seek to feed into the response to HIV/AIDS both on national and State levels, and in reference to all partners, including the international and domestic non-governmental organisations, foreign governments and multilateral agencies, credit institutions, the business community/ private sector, employers' and workers' associations, religious associations and communities.

Another purpose of the ***action points*** is to complement the International Guidelines on HIV/AIDS and Human Rights with practical solutions in the Indian context.

1. Consent and Testing

- All staff of testing centres and hospitals, both in public and private sector should be trained and sensitised, on the added value of the right of any person or patient to make an informed decision about consenting to test for HIV. Further the staff should be sensitised on universal precautions and provided with an appropriate infrastructure and a conducive environment which can enable them to respect the right of any person or patient to decide whether to test for HIV or not. This right to self-autonomy must be combined with the provision of the best possible services of pre-test and post-test counselling.
- Persons detected at routine HIV screening at blood banks, should be referred to counselling centres at nearby health care facilities, for further evaluation and advice.
- The physical environment in which counselling and testing is carried out needs to be conducive to prepare HIV positive people physically, mentally and with accurate information on how to 'live positively'. An important component of the enabling environment is sufficient time to internalise and consider the counselling and information provided and to make an informed decision on consent to testing.
- Official ethical guidelines and a comprehensive protocol should be developed on how to counsel and best protect the rights of the people who according to current legislation or the practice of diminished

authority may not have legal or social autonomy to provide or withhold their consent. This would include children, mentally disadvantaged persons, prisoners, refugees, and special ethnic groups.

- A comprehensive protocol on informed consent and counselling should be developed and be applicable in all medical interventions including HIV/AIDS. It needs to include testing facilities and processes in normal hospital setting, emergency setting and voluntary testing that take into consideration the window period. Although the counselling offered aims to advise testing for those who might feel they have been engaging in unsafe practices, the right to refuse testing must be respected.
- The availability of and/or access to voluntary testing and counselling facilities needs to be increased throughout India, including rural/remote areas, in an immediate or phased manner within previously defined and agreed timelines.
- Guidelines for the written consent procedures in the case of HIV/AIDS research need to be explored and developed.

The right to self-autonomy is a positive right to protect yourself

Protecting the rights of the infected, protects the rights of the non-infected

2. Confidentiality

- Train and sensitise all staff in testing settings, blood banks, and care and support settings, both in public and private sector; on the right of any person or patient to enjoy privacy and decide with whom medical records are to be shared
- Explore innovative and practical ways to implement respect for confidentiality in different settings: location for disclosure of diagnosis, specific procedures for the handling of medical journals and correspondence, reporting procedures, and confidential disclosure of status without the presence and pressure of family members, which is particularly relevant to infected women.
- The legal framework, administrative procedures, and professional norms should be revised to ensure enabling environments, which foster and respect confidentiality.

- Develop guidelines/regulations for beneficial disclosure of testing results. Disclosure without consent should only be permitted in exceptional circumstances defined by law.

3. Discrimination in Health Care

- Train and sensitise care providers and patients on their respective rights in the context of HIV/AIDS, and combine it with training on universal precautions and with the supply of means of protection including Post Exposure Prophylaxis (PEP) and essential drugs for all health care settings. Include to a greater extent trained and sensitised health care workers as trainers and role models to other health care workers. Information on HIV/AIDS should be available at all health care institutions for the public as well as for the staff, and should be most user-friendly.
- Implement stigma reduction programmes and campaigns among health care professionals that prohibit isolation of HIV positive patients, provide appropriately prescribed treatment of opportunistic infections, and offer standard procedure for the protection of confidentiality. Include to a greater extent people living with HIV/AIDS in the design of stigma reducing campaigns, awareness programmes and care and support services.
- Develop anti-discrimination legislation that practically enables protection of the rights of health care workers and patients, and that makes both the public and the private sectors accountable.
- Establish a multi-sectoral consultative body on HIV/AIDS to provide advice and dissemination of information to health care workers.

4. Discrimination in Employment

- Adoption of national and State anti-discrimination legislation that should apply equally to both the public and private sectors and should prohibit discrimination in relation to work. This should include prohibition of pre-employment HIV testing, routine health checkups with mandatory HIV testing, reasonable accommodation, HIV friendly sickness schemes, entitlements, regulation on subsidised treatment costs, and compassionate employment.

- Train and sensitise law enforcement authorities or other authorities/ sections of the community that might be closely connected with the workplace, employers/corporate leaders and employees/workers at formal and informal work places, and expand the awareness programmes to the surrounding communities on the issues of HIV/ AIDS, stigma and discrimination, leading to adoption of private and public corporate regulations on HIV/AIDS.
- Raise awareness about the existing CII policy on HIV/AIDS and training in legal literacy related to both HIV/AIDS in the workplace as well as other work place regulations in force. Media could be of great use to such a campaign.
- Commission an investigation on the anticipated costs for large and small Indian companies in the context of HIV, to prepare employers and workers in dealing with the consequences of HIV/AIDS.
- Introduce affirmative action/positive discrimination in the form of insurance and health care benefits and introduce medical insurance schemes to cover HIV positive employees.
- Increase focus on workplaces with special vulnerabilities.
- Introduce interventions training and sensitisation programmes within the armed forces, and design training and sensitisation programmes that are child- youth- and women friendly to be used in the workplaces where they are represented.

5. Women in Vulnerable Environments

- Effectively share accurate information on HIV (including transmission modes, sexually transmitted diseases (STD), preventive and curable aspects, treatment, drugs and counselling) with different categories of women in varied innovative, culturally adapted ways all over India.
- Adopt legal changes to empower women for equality in areas such as property rights, domestic violence and marital rape, and protect the right to association for any groups of women working for collective interests.
- The rights of women to provide or withhold informed consent, for HIV testing, must be protected. Social barriers that limit the free exercise

of such a right by women must be overcome through appropriate educational and administrative measures.

- All pregnant women should be provided an opportunity to have an HIV test, since vertical transmission of HIV can be effectively stopped by the use of low cost drugs in pregnant women who test positive. Women, who test positive for HIV, during pregnancy, should be offered such treatment.
- Start alternate media communication programmes to reach out to as many groups of women as possible on the issue of empowerment of girls and women and elimination of misconceptions, myths and stereotyping related to male and female sexuality. Remove silence about sexuality in the development of policies, guidelines, project management and programming as well as within prevention messages.
- Increase programmes directed at informing and involving men in the response to HIV/AIDS by opening up discussion on sexuality and gender differences and challenging cultures of shame and blame.

6. Children and Young People

- Ensure that the response to children and young people is shaped and driven by their rights guaranteed under the Child Rights Convention, their overall health needs as well as health education requirements.
- Train government officials, policy-makers, and healthcare providers to fully familiarise them with the contents of the CRC.
- Create innovative mechanisms to inform children and youth on safe sex and other sexual health issues and ensure that such information is related to their cultural context and age groups.
- Extensively use mass media and the education system to disseminate relevant information. The information and advocacy campaign should be subsidised by the Government.
- Redesign the health care services, including contact points/ counselling services, to become more child and youth friendly, and accessible.
- The limitations of the legislation related to children and young people need to be addressed. For instance, the *Juvenile Justice Act* (JJA)

should be revised to facilitate the shift to alternate methods of providing non-custodial care. A law covering sexual abuse of boys and girls should be adopted. Legal remedies need to be made accessible to children and youth.

- Develop a clear policy on how young people wishing to go through an HIV test can do so voluntarily and without breach of confidentiality vis-à-vis legal guardians or others.

7. People Living with or Affected by HIV/AIDS (PLWHA)

- Formulate institutional guidelines with standards placing the issues of PLWHA in a larger framework.
- Commission a study on the WTO regime post 2004. Lobby with the UN agencies, including the OHCHR to work for affordable drugs, and lobby towards Indian capacity building and opportunities for domestic drug manufacturing. Organise a workshop on WTO and TRIPS with reference to the issue of future access to drugs and anti-retrovirals.
- Increase legal literacy among the PLWHA and communities by community training programmes and integration of legal literacy messages in prevention messages. Ensure access to legal remedy in case of violations of the rights guaranteed.
- Review information, education and communication (IEC) strategies with the aim of reducing stigma while preventing HIV/AIDS. For this purpose, explore the role of public broadcasting companies, and introduce tax relief for private broadcasting channels to allow public broadcasting on issues related to HIV/AIDS. Train and sensitise the media through workshops. Lobby for the inclusion of HIV/AIDS issues in the Right to Information Bill.
- Immediately review legislation that impedes interventions (such as Section 377 of the *Indian Penal Code*), as well as feasible anti-discrimination legislation, health legislation and disability legislation to be more supportive to people living with HIV/AIDS, prevention, care and support initiatives. Include HIV/AIDS issues in the Right to Information Bill. Introduce affirmative action for HIV positive people in the employment sector.

8. Marginalised Populations

- Revise and reformulate laws and processes (such as Section 377 of the *Indian Penal Code* and the *NDPS Act*) to enable the empowerment of marginalised populations and reach them with HIV/AIDS prevention messages as well as care and support mechanisms.
- The revision of the legislation must seek to mitigate the socio-economic factors that cause people's marginalisation as well as unsafe practices.
- Legalise any sexual activities undertaken with consent between adults, and in connection with this adopt a clearly defined age for sexual consent.
- Legitimise and expand innovative harm reduction programmes to reduce harmful practices including needle exchange and unsafe sexual activities, and expand condom distribution among all marginalised populations.

9. General

- A comprehensive strategy to prevent and control HIV-AIDS should combine a population based approach of education and awareness enhancement with strategies for early detection and effective protection of persons at high risk.
- An Action Plan for implementation of these recommendations should be developed with focus on specific areas of action and prioritised sequencing of recommendations for early implementation within each of them. This may be done through a working group comprising representatives from the NHRC, Ministry of Health and Family Welfare, Government of India and UNAIDS who will identify the pathways of action and the agencies for implementation

10. Recommendations sent by NHRC to all States/Union Territories on 25 November 2003

(a) Public health action should focus on preventing mother to child transmission of the virus and measures to achieve this objective should receive prioritized attention from health policy makers at both central and state levels and

(b) A wider programme for the prevention of HIV/AIDS should conform to the recommendations made by NHRC as a follow-up of the National Consultation jointly organized by the NHRC and UNAIDS in November 2000.

11. Recommendations Sent by NHRC to all States / UTs on 6th September, 2004.

1. Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from attending schools
2. Address school fees and related costs that keep children, especially girls, from going to school
3. Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS
4. Provide care and protection to children whose parents are unable to care for them due to HIV/AIDS. Institutional arrangements must be made for extending medical aid to such children. [Hospitals and medical professionals should not be allowed to turn away people who are HIV +ve from being treated.]

Conclusion

The experts who gathered at the Second International Consultation on HIV/AIDS and Human Rights, 1996 recognized the following:

(i) The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS and to ensure an effective, rights-based response to HIV/AIDS. An effective response requires the implementation of all human rights in accordance with existing international human rights standards.

(ii) A rights-based, effective response to the HIV/AIDS epidemic involves establishing appropriate governmental institutional responsibilities, implementing law reform and support services and promoting a supportive environment for groups vulnerable to HIV/AIDS and those living with HIV/AIDS.

For further information:

National Aids Control Organizations website www.naco.nic.in

National Aids Prevention and Control Policy, NACO, Ministry of Health and Family Welfare, Government of India

HIV/AIDS and Human Rights - International Guidelines — United Nations, 1998

Regional Human Development Report – HIV/AIDS and Development in South Asia, 2003

Report on National Conference on Human Rights and HIV/AIDS, 24-25 November 2000, New Delhi.

KNOW YOUR RIGHTS

human rights and hiv / aids

KNOW YOUR RIGHTS

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KNOW YOUR RIGHTS

INTERNATIONAL HUMAN RIGHTS CONVENTIONS

NHRC

National Human Rights Commission

International Human Rights Conventions

What are Human Rights?

Human rights are commonly understood as those rights which are inherent to the human being. Every human being is entitled to enjoy his or her human rights without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human rights are legally guaranteed by human rights law. This protects individuals and groups against actions which interfere with fundamental freedoms and human dignity. They are expressed in treaties, customary International Law, bodies of principles and other sources of law. Human rights law places an obligation on States to act in a particular way and prohibits States from engaging in specified activities. However the law does not establish human rights since they are inherent entitlements, which come to every person as a consequence of being human. Treaties and other sources of law generally serve to formally protect the rights of individuals and groups from actions or abandonment of actions by Governments, which interfere with the enjoyment of human rights.

Important Characteristics of Human Rights

- Respect for the dignity and worth of each person
- Universality – they are applied equally and without discrimination to anyone
- Human rights are indivisible and inalienable. They cannot be taken away except in specific situations. However, the right to liberty can be restricted if a person is found guilty of a crime by a court of law.
- Human rights are interrelated and interdependent. The violation of one right will often affect several other rights.

International Human Rights Law

"Inherent human rights" are formally expressed through *International Human Rights Law*. A series of international human rights treaties and other instruments have emerged since 1945 conferring a legal form on inherent human rights. The United Nations provided an ideal forum for the development and adoption of international human rights instruments.

International Human Rights Law consists mainly of treaties, customs, declarations, guidelines and principles.

Treaties

A treaty is an agreement by States to be bound by particular rules. International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements. A treaty is legally binding on those States which have consented to be bound by the provisions of the treaty; in other words they are “party” to the treaty.

The full body of international human rights instruments consists of more than 100 treaties, declarations, guidelines, recommendations and principles, which together set out international human rights standards. However, many other international human rights instruments adopted by or under the aegis of the United Nations define specific rights, set out the rights of particular groups and regulate conduct to protect human rights. They have been categorised among other things under prevention of discrimination, rights of women, rights of the child, slavery and human rights in the administration of justice. The full list can be seen on the website, www.unhchr.ch/html/intinst.htm.

State Responsibility for Human Rights

The obligation to protect, promote and ensure the enjoyment of human rights is the prime responsibility of the States. Many human rights are owed by States to all the people within their territories, while certain human rights are owed by a State to particular groups of people: for example, the right to vote in elections is only owed to citizens of a State. State responsibilities include the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory. Under international law, the enjoyment of certain rights can be restricted in specific circumstances.

UN Charter

The members of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. They have expressed

their determination to promote social progress and better standards of life in larger freedom.

1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted on 10 December 1948. This was the first step towards the codification and progressive development of international human rights law. In the 56 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, when taken together, constitute international human rights standards.

The Universal Declaration of Human Rights consists of a Preamble and 30 Articles. It sets out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind. The Universal Declaration recognises that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. It recognises fundamental rights which are inherent to every man, woman and child. It includes

- 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

2. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) addresses the State's 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,

- the right to self-determination, 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, inhuman and degrading treatment or punishment
- freedom from slavery, forced labour, and arbitrary arrest or detention
- the right to a fair and prompt trial
- 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 recognised 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.

As of 2 November 2003, 151 States are party to this Covenant.

i. Optional Protocol I to ICCPR

The Optional Protocol I to the International Covenant on Civil and Political Rights establishes the procedure for dealing with communications (or complaints) of individuals claiming to be victims of violations of any of the rights set out in the Covenant.

The Optional Protocol I to the ICCPR provides States Parties with the option to recognise the additional competence of the Human Rights Committee in receiving and examining communications from individuals. It allows individuals or a group of individuals who have exhausted local remedies to petition the Committee directly about alleged violations of the Covenant by their Governments.

Under the Optional Protocol, the Committee's final decisions are akin to judgements, but are called "Views". Of more than 930 registered

cases, the Committee has concluded 339 by the adoption of Views, and found violations of the Covenant in 261 of them. As a direct result of the Committee's views, States Parties have commuted death sentences, released prisoners, paid compensation to victims and changed their legislation. The Committee has also established a follow-up procedure and conducts visits to States Parties to assist them in the implementation of the Committee's Views.

As of 2 November 2003, 104 States are party to this Optional Protocol.

ii. Optional Protocol II to ICCPR

The Optional Protocol II to the ICCPR envisages the abolition of the death penalty.

Important provisions of the Second Optional Protocol include the disallowance of reservations, except reservations concerning the application of the death penalty in time of war for most crimes of military nature committed during wartime.

States Parties are required to include in the reports to the Human Rights Committee information on the measures that they have adopted to give effect to the Second Optional Protocol.

Under the Second Optional Protocol, the Human Rights Committee is also conferred competence under the First Optional Protocol to receive and consider communications from individuals concerning the provisions of the Second Optional Protocol.

As of 2 November 2003, 50 States are party to this Optional Protocol.

3. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR was adopted by the General Assembly in 1966 and entered into force in January 1976.

The Covenant embodies some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to

- work in just and favourable conditions
- social protection
- adequate standard of living including clothing, food and housing
- the highest attainable standards of physical and mental health
- education and
- the enjoyment of the benefits of cultural freedom and scientific progress.

Significantly, Article 2 outlines the legal obligations, which are incumbent upon State 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 realisation of the rights recognised 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 of 2 November 2003, 148 States are party to the ICESCR.

4. International Convention on the Elimination of All Forms of Racial Discrimination

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 term “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.”

Parties to the Convention agree

- to eliminate discrimination in the enjoyment of civil, political, economic, social and cultural rights and to provide effective remedies against any acts of racial discrimination through national tribunals and State institutions.
- not to engage in acts or practices of racial discrimination against individuals, groups of persons or institutions and to ensure that public authorities and institutions do likewise;
- not to sponsor, defend or support racial discrimination by persons or organisations;
- to review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination;
- to prohibit and put a stop to racial discrimination by persons, groups and organisations;
- to encourage integration or multi-racial organisations, movements and other means of eliminating barriers between races, as well as to discourage anything which tends to strengthen racial divisiveness.

The Convention contains a long list of rights and freedoms in the enjoyment of which racial discrimination shall be prohibited and eliminated. The list includes certain rights not expressly contained in the Universal Declaration of Human Rights, such as the right to inherit and the right of access to any place of service intended for use by the general public.

The Committee on the Elimination of Racial Discrimination was established by the Convention to ensure that States Parties fulfil their obligations.

As of 2 November 2003, 169 States were parties to the Convention.

5. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

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. It is the most comprehensive treaty on women's human

rights, establishing legally binding obligations to end discrimination. Often described as the International Bill of Rights for Women, the Convention provides for equality between women and men in the enjoyment of civil, political, economic, social and cultural rights. The Convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to marriage, family life, sexual exploitation and participation in public life.

States Parties are required to end all forms of discrimination against women and to ensure their equality with men in political and public life with regard to nationality, education, employment, health and economic and social benefits. States are required to take account of problems specific to women in rural areas, and their special roles in the economic survival of the family. The Convention is the only human rights treaty to affirm the reproductive rights of women.

Article 17 of the Convention establishes the Committee on the Elimination of Discrimination against Women to oversee the implementation of its provisions.

As of 2 November 2003, 174 States are party to the Convention.

Optional Protocol to CEDAW

The objective of the Optional Protocol to the CEDAW is to allow individuals or groups of individuals who have exhausted national remedies to petition the committee directly about alleged violations of the Convention by their Governments. The Optional Protocol also permits the Committee to conduct enquiries into grave or systematic violations of the Convention in countries that are parties to the Convention and to the Optional Protocol.

States Parties to the Optional Protocol undertake to make the Convention and the Protocol widely known and to facilitate access to information about the views and recommendations of the Committee. They are also required to take all appropriate measures to ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation when they take advantage of the Protocol's procedure or provide information associated with this procedure. States, which ratify or accede to the Optional Protocol, may not enter reservations to its terms, but they can opt out of the inquiry procedure.

As of 2 November 2003, 53 States are parties to the Optional Protocol.

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

On 10 December 1984 the General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This was a significant step towards combating 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 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. More specifically, the Convention requires States Parties to take preventive action against torture such as the criminalisation of acts of torture and the establishment of laws and regulations to promote respect for human rights among its public servants for both the victim and the accused.

The implementation of the Convention is monitored by the Committee against Torture. As of 2 November 2003, 133 States are parties to the Convention.

7. Convention on the Rights of the Child

The Convention is the principal children's treaty encompassing a full range of civil, political, economic, social and cultural rights. The Convention aims at protecting children from discrimination, neglect and abuse. It grants and provides for the implementation of rights for children both in times of peace and during armed conflict.

The Convention embodies four general principles for guiding the implementation of child rights:

1. Non-discrimination ensuring equality of opportunity.
2. When the authorities of a State take decisions which affect children, they must give prime consideration to the best interests of the child.
3. The right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development.
4. 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's 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 of 2 November 2003, an unprecedented 192 States are parties to the Convention.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

The objective of the Optional Protocol is to seek limits on the use of children in armed conflict and, particularly, to raise the minimum age limit for recruitment and to limit the actual participation of persons under 18 years in hostilities.

The Optional Protocol

- prohibits the recruitment of individuals under 18 years of age by non-State actors.

- imposes an obligation upon States to raise the minimum age of recruitment above the age set by the Convention on the Rights of the Child.
- establishes an obligation upon States to take all feasible measures to prevent the direct participation in hostilities by individuals under the age of 18.
- requires States to establish safeguards relative to the voluntary recruitment of individuals under the age of 18.
- sets forth an obligation upon States to report to the Committee on the Rights of the Child on its implementation.

As of 2 November 2003, 57 States are parties to the Optional Protocol.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol supplements the provisions of the Convention on the Rights of the Child by providing detailed requirements for the criminalisation of violations of the rights of children in the context of the sale of children, child prostitution and child pornography.

The Optional Protocol

- provides for the offences of “sale of children”, “child prostitution” and “child pornography”.
- sets standards for the treatment of violations under domestic law, with regard to offenders, protection of victims and prevention efforts.
- provides a framework for increased international co-operation in these areas, in particular for the prosecution of offenders.

As of 2 November 2003, 64 States are parties to the Optional Protocol.

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

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 entered into force on 1 July 2003.

- 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.
- States Parties are obliged to establish policies on migration, exchange information with employers and provide assistance to migrant workers and their families.
- 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 movement and employment of migrant workers in an irregular situation.

As of 2 November 2003, 23 States are parties to the Convention.

9. The Declaration on the Right to Development

In 1986, the Declaration on the Right to Development was adopted by the General Assembly, recognising that development is a comprehensive economic, social, cultural and political process which aims at continuously improving the well-being of the entire population and of each individual.

The Declaration on the Right to Development states that the right to development is an inalienable human right. This means that everyone has the right to participate in, contribute to and enjoy economic, social, cultural and political development. This right includes permanent sovereignty over natural resource, self-determination, popular participation, equality of

opportunity and the advancement of adequate conditions for the enjoyment of other civil, cultural, economic, political and social rights.

For the purposes of development, there are three human rights standards that are particularly relevant to the full enjoyment of the right to development: the right to self-determination, sovereignty over natural resources and popular participation.

a. Treaty-Monitoring Bodies

Conventional mechanisms monitor the implementation of the major international human rights treaties. The different committees established are composed of independent experts acting in their individual capacity and not as representatives of their Governments, although they are elected by representatives of States Parties. The committees comprise 18 members each, with the exception of the Committee Against Torture and Committee on the Rights of the Child (both 10 members) and Committee for the Elimination of all forms of Discrimination Against Women (23 members). Members are elected according to the principle of equitable geographic representation, thus ensuring a balanced perspective and expertise in the major legal systems. The main functions of the treaty bodies are to examine reports submitted by States Parties and to consider complaints of human rights violations.

- **State Reporting**: All States Parties to the international treaties are required to submit reports stating the progress made and problems encountered in the implementation of the rights under the relevant treaty.

- **Individual Complaints**: Three of the international treaties currently allow for individuals to lodge complaints about alleged violations of rights (the Optional Protocol to the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention against Torture and other Cruel or Inhuman Treatment or Punishment).

- **State to State Complaints**: The same three treaties, in addition to the Convention on the Elimination of All Forms of Discrimination against Women, as listed above, also make provision for State parties

to lodge complaints relating to alleged human rights abuses against another State party. This procedure has never been resorted to.

By virtue of their responsibilities, treaty bodies serve as the most authoritative source of interpretation of the human rights treaties that they monitor. Interpretation of specific treaty provisions can be found in their "Views" on complaints and in the "Concluding Observations" or "Concluding Comments", which they adopt on State reports. In addition, treaty bodies share their understanding and experience of various aspects of treaty implementation through the formulation and adoption of "General Comments" or "General Recommendations". At present, there is a large body of General Comments and Recommendations serving as another valuable resource with regard to treaty interpretation.

Complaints of human rights violations are technically referred to as "Communications".

b. Reporting Procedure

All treaties require States Parties to report the progress of implementation of the rights set forth in the treaty. The common procedure is as follows:

- Each State party is required to submit periodic reports to the committee.
- The reports are examined by the treaty body in the light of information received from a variety of sources including Non-Governmental Organisations, United Nations agencies, and experts. Some treaty bodies specifically invite NGOs and United Nations agencies to submit information
- After considering the information, the treaty body issues concluding observations/comments containing recommendations for action by the state party enabling better implementation of the relevant treaty. The treaty body monitors follow-up action by the State party on the concluding comments/observations during examination of the next report submitted. On several occasions, treaty-body recommendations set out in the concluding comments/observations have served as the basis for new technical cooperation projects.

c. Communication Procedure for Individual Complaints

The communication procedure set out in the Optional Protocol to the ICCPR – Article 22 (CAT) and Article 14 (CERD) – is conditional on the following:

i. The individual must first exhaust local remedies. In other words, the individual must have explored available legal remedies in the State concerned including appeal to the highest court, unless:

   - there is no legal process in that country to protect the rights alleged to have been violated.
   - access to remedies though the local courts has been denied or prevented.
   - there has been an unreasonable delay locally in hearing the complaint.
   - a consistent pattern of gross violations of human rights makes any prospect of remedies meaningless.
   - the remedies are unlikely to bring effective relief to the victim.

ii. The communication must not be anonymous or abusive.
iii. The communication must allege violations of rights as stipulated in the treaty which the committee oversees.
iv. The communication must come from an individual who lives under the jurisdiction of a State which is party to the particular treaty.
v. The communication must not be under current or past investigation in another international procedure.
vi. The allegations set out in the communication must be substantiated.

Key International Human Rights Treaties to which India is a Party

As of November 2000, India was a party to the following International Treaties drawn-up under the auspices of the United Nations:

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- International Convention on the Suppression and Punishment of the Crime of Apartheid

- International Convention against Apartheid in Sports
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
- Convention on the Rights of the Child
- Convention on the Elimination of all forms of Discrimination Against Women
- Convention on the Political Rights of Women
- Convention on the Nationality of Married Women
- Slavery Convention of 1926
- 1953 Protocol amending the 1926 Slavery Convention
- Slavery Convention of 1926 amended
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Though India has signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1997, it is yet to ratify it.

Some Important Human Rights Conventions to which India is yet to become a party:

- Optional Protocol I to the International Covenant on Civil and Political Rights, 16 December 1966
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 18 December 1990
- Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women, 6 October 1999
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction, 18 September 1997
- Rome Statute of the International Criminal Court, 17 July 1998
- ILO Convention 182 regarding Elimination of Worst Forms of Child Labour

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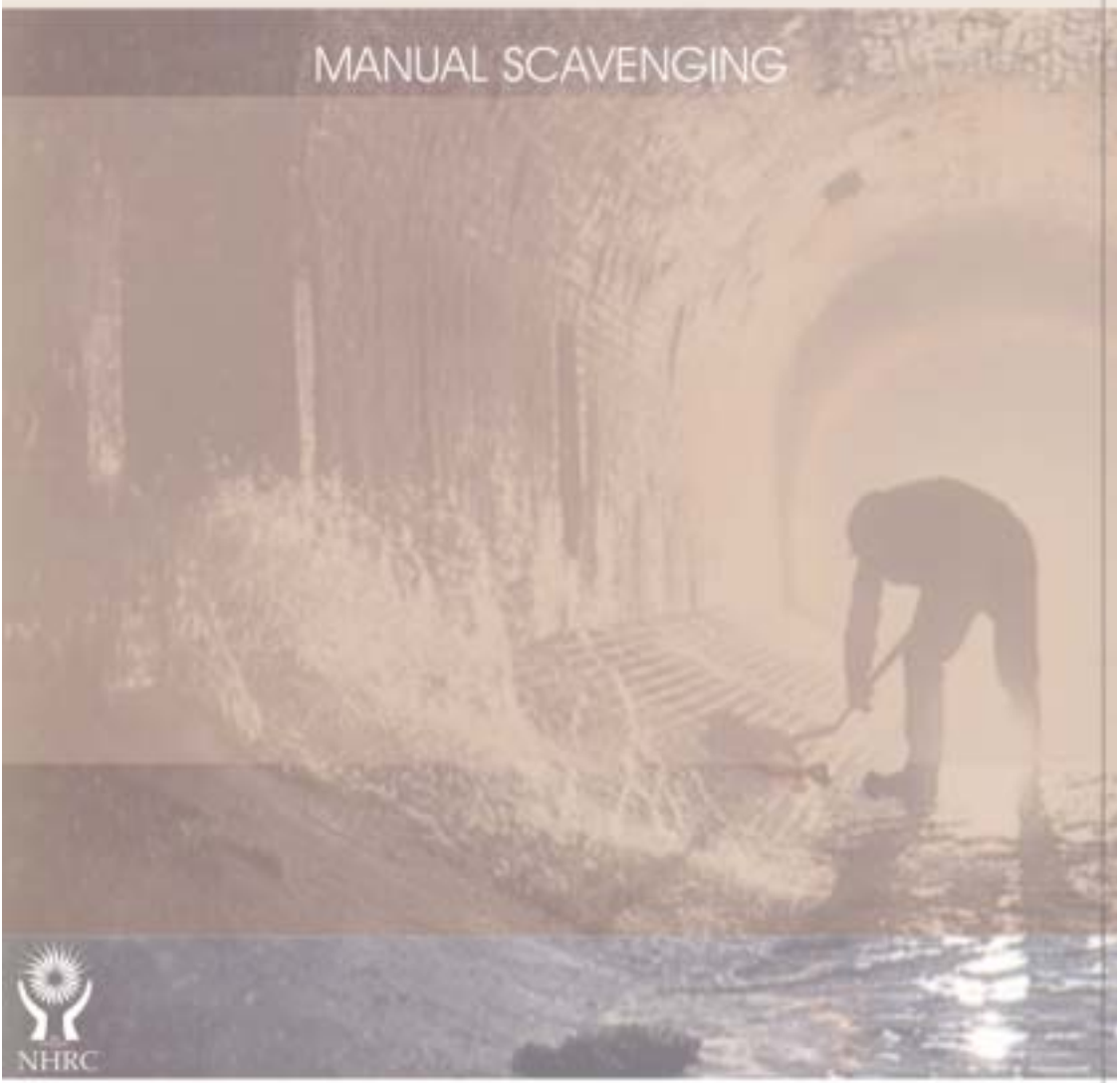
MANUAL SCAVENGING



NHRC

National Human Rights Commission

Manual Scavenging

Manual Scavenging is not only a violation of human rights but a disgrace to human dignity and humanity at large. Though untouchability has been abolished by the Constitution, manual scavenging has the inevitable effect of perpetuating untouchability. Manual scavenging continues to exist in India, despite being unacceptable and hazardous as a method of disposal of human waste, despite scientific and technological advancement on various fronts that saves manual labour, and despite the availability of simple and low-cost alternatives which can eradicate the twin problems of manual scavenging and safe disposal of human excreta.

Definition of Manual Scavenging

Manual Scavenging is one of the most inhuman and degrading forms of work wherein a person is engaged in manually removing or carrying human excreta. A person engaged in this inhuman and disgraceful occupation to earn a livelihood is called a 'Manual Scavenger' – the victim of this particular form of flagrant violation of human rights.

The tools with which a manual scavenger works are generally a broom, a tin plate, a basket/bucket or a metal drum in which the night soil is transported to the dumping grounds.

Causes of Manual Scavenging

Manual scavenging is both poverty and caste driven. Most scavengers belong to the Scheduled Castes. Even within their own caste, they are placed at the lowest level. There are scavengers who do not belong to the Scheduled Caste community though they are few in number. Further, scavenging continues to be a hereditary occupation. Frequently, women of such households bear the brunt of being manual scavengers, and children of such families run the risk of becoming scavengers in due course.

Magnitude of Manual Scavenging

The number of manual scavengers in the country is uncertain. Reliable baseline data is not available. However, according to the estimate

of a task force constituted by the Planning Commission in July 1989, there were over four lakh manual scavengers in the country as on March 1991. Of these, 83% were in urban areas and 17% in rural areas. 35% manual scavengers were women. These figures are in respect of Scheduled Castes only.

The figure estimated by the Ministry of Social Justice and Empowerment as on March 2003, is 6.76 lakh scavengers.

Manual Scavenging – A Health Hazard

Manual Scavenging exists pre-dominantly in urban areas. Due to poor sanitation and lack of other facilities it is also prevalent in rural areas. In urban areas, manual scavengers are also engaged in cleaning manholes, often without any protective gear. There have been cases of death reported due to carbon-monoxide poisoning.

Manual Scavenging is an obvious health hazard for all concerned including the scavenger, for whom the service is rendered and those residing in the locality. A manual scavenger collects 'night-soil' and disposes it into a nullah/river or any other water body or dumping site. This pollutes the environment and adversely affects the life of all the residents near-by. The dry-latrine/service latrine system breeds insects and infectious germs at the places of disposal and emits foul smell on the route through which the human waste is carried by the scavengers. Such conditions cause irritation and health hazards for people living in the surroundings.

Constitutional and Legal Safeguards

Constitutional Provisions

Manual Scavenging is a gross violation of human rights and an assault on the dignity and worth of a human person. It defies the constitutional guarantee of a life with dignity for each human being in this country.

Article 21 of the Constitution on the Right to Life has been interpreted by the Hon'ble Supreme Court as the right to live with human dignity.

Legislations

Section 2 (d) of the *Protection of Human Rights Act, 1993* defines, "human rights" as "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 *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993* was notified on 24 January 1997. Unfortunately, the practice still continues in several states.

The Objective of the Act

The Act has been passed with the objective of 'Elimination of Manual Scavenging'. Section 3 of the Act prohibits

- Employing or engaging manual scavengers
- The construction or maintenance of dry latrines

Whoever violates the provisions of the Act commits a cognizable offence. Such a person shall be punished with imprisonment for a term which may extend to one year or with fine, which may extend to two thousand rupees, or with both.

The Act also provides for –

- Formulating various schemes to convert dry latrines into water-sealed latrines.
- Constructing new water-sealed latrines.
- Rendering technical and financial assistance for new or alternative low cost sanitation to local bodies and other agencies.
- Construction and maintenance of community latrines and regulation of their use on a pay-and use basis.
- Constructing and maintaining shared latrines in slum areas for the benefit of citizens who are socially and economically backward.
- Registering manual scavengers and rehabilitating them.
- Financing by the Housing and Urban Development Corporation Limited or other agencies to construct water-sealed latrines or to convert dry latrines into water-sealed latrines.

Responsibility of the States

Though a Central legislation, the States are required to adopt the Act or have their own legislation passed by the Assembly. So far, 26 States have either adopted the Act or have enacted their own laws. It is the responsibility of the State Governments to implement the Act. However, even states who have adopted the Act have in many cases not proceeded to enforce it by issuing the requisite notifications requiring the owners of dry latrines to convert to water-sealed latrines, and cease the practice of engaging manual scavengers. Monitoring of the schemes has been lax, to say the least.

The following states have reported that manual scavenging has either been totally abolished in their state or the practice does not exist as there are no dry latrines:

Arunachal Pradesh, Delhi, Goa, Himachal Pradesh, Kerala, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Tamil Nadu.

Action Taken by the Government

In keeping with the Prime Minister's announcement, the Planning Commission has formulated a National Plan for Total Eradication of Manual Scavenging by 2007. A unified scheme was launched to construct wet latrines and to liberate and train manual scavengers.

Centrally Sponsored Schemes

The two centrally Sponsored Schemes launched by the Government are:

(i) The Urban Low Cost Sanitation Scheme for Liberation of Scavengers

The main objective of the scheme is to convert the existing dry latrines into low cost pour flush latrines and to provide alternative employment to the liberated scavengers. Financial assistance like loan/ subsidy is provided to the States to construct water-sealed latrines. The scheme provides for simultaneous rehabilitation of the scavengers or their dependents by State Governments with

the help of funds provided by the Central Government or with facilities available under the Nehru Rozgar Yojna.

HUDCO is implementing the Government action plan programmes of integrating Low Cost Sanitation, Valmiki Ambedkar Avas Yojana, Shelter and Sanitation Facilities for the Footpath Dwellers in Urban Areas etc. All these schemes focus on the provision of water-sealed latrines.

HUDCO has provided for wet toilets in all their housing schemes. Even in slum development schemes it is ensured that community toilets are available to the residents to prevent open defecation.

(ii) The National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents (NSLRS)

The scheme was launched in March 1992 to liberate manual scavengers from their hereditary obnoxious and inhuman occupation and to engage them in alternative and dignified occupations within a period of five years.

The scheme provides for

- Time bound programmes to identify scavengers and their dependents.

- Training in identified trades for scavengers and their dependents at the nearest local training institutions of various departments of State Governments, Central Government and other semi-Government and non-Government organizations.

- Rehabilitation of scavengers in various trades and occupations by providing them with subsidy margin money loans and bank loans.

- Rehabilitation of municipal scavengers in services related to local bodies by the local bodies themselves.

- Rehabilitative training to private scavengers and their dependents including the dependents of scavengers employed by local bodies.

- Training scavengers and their dependents in suitable trades keeping in view their aptitude and local requirement. Incentives in terms of subsidy, margin money loans to scavengers and their dependents for taking up alternative and dignified occupations.

- According to the Ministry of Social Justice and Empowerment under the NSLRS an amount of Rs. 671.19 crore has been released for assisting 1,56,488 scavengers for training and 4,08,644 for rehabilitation upto 2001-02.

- To overcome difficulties faced by the scavengers in managing their commercial activities individually, the concept of organizing the scavengers under groups for running sanitary marts was developed during 2000-01. The sanitary marts were encouraged to take up all activities, which were commercially viable.

There is also a scheme of Pre-Matric Scholarship to the children of those engaged in such unclean occupations being implemented by the Ministry of Social Justice and Empowerment. Under the scheme the children of families engaged in unclean occupations such as scavenging, flaying and tanning are assisted to pursue education up to matriculation. The scholarship is provided through State Governments and Union Territory Administrations. During 2001-02, about 4.50 lakh students were benefited under the scheme.

Shortcomings in the Implementation of the Scheme

Despite the ambitious scheme of liberation and rehabilitation of scavengers, the Comptroller and Auditor General of India in his performance appraisal of the scheme pointed out in his report for the year ending March 2002, the following shortcomings in the implementation of the scheme.

- Even after a decade of its implementation (1992-2002), the scheme, by the end of the Eighth Plan period (1992-97) failed to deliver its

social vision. More than 40 percent of the estimated beneficiaries remained un-rehabilitated.

- The scheme was not in tune with the legal framework provided by the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.*

- The base line surveys conducted in the States, which were intended to locate, specify and particularize the beneficiaries and their needs for training and rehabilitation, suffered from various infirmities. Even after a lapse of ten years, the Ministry or implementing agencies did not have a reliable database of targeted beneficiaries.

- No special curriculum was developed for training of scavengers. As against 3.50 lakh eligible scavengers and their dependents targeted for training during 1992-97, only 2.02 lakh scavengers could be imparted training by March 2002. Shortfall in training during the Ninth Plan period (1997-2002) was as high as 77 percent.

- Of the 4.00 lakh scavengers and their dependents targeted by the Eighth Plan period, only 2.68 lakh beneficiaries could be rehabilitated by 1997. The Ninth plan period showed quantitatively even a lesser achievement (2.02 lakh) than the Eighth Plan period. Audit review of occupational rehabilitation revealed that resources were misused. There were preponderance of unviable low cost projects and rehabilitation of untrained scavengers, while trained scavengers were not rehabilitated. There were also mismatches between skills acquired and occupations provided.

- The implementing agencies were casual in project formulation and estimation of its viability. This was evident from the rejection of a large number of loan applications by banks.

- During 1992-2002 the Government of India adopted a new thrust area of establishment of Sanitary Marts and released Rs. 130.05 crore for the purpose. However, the implementing agencies could set up only 636 such Marts rehabilitating 4,107 scavengers against a target of 4,606 Marts for rehabilitation of 1,15,150 scavengers.

- The scheme did not provide the necessary linkage between the implementing agencies and the Ministries administering the "liberation" schemes for scavengers. Lack of interface between "liberation" and "rehabilitation" was reflected by the fact that as compared to 4.71 lakh scavengers stated to have been rehabilitated during 1992-2002, only 0.37 lakh urban scavengers were liberated. There was no evidence to suggest if those liberated were in fact rehabilitated.

- As against 17,45,814 dry latrines sanctioned for conversion, only 37 per cent could be converted as of March 2002. 50 percent of the total number of scavengers were concentrated in those States in which no dry latrines were converted or where the pace of conversion was tardy.

- As against the sanction for construction of 17,96,649 units of flush latrines, only 38 percent were constructed as of March 2002. The construction of the community toilets was not undertaken by a majority of the States.

- There was hardly any evidence of monitoring by the agencies responsible for the delivery of the programme. The district level focus was largely lost.

Role of NHRC in Eradication of Manual Scavenging

The NHRC has shown special concern towards the violation of rights of the marginalized sections of our society. The Commission as a part of its policy has been active in the abolition of the degrading practice of 'Manual Scavenging' in the country. It has taken up this matter at the highest echelons of the Central and State Governments through a series of personal interventions by the Chairperson.

Steps taken by NHRC

- In 1996 the Chairperson of the NHRC wrote a letter to all the Chief Ministers of the States and to various Ministries in the Union Government asking them to set an example by having the dry

latrines replaced with pour flush latrines in the buildings owned by them and to fix a date for achieving this target.

- In 1997, the Chairperson of the NHRC wrote letters to Chief Ministers of all the States to have a resolution passed in the State Legislatures adopting the Act in relation to their State.

- In 1999 the Commission organized a joint meeting with the competent authorities of the Central Government, to chalk out a combined strategy to find ways to end this degrading practice. A committee was constituted consisting of the Secretaries in the Ministry of Urban Affairs and Employment, Social Justice and Empowerment, Law and Justice and a representative of the Planning Commission to consider certain aspects of 'Manual Scavenging'.

- In 2001, on the eve of Independence Day, the Chairperson of the NHRC brought to the notice of the Prime Minister that the Government lacked the necessary commitment to eradicate manual scavenging.

- In 2001, the Chairperson of the NHRC wrote letters to the Prime Minister and also to the Chief Ministers of all the States that the Union Government and the State Governments should work jointly to ensure that by 2nd October 2002 there are no dry latrines left in the country.

- In 2002, the Chairperson of the NHRC wrote a letter to the Prime Minister suggesting that he may make an announcement on Independence Day to raise awareness amongst people and concerned authorities to put an end to the demeaning practice of manual scavenging. The Prime Minister included 'The eradication of the outrageous practice of manual scavenging' as part of the 15-Point Initiative on 15th August 2002.

- In 2003, the NHRC took up the matter again with the Prime Minister.

The NHRC is monitoring the progress made by the States to eradicate manual scavenging and the following action-points with the States :

- Adoption of the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.*
- Surveys to identify the number of scavengers and their dependents.
- Imparting training to identified scavengers.
- Rehabilitation of identified scavengers by utilizing funds available under the Centrally Sponsored Schemes.
- Making provisions in building bye-laws not to sanction the construction of new buildings and also not to issue completion certificate unless there are provisions for pour-flush latrines
- Passing resolutions to fix a final date by which the State shall be free of dry latrines.

The States have been advised to set six-monthly targets for themselves to convert dry latrines and to construct new latrines.

The Commission has also been coordinating with the nodal Ministries of the Government of India and the National Commission for Safari Karamchari by:

- Inviting the attention of all concerned to the problem through its newsletters, annual reports, brochures etc.
- Campaigning to raise awareness through the media.

The measures which need to be intensified for total eradication of manual scavenging:

- Vigorous implementation of the *Employment of Manual Scavengers & Construction of Dry Latrines (Prohibition) Act, 1993.*

- Periodic and regular surveys to determine the number of manual scavengers and their families.

- Periodic and regular surveys to determine the number of dry latrines and the status of their conversion.

- Construction of new water flush latrines to keep pace with the requirements of an increasing population.

- NGOs and Panchayats to make concerted efforts in assisting the district machinery to identify and rehabilitate manual scavengers.

- Training the identified scavengers and their dependents to take up an alternative employment.

- Involvement of civil society and the NGOs in raising awareness about the ill-effects of this practice.

- Sensitizing State/District/Municipal employees to the urgency of the problem.

- Raising awareness through media campaigns.

In spite of the Commission's best efforts, no significant progress has been achieved in eradicating manual scavenging. Human Rights cannot be protected by enactment of legislations alone. It is important to realize that in a democracy, the onus is on society in general and civil society in particular to preserve human dignity and protect the basic human right of the right to a decent life.

Continuation of the practice of manual scavenging is evidence of society's indifference to the need for safe sanitation, and to upholding

the dignity of others, in this instance the manual scavengers. Non-Government Organizations have a major role in sensitizing those citizens who still use dry latrines, regarding the inhumanity of the practice of manual scavenging, and the alternatives which can be adopted by any householder to comply with the law. States and Municipal authorities must enforce construction of water-sealed latrines as a measure of safe disposal of human waste, apart from relief and rehabilitation of manual scavengers.

KNOW YOUR RIGHTS

Manual scavenging

"I may not be born again and if it happens, I will like to be born in a family of scavengers so that I may relieve them of inhuman, unhealthy and hateful practice of carrying head loads of night-soil."

- Mahatma Gandhi

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KNOW YOUR RIGHTS

NATIONAL HUMAN RIGHTS COMMISSION

NHRC

National Human Rights Commission

National Human Rights Commission

The National Human Rights Commission (NHRC) is an expression of India's concern for the protection and promotion of human rights. It came into being on 12 October, 1993.

Human Rights — Definition

"**Human Rights**" is defined in Section 2 of the *Protection of Human Rights Act, 1993*, as "the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India."

"**International Covenants**" 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 .

Autonomy of the Commission

The autonomy of the Commission derives, among other things, from

(i) the method of appointing its Chairperson and Members
(ii) their fixity of tenure and statutory guarantees to the above
(iii) the status they have been accorded and
(iv) the manner in which the staff responsible to the Commission - including its investigative agency - will be appointed and conduct themselves.

The financial autonomy of the Commission is spelt out in Section 32 of the Act.

The Chairperson and Members of the Commission are appointed by the President on the basis of recommendations of a Committee comprising the Prime Minister as the Chairperson, the Speaker of Lok Sabha, the Home Minister, the leaders of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha as Members.

Composition of the Commission

The Commission consists of five Members. Its Chairperson is a former Chief Justice of India. Of the other four Members, two are from higher judiciary - one who is or has been a judge of the Supreme Court and the other a Chief Justice of a High Court. Two Members are from amongst persons having knowledge of or practical experience in, matters relating to Human Rights.

The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women are the Ex-officio Members of the Commission.

The Chief Executive Officer of the Commission is its Secretary General. An officer of the rank of the Director General of Police heads the Investigation Division and the Registrar (Law) heads the Law Division.

Functions Assigned to the Commission under the Act

The Commission shall, perform all or any of the following functions:

a) **Inquire** on its own initiative or on a petition presented to it by a victim or any person on his/ her behalf, into complaint of -

   i) violation of human rights or abetment or
   ii) negligence in the prevention of such violation, by a public servant;

b) **intervene** in any proceeding involving any allegation of violation of human rights pending before a court with the approval of that court;

c) **visit** under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living condition of the inmates and make recommendations thereon ;

d) **review** the safeguards provided by the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

e) **review** the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

f) **study** treaties and other international instruments on human rights and make recommendations for their effective implementation;

g) **undertake** and promote research in the field of human rights;

h) **spread** human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

i) **encourage** the efforts of non - Governmental organizations and institutions working in the field of human rights;

j) **such other functions** as it may consider necessary for the promotion of human rights.

How to File Complaints with the Commission

- Complaints may be filed in Hindi, English or in any language included in the Eighth Schedule of the Constitution.
- The complaints are expected to be self contained.
- No fee is charged on complaints.
- The Commission may ask for further information and affidavits to be filed in support of allegations whenever considered necessary.
- The Commission may in its discretion, accept telegraphic complaints and complaints conveyed through FAX or by e-mail [(covdnhrc@hub.nic.in (General)/ jrlaw@hub.nic.in (For complaints)].
- Complaints can also be made on the mobile telephone number, **9810298900** of the Commission.

Complaints not Admissible by the Commission

Ordinarily, complaints of the following nature are not entertained by the Commission:

a) In regard to events which happened more than one year before the making of the complaints;
b) With regard to matters which are before a judge or court (*sub-judice*)
c) Which are vague, anonymous or pseudonymous;
d) Which are of frivolous nature;
e) Which pertain to service matters.

Powers Vested with the Commission Relating to Inquiries

While inquiring into complaints under the Act, the Commission is vested with all the powers of a civil court trying a suit under the *Code of Civil Procedure*, *1908*, and in particular the following:

a) Summon and enforce the attendance of witnesses and examine them on oath;
b) discover and produce any document;
c) receive evidence on affidavits;
d) formally demand any public record or copy of that from any court or office;
e) issue commissions for the examination of witnesses or documents;
f) any other matter which may be prescribed.

Investigation Team of the Commission

The Commission has its own investigating staff headed by a Director General of Police for investigation into complaints of human rights violations. Under the Act, it is open to the Commission to utilise the services of any officer or investigation agency of the Central Government or any State Government. In a number of cases the Commission has associated non - Governmental organizations in the investigation work.

Inquiry into Complaints

- The Commission while inquiring into complaints of violations of human rights may call for information or report from the Central Government or any State Government or any other authority or organization subordinate to any of them within the time specified by it.
- If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own.
- On the other hand, if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

Steps open to the Commission after Inquiry

The Commission may take any of the following steps upon the completion of an inquiry:

1) Where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

2) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

3) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.

Procedure Prescribed under the Act with respect to Armed Forces

The Commission may on its own motion or on the basis of petitions made to it on allegations of human rights violations by armed forces, seek

a report from the Central Government. On receipt of the report, it may either not proceed with the complaint or, as the case may be, make its recommendations to the Government. According to the Act, the Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow. It is further stipulated that the Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations. A copy of the report so published will also be given to the petitioner.

Responsibility of the Authority/State/Central Governments to which Reports/ Recommendations have been Sent by the Commission

The authority/State Government/Central Government has to indicate its comments/action taken on the report/recommendations of the Commission within a period of **one month** in respect of general complaints and within **three months** in respect of complaints relating to armed forces.

The Issues on which Complaints are Received

Since its inception, the Commission has handled a variety of complaints. The category of the complaints mainly have been:

- ***In respect of police administration***

  Failure in taking action
  Unlawful detention
  False implication
  Custodial violence
  Illegal arrest
  Other police excesses

- ***Custodial deaths***
- ***Encounter deaths***
- ***Harassment of prisoners; jail conditions***
- ***Atrocities on SCs and STs***
- ***Bonded labour, child labour***

- ***Child marriage***
- ***Communal violence***
- ***Dowry death or its attempt; dowry demand***
- ***Abduction, rape and murder***
- ***Sexual harassment and indignity to women, exploitation of women***

Numerous other complaints which cannot be categorized, have also been taken up.

Activities of the Commission

Inquiring into complaints is one of the major activities of the Commission. In several instances individual complaints have led the Commission to the generic issues involved in violation of rights, and enabled it to move the concerned authorities for systemic improvements.

However, the Commission also actively seeks out issues in human rights which are of significance, either on its own motion *(suo motu)*, or when brought to its notice by the civil society, the media, concerned citizens, or expert advisers. Its focus is to strengthen the extension of human rights to all sections of society, in particular, the vulnerable groups.

The Commission's purview covers the entire range of civil and political, as well as economic, social and cultural rights. Areas facing terrorism and insurgency, custodial death, rape and torture, reform of the police, prisons, and other institutions such as juvenile homes, mental hospitals and shelters for women have been given special attention. The Commission has urged the provision of primary health facilities to ensure maternal and child welfare essential to a life with dignity, basic needs such as potable drinking water, food and nutrition, and highlighted fundamental questions of equity and justice to the less privileged, namely the Scheduled Castes and Scheduled Tribes and the prevention of atrocities perpetrated against them. Rights of the disabled, access to public services, displacement of populations and especially of tribals by mega projects, food scarcity and allegation of death by starvation, rights of the child, rights of women subjected to violence, sexual harassment and discrimination, and rights of minorities, have been the focus of the Commission's action on numerous occasions.

Major Initiatives of the Commission

✺ Civil liberties

- Review of statutes, including the *Terrorist and Disruptive Activities (Prevention) Act,1987* and (draft) Prevention of Terrorism Bill, 2000
- Protection of human rights in areas of insurgency and terrorism
- Guidelines to check misuse of the power of arrest by the police
- Setting up of Human Rights Cells in the State/City Police Headquarters
- Steps to check deaths, rape and torture in custody.
- Accession to the Convention against Torture, Additional Protocols to the Geneva Conventions.
- Discussion on adoption of a Refugee Law for the country
- Systemic reforms of police, prisons and other centers of detention
- Visit to Jails, mental hospitals and similar other institutions

✺ Review of laws, implementation of treaties, and the international instruments on Human Rights

Economic, social & cultural rights

- Elimination of bonded labour and child labour
- Issues concerning Right to Food
- Prevention of maternal anemia and congenital mental disabilities in the child
- Human Rights of persons affected by HIV/AIDS
- Public Health as a human rights issue

Rights of the vulnerable groups

- Rights of women and children, minorities, scheduled castes and scheduled tribes
- People displaced by mega projects
- People affected by major disasters such as the super-cyclone in Orissa and the earthquake in Gujarat.
- Monitoring the functioning of the Mental hospitals at Ranchi, Agra and Gwalior, and the Agra Protection Home, under a Supreme Court remit.

- Action Research on Trafficking
- Promotion and protection of the rights of the disabled.
- Rights of Denotified and nomadic tribes
- Welfare of the destitute widows of Vrindavan
- Elimination of manual scavenging

- **Promotion of human rights literacy and awareness in the educational system and more widely in society**

- **Human rights training for the armed forces and police, public authorities, civil society, and students**

- **Research through well-known academic institutions and NGOs on various issues relating to human rights**

- **Publication of annual report, monthly newsletter, annual journal, and research studies**

- **Consultation with NGOs and experts/specialists on Human Rights Issues**

State Human Rights Commissions

The Protection of Human Rights Act, 1993 makes provisions for the establishment of State Human Rights Commissions. Fourteen States have already set up such bodies. The States are :

Assam, Chhattisgarh, Himachal Pradesh, Jammu and kashmir, Kerala, Madhya Pradesh, Maharastra, Manipur, Orissa, Punjab, Rajastan, Tamil Nadu, Uttar Pradesh, West Bengal.

Some Major Accomplishments

- The number of complaints received by the Commission has increased from 496 in 1993-1994 to 72,107 in 2001-2002, reflecting the growing credibility of the Commission and the trust reposed in it by citizens.

- A fact-track system for complaints has been introduced, and computerization and other procedural changes adopted, to deal with the heavy load of case work.

- All states have set up Human Rights Cells in the offices of the Directors General of Police.

- Some states have set up States Human Rights Commissions and a number of them have also set up Human Rights Courts.

- Constitutional Amendment which makes the right to education of children in the age group 6-14 years a Fundamental Right.

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