

***BACKGROUND NOTE FOR
TRAINING AND SENSITISATION***

***FOR THE STAFF OF
CHHATTISGARH STATE HUMAN RIGHTS COMMISSION***

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Introduction

The Constitution of India, which was framed soon after independence embodies the noble ideals of the freedom struggle and seeks to establish a society that is just and humane, where all persons irrespective of caste or creed are assured equality of opportunity and the freedom to pursue their dreams in an atmosphere of peace and security. Human rights therefore find a pride of place in the Constitution which is the supreme law of the land.

While law courts have been actively engaged in the protection of human rights, the need for an agency that exclusively promotes and protects human rights was acutely felt. The 1980s and the early 1990s saw an escalation of internal conflicts in Punjab, Jammu & Kashmir and the North-East which were dealt with by a heavy hand by government agencies. Increasing concern was expressed by the media, civil society groups, and by the general public about the large number of human rights violations that were taking place in the country. The international community was also concerned about the state of human rights in India and constantly reminding the government to fulfil its obligations under international law to establish mechanisms for protecting human rights. It was a culmination of factors that ultimately led the government to accede demands for greater accountability and human rights sensitivity in its dealings. It is with this intention in mind that the Protection of Human Rights Act 1993 was passed through which the National Human Rights Commission and the State Human Rights Commissions came into being.

Human Rights Commissions have a vital role to play in ushering a culture where there is respect for individual dignity and intrinsic worth of individuals. They have been established to ensure that the government does not infringe upon the rights of citizens, rather it takes steps for their protection and promotion. For this it is important that those who serve in Human Rights Commissions fully comprehend the importance of human rights and the extent of their scope.

It is with this purpose that Commonwealth Human Rights Initiative (CHRI) which is an independent, non-partisan, non-profit, independent, international non-governmental organisation mooted the proposal to conduct a training programme for the staff of the Chattisgarh State Human Rights Commission. The training/sensitization programme is intended to be a two way exchange of ideas where both participants and resource persons explore various aspects of human rights and discuss ways in which Human Rights Commissions can play a more proactive role in their preservation. The programme has been so designed that at its culmination participants are able to leave with a better understanding of human rights that will enable them to play an active role in dissemination of human rights information both in their official and unofficial capacities.

What are Human Rights?

Human rights are those basic rights which all human beings possess simply because they are human beings. Human rights are “natural rights” which means that all human beings are born with them and they cannot be taken away by anyone. They are also universal and belong to all persons, regardless of race, religion, caste, sex, age or place of birth. Human rights transcend national and cultural boundaries and reflect the philosophy of all major religions, faiths and moral codes.

As the birthright of all, states have a duty to protect these rights and promote respect for them. At the centre of the idea of human rights is the idea that all human beings are equal and they are entitled to live in dignity. Human beings must be free from fear and well provided for. These ideas have been accepted by all nations and have come to be incorporated into national and international law and now represent a universal belief system.

Basic human rights include:

- right to life and physical security
- right to live with dignity
- right to be treated equally and not to be discriminated against
- right to express oneself freely
- right to earn a livelihood
- to move about freely
- right to practise one's belief or religion.
- right not to be exploited .
- right to live in a clean and healthy environment

Most human rights have been formally incorporated into national and international law. Therefore it is the responsibility of the State to uphold and protect human rights.

Human Rights violation

The State is bound by law to protect a person's human rights. If it is unable to do that or when an agent of the State who has access to power, such as a bureaucrat, a policeman or army officer does something that interferes with or disrespects human rights, it is said to be a violation. Human Rights are claimed against the State and not against private persons. However, if a private person violates someone's rights relating to life, liberty, equality or dignity, the person whose rights have been violated can approach the State for taking action against the offender. If the State fails to register a complaint to punish the offender or fails to stop the offender then a human rights violation occurs because the State is duty bound to ensure everyone's human rights are protected.

“**State**” means the government and consists of all people, agencies and institutions that are responsible for running our country. *The Police Department, Collectorates, the Panchayats, the Municipal Corporation, the Postal Department, the Electricity Department, the State Transport Corporation and even companies that are owned and controlled by the government are all part of the State.*

Human rights cover a series of rights and freedoms incorporated into national and international law. These rights have also been accepted and acknowledged by states as basic entitlements for all human beings in the Universal Declaration of Human Rights (UDHR).

Universal Declaration of Human Rights

Universal Declaration of Human Rights (UDHR) is a declaration adopted in 1948, by all members of the United Nations, including India. It states that “human rights are the foundation of freedom, justice and peace in the world.” The UDHR lays down principles or standard of achievement for all nations to follow. It has influenced the Constitutions and legal systems of many countries. The Constitution of India recognises most of these principles as fundamental rights and some of them form part of the Directive Principles of state policy. (Appendix 1 contains a copy of the Universal Declaration of Human Rights.)

Apart from the Universal Declaration of Human Rights, the international community has approved documents which recognise and protect human rights. These are called international treaties or covenants.

An “**international treaty or covenant**” is an agreement which has been formally ratified (or approved) by all or many countries. Once a country ratifies a treaty, it becomes *binding*. This means that the government must ensure that it complies with all the provisions contained in the treaty, and that national or domestic laws are consistent with the treaty principles. It also means that the courts must interpret domestic laws in tune with treaty provisions.

The two main international covenants on human rights are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which were both adopted by the General Assembly of the United Nations in 1966.

- Civil rights guarantee a person’s liberty and equality.
- Political rights allow persons to participate in the political life of their community and society.
- Economic, social and cultural rights guarantee the basic necessities of life - economic and social rights focus on how people live and work, while cultural rights allow people freedom to participate in cultural practices.

Guarantee of human rights in India through Fundamental Rights and Directive Principles

Most human rights that are enunciated in the Universal Declaration of Human Rights and the main international covenants are protected under the Constitution of India. Some of them are guaranteed as Fundamental Rights and some of them form part of the Directive Principles of the state policy

laid down in the Constitution. Some of them are also protected under different laws enacted by the Parliament and State Legislatures.

Fundamental Rights

The Constitution of India bestows certain basic rights upon individuals without which it would be impossible for people to lead a satisfying life and develop to their full potential. These are classified as:

- the right not to be discriminated against. This is called the **Right to Equality**.
- the right to do certain things freely in order to lead a good life, such as think freely, talk freely, move about freely, meet people, exchange views, reside and travel freely and to practise any trade or profession. This is called the **Right to Freedom**.
- the right to live, which means the right to eat, drink, breathe and also means the right to protect one's body from any danger. This is called the **Right to Life and Personal Liberty**.
- the right not to be exploited through trafficking of human beings or forced labour and the right of children under the age of 14 years not to be employed in hazardous industries. This is called the **Right against Exploitation**.
- the right to practice and propagate the religion of one's choice. This is the **Right to Freedom of Religion**.
- the right to preserve one's culture and language and the right to set up an institution to promote the same. These are **Cultural and Educational Rights**.
- the right to approach the highest court in the country (the Supreme Court) for protection of these fundamental rights. This is the **Right to Constitutional Remedies**.

A number of rights mentioned in the International Covenant on Civil and Political Rights (ICCPR) find mention in the Constitution as Fundamental Rights.

International Covenant on Civil and Political Rights (ICCPR)	Fundamental Rights
<ul style="list-style-type: none"> • right not to be discriminated against by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or economic or social status • right to life • right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment • right to be free from slavery • right to liberty and security of the person • right not to be subjected to arbitrary arrest or detention • right to respect for the inherent dignity of persons deprived of their liberty • right to liberty of movement and freedom to choose one's residence • right to equal protection of the law • right to equal treatment • right to a fair and public hearing by a competent, independent and impartial tribunal established by law • right to be presumed innocent until proven guilty • right to be free from arbitrary or unlawful interference with, family, home or correspondence 	<p>Article 15 of the Constitution. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.</p> <p>Article 21, Protection of life and personal liberty</p> <p>Article 21, Protection of Life and personal liberty as interpreted by the Supreme Court</p> <p>Article 23, Prohibition of traffic in human beings and forced labour.</p> <p>Article 21, Protection of life and personal liberty</p> <p>Article 21, Protection of life and personal liberty</p> <p>Article 21, Protection of life and personal liberty as interpreted by the Supreme Court</p> <p>Article 19 (e); (f), Freedom to move freely throughout the territory of India; and reside and settle in any part of India</p> <p>Article 14, Equality before law</p> <p>Article 14, Equality before law</p> <p>Article 21, Protection of life and personal liberty</p> <p>Article 21, Protection of life and personal liberty</p> <p>Article 21, Protection of life and personal liberty</p>

<ul style="list-style-type: none"> • right to freedom of thought, conscience and religion 	Article 25, Freedom of conscience and religion
<ul style="list-style-type: none"> • right to hold an opinion without interference 	Article 19 (a) Freedom of speech and expression
<ul style="list-style-type: none"> • right of peaceful assembly 	Article 19 (b) Freedom to assemble peacefully and without arms
<ul style="list-style-type: none"> • right to freedom of association with others, including the right to form and join trade unions 	Article 19 (c) Freedom to form associations or unions
<ul style="list-style-type: none"> • right to establish a family 	Article 21, Protection of life and liberty

Directive Principles of state policy

These are the Principles aimed at guiding the policies of the government. In other words these are the directions given by the Constitution to the government, which is expected to frame policies in such a way so as to realise the goals set out in the Constitution. The Constitution requires that the government must make efforts to achieve these goals through its policies and laws.

Significant provisions of the International Covenant on Economic, Social and Cultural Rights (ICESR) find mention in Directive Principles of state policy.

International Covenant on Economic, Social and Cultural Rights	Directive Principles of state policy
<ul style="list-style-type: none"> • Right to work 	Article 41 enjoins the State to make effective provisions to secure the right to work in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
<ul style="list-style-type: none"> • Right to equal pay for equal work for men and women 	Article 39 (a) enjoins the State direct its policy towards securing equal pay for equal work for both men and women.
<ul style="list-style-type: none"> • right to just and favourable working conditions 	Article 42 enjoins the State to make provision for just and humane conditions of work and for maternity relief.
<ul style="list-style-type: none"> • right to the continuous improvement of living conditions and enjoyment of the highest attainable standard of physical and mental health 	Article 47 enjoins the State to raise the level of nutrition and the standard of living and to improve public health.
<ul style="list-style-type: none"> • right to education 	

<ul style="list-style-type: none"> • right to take part in cultural life and enjoy the benefits of scientific progress 	<p>Article 45 enjoins the State to promote with special care free and compulsory education for all children until they attain the age of 14 years.</p> <p>Article 43 enjoins the State to secure to all workers, agricultural, industrial or otherwise a decent standard of life and full enjoyment of leisure and social and cultural opportunities.</p>
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Role of a Human Rights Commission

Human Rights Commissions have been set up to protect human rights of people in the country and to help create an environment where there is respect and understanding of human rights. The National Human Rights Commission (NHRC) has been given the responsibility to see that all inhabitants of India are able to enjoy their human rights without interference. State Human Rights Commissions (SHRCs) have been established to safeguard the rights of people residing in a state.

The Protection of Human Rights Act, 1993 enjoins Human Rights Commissions to protect and promote those human rights relating to life, liberty, equality and dignity of the individual which are:

- guaranteed by the Constitution, or
 - contained in the International Covenants
- and are enforceable in India

The Act defines “International Covenants” as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Functions of a Human Rights Commission

Human Rights Commissions are expected to perform a number of functions which are laid down in the Protection of Human Rights Act, 1993. These include:-

Inquiry into complaints regarding:

- violation of human rights,
- abetment to violate human rights, or
- negligence in the prevention of a human rights violation by a public servant

Abetment to do a thing means:

helping a person to do that thing; or
incite a person to do that thing; or
engaging in a conspiracy for doing that thing;

Human Rights Commissions also:

- involve themselves in court cases regarding human rights if the court agrees
- visit any jail, hospital, juvenile home, welfare home, school etc. that is run by the government and make recommendations for improvement in living conditions
- study laws and issues which come in the way of enjoyment of human rights
- promote awareness of human rights through research, publications, workshops, seminars etc.
- support non-governmental organisations and institutions working in the field of human rights

Protecting Human Rights

Human Rights Commissions (HRCs) inquire into:

- *instances of custodial death/ rape/ torture*
- *cases where rioters accused of murder and rape have been let off due to lack of evidence*
- *instances where drinking water has been tainted with chemicals leaving several people dead and many others ill*
- *situations where the police has failed to protect the life and property of citizens*
- *instances where persons have been gunned down by terrorists because they belong to a particular religion*
- *cases of mass cremations of dead bodies by police and security forces*
- *instances of forced labour/ bonded labour*
- *cases of illegal detention, extortion and intimidation by the police*
- *instances of non registration of cases by the police*
- *situations regarding exclusion of dalits from village affairs*
- *denial of basic facilities to prison inmates*
- *cases of land-grabbing by politicians and government officials*
- *situations where district authorities have failed to control pollution caused by hazardous industries/ businesses*

Promoting Human Rights

- *HRCs conduct human rights training workshops for the benefit of the police and judicial officers.*
- *HRCs promote research on gender issues exploring causative factors behind sexual exploitation, trafficking in girls, female foeticide and infanticide*
- *HRCs spread human rights awareness by publishing posters, fliers, handbooks on the rights of citizens*
- *HRCs support efforts of non- governmental organisations in projects concerning children's rights, women's rights, rights of dalits, scheduled castes/ tribes and minorities*

Special powers of Human Rights Commissions to inquire into complaints regarding human rights violations

Since inquiry and investigation into instances of human rights violations lie at the core of a Human Rights Commission's activities it has been given the power of a Civil Court trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters:

- Summoning and enforcing attendance of witnesses and examining them under oath
- Requiring any person to furnish information on relevant matters unless the person has been exempted by law to do so
- Receiving evidence on affidavits
- Ordering the production of any document
- Getting a copy of any public record from any court or office

Type of recommendations are made by Human Rights Commissions

Human rights commissions can direct the government to:

- pay compensation to the victim or the victim's family
- take disciplinary action against the guilty persons
- register a criminal case against the guilty persons
- stop a particular action as it is violating human rights
- properly perform its duty so that a human rights violation can be stopped
- take preventive measures so that human rights violations do not take place in future

In addition to the above Human Rights Commissions also give directives to the government. Directives are guidelines on policies and practices for the government and its authorities to follow to ensure that human rights are respected and protected.

NHRC directives have been issued on:

- improving police-public relationship and confidence
- checking the misuse of power and arbitrary arrest by the police
- the transfer of all mentally ill persons languishing in jail to appropriate mental institutions
- the elimination of employment of children below 14 years of age as domestic help by government servants
- the elimination of manual scavenging

- the use of lie detector tests
- compulsory education for children up to 14 years old
- the conduct of surprise visits to police lock-ups in various states
- the reporting of a case of custodial death or custodial rape (whether in custody of the police or in prison) by all direct administrations, police and state authorities to the NHRC within 24 hours of its occurrence. If the agency does not report such cases to the NHRC, there is an assumption that the agency is hiding facts.
- the video-taping of all post-mortem examinations of persons who have died in custody and sending the video tapes to the NHRC. This directive was an attempt to ensure that the post mortem examination is thoroughly done and the doctor conducting it is not influenced or manipulated by jail or police officials.
- the setting up and effective functioning of Human Rights Cells in state/city police headquarters. Human Rights Cells are the main link between the NHRC and state police agencies.
- the setting up of a District Complaints Authority in the office of the Director General of Police in each state which would examine the conduct of public authorities and the growing tendency of insensitive and rude behaviour towards the public, arbitrary arrest of people by the police and their detention or allegations of false implication in criminal cases and custodial violence.
- prison reform (including administration, living conditions, health care of prisoners, overcrowding, periodical medical check up of prisoners, guidelines for premature release of life-term prisoners, speedy trial of under-trial prisoners)
- the implementation of a summer internship programme at the NHRC to expose both national and international university students to the work of the Commission

Obligation of the State to obey the order of a Human Rights Commission

After carrying out an inquiry into a complaint, the Human Rights Commission sends its a copy of its order to the government. Though the Protection of Human Rights Act, 1993 gives only recommendatory powers to a Human Rights Commission, recommendations in most cases are complied by the government. If the government decides not to implement the order of a Human Rights Commission, it has to give reasons for not doing so in a special report called Action Taken Report. This report is laid before Parliament in case of National Human Rights Commission and before the Vidhan Sabha in case of a State Human Rights Commission. Because India has a free press, aware voters and alert courts it becomes very difficult for the government to reject a decision of a Human Rights Commission.

In case the government does not take action on the orders/recommendations of a Human Rights Commission, it can approach the High Court. High Courts in most cases have upheld the decision of Human Rights Commissions and issued directions to the relevant authority to take necessary action.

Other activities undertaken by Human Rights Commissions

Human rights commissions are involved in a number of projects and programmes to raise awareness about human rights in the country. Human rights commissions often collaborate with national and international agencies, educational and research institutes, non-governmental and other organisations to inform people about their rights and highlight social issues.

Some projects involving HRCs

Madhya Pradesh HRC was involved in a project on improvement of living conditions in prisons within the state. The HRC assisted NGO groups in gaining access to prisons and in identifying areas of concern.

A project on Child Rights and Child Protection was conducted by the Punjab HRC and the British Council to raise awareness on issues concerning children. 72 Public Education Programmes were conducted across 12 districts in the state.

The NHRC and the British Council launched a project to impart human rights investigation and interviewing skills to police officers. Five other State HRCs were also included in this project.

Human Rights Commissions also look at mass violations of human rights such as:

Persecution of Reang Tribals in Mizoram

The National Human Rights Commission looked into displacement of 30,000 members of the Reang community in Mizoram who were forced to migrate to neighbouring states after widespread reports of their murder, rape, abduction and burning of houses. The NHRC directed the Government of Mizoram to arrange for their return and pay special attention to their safety and security. The NHRC has also been monitoring progress of relief and rehabilitation efforts by the State Government.

Gujarat Riots

Taking note of media reports about the inability of the State Government to control the communal violence that occurred in Gujarat in February-March 2002 and that the needful was not being done to stop the violence and arrest the guilty, the National Human Rights Commission registered a complaint before itself and asked the State Government to report to it on what it was doing to restore law and order and monitored relief and rehabilitation measures for victims.

Starvation Deaths in Orissa

The National Human Rights Commission appointed a Special Rapporteur to look into starvation deaths in Koraput, Bolangir and Kalabandi districts of Orissa. The Commission reviewed the implementation of various measures taken by the Government of Orissa. For this purpose the Commission sent its Special Rapporteur to various districts of Orissa. He submitted his observations on the progress of work to the Commission.

Conclusion

While the preceding pages of this background note provide a general insight into the functioning and work of Human Rights Commissions, the real onus of making them effective promoters and protectors of human rights lies on those who serve in them. Human Rights Commissions have been established to restore the faith of citizens in the State. Their job is to ensure that justice is done and perpetrators are not allowed to escape scot-free while their victims suffer. The staff of a Human Rights Commission are thus part of a vital process of building a more civilized and caring society, of ensuring that the State fulfils its responsibilities towards citizens. Orders and documents that pass through the corridors of a Human Rights Commission are harbingers of justice. It is through them that instances of impunity are addressed and state organs are made accountable.

A cursory glance at complaints that come before a Human Rights Commission reveals deep hurt, anguish and often disillusionment of the complainant with the State. If these issues are to be addressed it is imperative that staff of a Human Rights Commission are conscious of the plight of those who approach it. People who come to a Human Rights Commission come because something has gone wrong somewhere. They come because their human rights or the human rights of their loved ones have in some way been violated. A Human Rights Commission is unlike any other office, it is a temple of justice, it is the human face of the government and the employees therein represent the compassionate will of the State to ensure prevalence of the rule of law, and peace and security for all.

While final orders and recommendations may be made by the Chairperson and Members, subordinate staff too play a vital role in providing redress to victims through performance of their functions. Justice can only be done by the Chairperson and Members if files are put up in time, vital papers are not lost, investigations are completed honestly and swiftly, if complainants do not lose faith and withdraw their complaint because someone at the Commission did not let them in, was rude and inattentive or did not properly explain to them the progress of their case. Serving in a Human Rights Commission provides an employee a rare opportunity to be part of a process where justice is meted out, where balm is applied on the wounds of those who have borne the brunt of state coercion or alternatively have been at the receiving end of its apathy. Because, the nature of tasks is so sensitive, employees must always be seen to be act with compassion and should exercise due sensitivity to those who are suffering.