

Human Rights Manual for District Magistrate



NATIONAL HUMAN RIGHTS COMMISSION





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CHAIRPERSON NHRC

FOREWORD

Dignity is the essence of Human Rights. Any comprehension of Human Right will assure dignity to every human being in the world. This emphasis on dignity is set out in the preamble to Constitution of India and Charter of UDHR as a core value. Development of a nation cannot be thought of without a nation's ability to convert knowledge into wealth and social good. It is possible by improving governance through human development. People should not only live above the subsistence level but also should have a normal life with human value and dignity. The democracy can only be meaningful and effective if government and civil society go hand in hand to give the citizens a dignified life and this should be the best practice in the world's largest democracy.

Ensuring the citizen a value oriented and dignified life in the society becomes more important at this juncture when we are celebrating the Diamond Jubilee of India's Independence as well as charter of Universal Declaration of Human Rights. It is becoming more meaningful when the concept of Human Rights is encompassing social and economic rights of the citizens expanding its core areas from the concern of atrocities by the state forces to more and more areas ensuring dignified life to various sections of the people irrespective of their caste, creed, religion, age, social and economic status, etc.

The three pillars of democracy are legislature, judiciary and executive which are given a balanced role to contribute to the democratic ethos to run the country. Of the Executive, the District Magistrate plays a vital role being the nodal officer at the district level and harnessing all the development projects of the government as well as maintaining district administration including law and order. He is the supervisory officer of the correctional homes (jails) within the territorial jurisdiction of the district. He has to motivate, and

supervise officers at the grassroots level, block level, subdivision level and also at the district level. He has to liaison with the various government departments of the state and centre as well as statutory bodies and non government and civil society organizations of various kinds of development and maintenance works apart from apprising the higher authorities on the ground realities for the right kind of action to be generated from the top for the concerned district so that no problem occurs at the ground level. The District Magistrate plays one of the most vital roles in the administration in the delivery mechanism of governance of the people.

Lot of young, qualified, talented and professional men and women are coming in the Indian Administrative Service leaving other alluring job prospects elsewhere. One of the reasons for which they are coming is to serve people and it is true that in the democratic set up of our country the pro people approach of an administrator can really change the life of the people. But, efforts should also be given to supplement this ambition of the young administrators to help the people by providing right kind of information to them, making their hands even more strengthened so that they can act in more people, friendly manner.

The Human Rights Manual for the District Magistrates, prepared after lot of research and studies, will surely help the District Magistrates to take decisions in various matters, which will uphold the spirit of Human Rights among the people he is serving. This handy compilation will readily provide relevant guidelines for the same under one cover, which, otherwise, he had to gather from various places wasting lot of time.

Sensitizing the District Magistrate means making the life of the people much better and dignified and ensuring that the people will get their due from the administration. NHRC will be happy if this publication really does so.



Justice S. Rajendra Babu
(Former Chief Justice of India)

From the Editor's Desk

District Magistrates as Prime Human Rights Defenders

Human Rights form a vital area of human life. This has become essential for one's subsistence and growth in the society. It is thus an important instrument of the progress of modern human civilization.

While celebrating the Diamond Jubilee of the world's largest democracy, we should at this point of time take a vow to ensure every citizen's civil, political, economic, social and cultural rights to show the growth and maturity of our democratic process over all these years.

Being instrumental in bringing out various publications as an integral part of my responsibilities in the NHRC, it has become my passion too to create awareness on the matters of Human Rights among different kinds of people in the society, including Human Rights Defenders by sensitizing them in this vital area of human life through these publications.

However, my personal feeling was unique while presenting this particular publication. I was wondering why did I not have such a ready-made handy manual on Human Rights when I was a young District Collector in the State of Madhya Pradesh. The District Magistrates are the real face of the state administration through whom all kinds of administrative and developmental activities are initiated, supervised and followed up till the delivery level. Maintenance of law and order also comes under her/his jurisdiction among other magisterial duties. These kinds of duties and responsibilities of a District Magistrate, where an individual and/or a group of common people are involved, are constantly changing from those of the British rule and even during the early days after independence. The ethos of democracy is not only maturing day by day but also brings different meaning in a modern society, demanding a paradigm shift in the attitude, decisions and priorities of the District Magistrates in handling various situations and issues.

As a key person in the administration, primarily responsible in ensuring a dignified and value oriented life to the citizens, the District Magistrates need

to be sensitized in the areas like Human Rights, so that they can act as prime Human Rights defenders as per the international standards ensuring the practice of true democracy in the grassroots level.

The Constitution of our country has ensured balance of power among the administration, the legal system and the law making bodies. Various agencies within the executive machinery such as civil administration, police, para military and armed forces play a complementary role, being answerable to each other. This definitely ensures the concept of checks and balances and gives no particular agency the absolute and supreme power in the democracy. The District Magistrates are required to play a vital role, given the nodal position in this process at the ground level and their alertness and attitude as prime Human Rights defenders within the government system is absolutely essential for a democratic and welfare State like ours to ensure basic Human Rights to the citizens at the grassroots level. In the modern concept of pro people administration why only the independent agencies will be required to come forward to take up the cause of Human Rights violations? The District Magistrate and her/his team is one of the agencies within the government machinery, which can also take up such causes. An individual and/or group may have to spend time and money both to get redress for Human Rights violations, which can also be taken up by the District Magistrate even before any such violation takes place or at the time of such violations even one being inside the system and this is the wonder of democracy.

The modern concept of Human Rights is not only confined to the atrocities by the State forces but are well extended to the economic and social rights of the citizens and in these matters the District Magistrate also plays a vital role in implementing several welfare projects of the government targeted to uplift the downtrodden, including socially and economically weaker sections of the society. Human Rights can also be taken up as an instrument of ensuring good governance particularly to the people living below the poverty line and other marginalized and downtrodden, especially in case of ensuring subsistence level food, shelter, clothing and other government supplies during normalcy as well as during the disaster. The District Magistrate can also make use of Human Rights norms as a strong weapon to protect these people from the clutches of the Human Rights violators having vested interest.

This manual elaborately deals with dos and don'ts and various other nuances in connection with different important issues to be dealt in by the District Magistrate and her/his team. The common areas sensitive to Human Rights, such as maintenance of public law and order, custodial justice including

custodial death, terrorism and insurgency, social, economic and cultural entitlements, child rights, rights of women, eradication of bonded labour, rights and equalities in respect of scheduled castes, scheduled tribes and minorities, rights of differently able and physically challenged, rights of senior citizens, Food Security, Health and Human Trafficking along with Integrated Plan of Action are discussed in detail in this manual as in all these areas the District Magistrate or her/his team in the administration are the nodal officers and responsible to oversee the factors concerning Human Rights.

I am sure this manual will help the District Magistrates and their team of able officers to be readily informed and also be proactive on Human Rights issues and thus ensuring better Human Rights standards in the whole country.



(Aruna Sharma)

Joint Secretary

National Human Rights Commission

A Few Words

A child is born. Its birth represents the duplication of human species. It becomes a festive occasion of excitement and joy for the parents, family members and the neighbourhood. They pray for the health, happiness and wellbeing of the new born in the words of Shukla Yajur Veda:-

“May you live for one hundred years
May you see one hundred autumns
in their resplendent glory
May you listen to the whispers of the falling leaves
of one hundred autumns
May you minstrel to humanity
in the language of one hundred autumns’.

But the fervour and joy are shortlived. No sooner the baby is out of the protective warmth of the womb of the mother, it is subjected to a series of vicissitudes. To start with, there is the incidence of low birth weight/ compounded by vulnerability to a series of infections (diarrhea, dysentery, whooping cough, tetanus, measles, diphtheria, T.B. and so on). As the child learns to begin with the first step in the long journey of life, it falters and falls. Every moment of its evolution and growth also becomes a moment of accidents, which cause injury and, therefore, anxiety and concern. The pangs of death invade the scene as unpredictably as the joy of birth. Children could get burnt or drowned as they could go missing, being victims of kidnapping/ abduction by sinister designs of predators, often not to return to the cosy and secure fold of parents.

As the infant grows to childhood, it is subjected to an abominable culture of sex based discrimination incomparable in its severity in any other country. As the years roll by the discrimination gets deep rooted and gets extended to matters of education, food, dress, health, medical care including specialized treatment. Even before she saw the light of the world, the foetus was subjected to a sex determination test and foeticide; she falls a prey to the barbaric

practice of female infanticide after her advent on the earth. Both are appalling to a civilized human conscience and indefensible on any count.

In the Bheesma Parva of Mahabharat, it has been said that ‘Man is the finest and best in creation; there is nothing greater than man. As the story goes, when Bheesma Pitamaha fell on the 10th day of the battle of Mahabharat and was lying on the bed of arrows, wreathing in physical and mental anguish Yudhistira approached him and asked: ‘Pitamaha! Please tell us at this moment of your life as to what is the supreme truth in the world’. Quick came the reply: ‘Let me tell you, O Yudhistira, that supreme truth there is nothing greater than man’.

Bhisma, Yudhistira and all other characters in the epic are figments of imagination of Poet Vyasa who composed Mahabharat, but the message thereof is loud and clear, as also relevant for all times. The message is this: the yearning of mankind to live with dignity and decency and to lead a clean, safe, secure and congenial existence has found expression through the creative works of poets, playwrights, novelists, painters and sculptors for generations. The crowning glory of this yearning manifested itself in Viswakavi Rabindranath Tagore’s poetry in the following couplet:

‘I do not want to die
In this beautiful planet
I want to live
Admidst the army of human beings
I want to live
In the midst of the rays of the rising sun
Amidst the flowers and foliage of gardens
of beauty and fragrance
How I wish I could get a little place
Amidst the hearts of living beings’.

If the right to life or to live with dignity is the quintessence of Article 21 of the Constitution, which has also been an integral part of Indian ethos and culture, it is appropriate to ask the following questions:

- Boys and girls are born out of the same womb. They eat the same food, drink the same water, breathe the same air and wear the apparel

made out of the same fibre. The same WBC and RBC flow through their veins and arteries. What is the rationale for erecting an artificial wall of division between them?

- Women invariably work longer than men. They are as intelligent, as imaginative, as ingenuous and as resourceful as men. As a matter of fact, it is inestimable. Their contribution through unpaid labour to the family, community and society is much higher than that of men. Why should their economic contribution be technically excluded, socially undervalued and economically underestimated? Why should women continue to be deprived of the same remuneration as their male counterparts for same or similar nature of work or work of equal value and being subjected to many other forms of discrimination?
- Why is it that as human life advances from childhood to youth, from youth to manhood and manhood to old age, there is so much of denial of basic entitlements such as right to land, right to food, right to education, right to health and hygiene, sanitation and medical care, immunization and nutrition etc. at every stage?
- Why do we take recourse to trafficking of girls and boys for commercial sexual exploitation, for forced labour, for adoption, for performance in circus and for sale of organs, being fully aware of the fact that by doing so we are carrying the victims who are our succeeding generation, our hope, our asset and most precious resource to the brink of their near total destruction?
- A worker is not a commodity but an animate entity. Whether a woman or a man, she/he is entitled to be treated with dignity, decency and civility at the workplace. Why despite the judgment of the Supreme Court in *Visakha Vs. State of Rajasthan*, there should still be cases of sexual harassment at workplace?
- Why are children, the flowers of home and a formidable asset to the nation being pushed involuntarily to work which is both drudgerous and hazardous at the cost of their education, health, psyche and total development, when we are fully aware of the fact that childhood once lost cannot be regained?
- Why do we push human beings from an autonomous existence to a State of servitude, to being 'hewers of wood and drawers of water'?

to a dehumanized status, where the dignity, beauty and worth of human life is reduced to smithereens, being fully aware of the fact that freedom is the choicest object for every man or woman and once lost cannot be easily regained?

- Untouchability has been abolished and its practice in any form is forbidden (Article 17). We have also enacted three legislations on the subject, namely:-
 - the Untouchability (Offences) Act, 1955;
 - the Protection of Civil Rights Act, 1976;
 - the SC and ST (Prevention of Atrocities) Act, 1989.

Why is it that despite Constitutional and legal Provisions members of SC and ST continue to be dealt with so much of humiliation, oppression, harassment, brutal torture and denial of inalienable human rights? Why is it that untouchability is being practised even today in every nook and corner of the country?

- Linguistic, cultural and religious minorities are entitled to protection of their language, culture and religion and should be treated with the dignity, decency and respect to which they are entitled, as any other member of the civil society. There are, however, occasions when they feel that they are victims of cultural neglect, linguistic discrimination and religious persecution. What needs to be done to restore to them the dignity, equality (nondiscrimination) and freedom (of their language, culture and religion) to which they are entitled?
- The physically, orthopaedically and visually handicapped and mentally retarded are also human beings and are entitled to be treated with kindness, compassion and commiseration for the simple reason that they are not responsible for what they are. Besides, ‘The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1996 gives for the first time legal recognition to the rights of the disabled persons in India. Have we done enough to implement the Provisions of this important legislation in letter and spirit? If not what more needs to be done in this regard?
- The seminal principles of custodial justice have been enumerated in the Constitution and series of judgments of the apex Court. Clear guidelines have been laid down by the latter on interrogation,

confession, arrest and detention, bail, trial, torture, death penalty and upholding human dignity of the arrestee/detainee to its full measure etc. The persons arrested and remanded to custody – police or judicial are to be treated with the same dignity and decency to which they as any other human being are entitled. Similarly the guiding principle for convicts is reformatory behaviour and treatment and not retributive justice.

What is the extent to which we as upholders of custodial justice have lived upto these Principles?

These and many other questions in relation to other deprived and disadvantaged sections of the society would continue to haunt us as we proceed to deal with them as individuals and groups. It is also pertinent to ask as to what would be the role of Collectors/DM to promote, protect and preserve basic human rights of these deprived/disadvantaged sections of the society, how they should perceive that role, how through orientation and training we make them internalize that role and how eventually we make them implement their mandate.

The steel frame inherited (a hang over of colonialism spanning over 200 years) by the bureaucracy (of which Collectors/DMs are an integral part) regrettably continues to shape their attitude and approach to problems of life in general and administration in particular (though there are exceptions). It is responsible for creating mental woodblocks which is not conducive to the general wellbeing of the people of the society.

Notwithstanding such hangovers of the colonial past and the aberrations associated therewith there have been examples set by a number of Collectors/DMs in their individual capacity in a number of areas which are worthy of emulation by others. The areas are:

- maintenance of law and order, peace and tranquility (which includes prevention of linguistic and communal disturbances);
- effectively handling insurgencies;
- effectively controlling riots inside jails;
- bringing about reforms and qualitative changes in jail administration;

- protecting and safeguarding the interests of linguistic, cultural and religious minorities;
- promoting development of SC, ST and OBCs;
- protecting and safeguarding the interests of physically, orthopaedically and visually handicapped and mentally retarded;
- protecting and safeguarding the interests of girls and women in matters of their access to education, primary health care, vocational skills, opportunities for employment, prevention of trafficking etc.;
- elimination of forced/bonded labour;
- elimination of child labour;
- improvement of sex ratio;
- land reforms;
- protection and conservation of environment;
- equality and empowerment of women;
- planned parenthood and balanced family.

While the achievements of individual Collectors/DMs are many, it should be noted that these are on account of enormous personal bold and imaginative initiatives taken by them amidst bundles of heavy preoccupations and responsibilities. There may be Collectors/ DMs who are equally well meaning but may not have been able to contribute substantially to a particular area(including the area of human rights) on account of (a) short tenure (b) competing claims (c) external and internal pressures to attach priority attention to a few areas at the cost of others.

Taking things as they are, the NHRC recognizes (a) the pre-eminent position of Collectors/DMs in the hierarchy of district administration, (b) need for their intensive human rights education orientation and sensitization. Such education and orientation imparts new skills, removes doubts, misgivings and reservations about importance of human rights, instils hope, faith and conviction that implementation of human rights is not utopian but possible, feasible and achievable and replaces cynicism and scepticism by a robust optimism that 'we can make it happen, we will make it happen, come what may'.

It is with this end in view that the Commission entrusted the responsibility to LBSNAA, Mussoorie to design a Manual in 2002 with the help of identified resource persons to incorporate central messages pertaining to promotion, protection and preservation of human rights in 11 areas, so that it could come quite handy for all the 600 Collectors and DMs of 600 districts in the country in terms of their familiarization, orientation and sensitization.

The million dollar question which arises is this: how do Collectors/DMs/DCs proceed to operationalize the guidelines contained in the Manual?

Placed below are some practical tips about such operationalization:-

- I The first requirement in the entire process is to have a correct understanding which should also be positive, proactive and sensitive of the Provisions of the Constitution (Article 21, 21A, 23, 24, 38, 39,47,51); Provisions of Laws (Tenancy Laws, Labour Welfare Laws and Social Welfare Laws) and judgments of the Supreme Court in respect of various areas of human rights as also guidelines issued by the NHRC from time to time.
- II When a law or ruling is capable of being interpreted differently a positive, proactive and sensitive district administration, headed by the District Magistrate, should adopt that interpretation which is beneficial to the persons for whose benefits the law has been primarily enacted.
- III Time is the essence in dealing with any problem. Acknowledging the existence of the problem, effectively dealing with it and taking timely steps for prevention of its recurrence instead of dithering, vacillating and postponing decisions on implementation will yield far more dividends.
- IV One can take cognizance of the problem through newspaper reports, through public interest litigations or through information from any other credible source.
- V If on account of preoccupations, constraints of time management and other compulsions, the DMs are unable to directly deal with the complaints, they need to identify officers of proven trust, ability and social conscience and depute them for dealing with the complaints and submission of the report in a time bound manner.
- VI After the reports are received, they need to apply their mind, scrutinize them and take a fair and judicious view on the complaint. On no

account, decision on investigation/enquiry reports should be kept pending.

- VII All complaints and grievances (be they in relation to bonded labour or child labour or discrimination or trafficking or custodial violations of human rights) must be redressed in the shortest possible time as any delay in their disposal would defeat justice.
- VIII Computerized documentation of success stories is extremely important. Such documentation would help to remove cynicism and scepticism. It would inspire confidence that we can do it. It can be used for training and evaluation.
- IX DMs should from time to time have a complete stock taking of cases pending with subordinate Magistrates who have been vested with judicial powers [like Executive Magistrates vested with powers u/s 21 of Bonded Labour System (Abolition) Act]. While they may reward individual officers for fast track disposal, they must penalize the sloppy, slow and superfluous ones.
- X NGOs – good, reliable and committed as also apolitical and non political must be promoted, encouraged and fully involved with social action and action research. They can undoubtedly supplement and complement the role of the State and Civil society on account of (a) flexibility in their structure and operations, (b) presence of a number of good Samaritans working and living with people on the ground without any expectation of award, reward or incentive, (c) there are no hassles of bureaucratic redtapism in their decision making process. The areas of social action in which the DM may enlist the involvement and support of NGOs would depend on the experience, attitude, approach and professionalism of the NGO in a particular area. Once, however, a decision is taken to involve an NGO in a particular field of social action, it should be whole heartedly supported and encouraged in its operations.

Dr. L. Mishra, IAS (Retd.)
Special Rapporteur, NHRC

Maintenance of Public Law and Order

1.1. INTRODUCTION

The Universal Declaration of Human Rights (UDHR) is a historically memorable and significant document of human liberty. Its preamble frames the document, proclaiming that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed the highest aspiration of the common people.”

This chapter attempts to discuss the role of human rights approach in eliminating or reducing cases of human rights violations in the sensitive and difficult task of maintenance of public law and order by law enforcement agencies viz., police, para-military, military and the executive consistent with the spirit of chapter III on Fundamental Rights of the Constitution of India, the Universal Declaration of Human Rights and other relevant UN Conventions and Covenants.

The smooth and effective maintenance of public law and order is the cornerstone for shaping and regulating the multi-ethnic, multi-religious and multi-lingual diversified society in India as a harmonious, democratic, secular and social welfare oriented civil society gravitating towards the concepts of “Unity in diversity”, “truth” and “transparency”.

Why human rights?

It is essential if humanity “is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

Article 8 is a ‘due process’ provision noting that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law”.

Article 13 of UDHR assures freedom of movement.

Article 18 assures freedom of thought, conscience and religion.

Article 19 assures freedom of opinion and expression.

Civil society has broken down in numerous areas. There is a widespread belief that society is disintegrating as are traditional, moral and social codes resulting in routine abuse of human beings and their rights. Against this background, the concept of human rights has acquired new importance and resonance. The idea that people possess certain basic human rights, and that these should be safe from violation by the State or by other groups or individuals, seems today an important bulwark against the breakdown of law and order and degradation of moral norms.

Globalization and human rights

The global machinery of surveillance and monitoring through the UN human rights regime, is reinforced by an evolving set of regional regimes and mechanisms in the adjudication and enforcement of rights. There has thus occurred a consequent institutionalization for vindication of human rights.

Globalization is associated with significant challenges in the human rights project, as conventionally conceived. The most pressing issue confronting the guardians of the human rights project is how to marshal the forces of globalization in order to ensure the advancement of human rights and justice in the new millennium.

The present trends of severe abridgement of human rights may continue in future and demands for right to life, liberty, equality, etc. will continue to be made. The primary victims of human rights violations will be women, weaker sections, children, victims of terrorism-related violence and environmental degradation.

Indiscriminate urbanization, consumerism and industrialization have brought degradation to the civil society. Thus human rights violations can be eliminated, if there are basic changes in the socio – economic and political milieu.

Accessibility to legal remedies by the common man is ensured by:

- Proper recording of General Diary / First Information Report in Police Stations and follow-up enquiries / investigations,
- Remedy before legal forums / Courts / tribunals, which includes invoking Constitutional writ jurisdictions of the High Courts and the Supreme Court,
- Vindication of infringement of rights of persons,
- Legal counselling through awareness campaigns,
- Legal aid and clinics to remedy the problem of unequal financial power to continue law suits,
- Formulating and ensuring the accountability criteria of functionaries at different levels of the State / para-State institutions.,
- To curb the general tendency of higher ups in administrative /social hierarchy to ignore and rise above the law by use of:
 - a) muscle power,
 - b) money power,
 - c) political power,
 - d) rampant corruption.

Human Rights for good governance are characterized by the following:

- ✓ Protection and promotion of fundamental rights depend on proper and efficient law enforcement,
- ✓ Effective law enforcement is possible only when there are trained and efficient keepers of the law, wedded to human rights norms,
- ✓ Politicians now prefer officers who are not upright and strong – willed and are willing to function as “sycophants and courtiers”. (Dharam Vira).
- ✓ “the Rule of law in modern India, ... has been undermined by the rule of politics.” (Prof. David Bayley)
- ✓ “With the passage of years there is escalation of crime and lawlessness.” (Sankar Sen)
- ✓ “large number of cases in police stations are not registered.” (Sen)
- ✓ delay in disposal of cases,
- ✓ a vast number of old and outdated laws continue in statute books,
- ✓ the Police Act of 1861 remains archaic, inhibiting police to function professionally without fear or favour. Police reforms are yet to ensure greater transparency, accountability and responsiveness to public criticism of police functioning

- ✓ politician-civil service–police nexus must be eliminated to stamp out ‘politicization of crime and criminalization of politics’.
- ✓ Police have to be made accountable.
- ✓ “corruption of civil servants is one of the most damaging consequences of poor governance. It subverts law enforcement and undermines the legitimacy of the State.” (Sen). For good governance, it is essential “to devise a series of long – range strategies and short –term measures to deal with the menace of corruption Corruption flourishes because punishment is lacking.” (Sen)
- ✓ community policing assumes police – public partnership,
- ✓ “internal regulation of policing can be more thorough, effective and efficient than external supervision” (Bayley)
- ✓ “any civilian oversight body in order to be effective should have an independent investigative capacity.” (Sen).
- ✓ the roots of police deviating from the ‘Rule of Law’ stem from:
 - ❖ ambiguous legislation
 - ❖ vulnerability to legal sanctions
 - ❖ occupational culture and
 - ❖ a desire to produce quick results
(Maurice Punch in ‘Conduct Unbecoming’)

1.2. HUMAN RIGHTS AND PUBLIC LAW AND ORDER

A) Universal Declaration of Human Rights, 1948 (UDHR) envisages the following human rights:

- Right to life, liberty and security of person to every human being. (Article 3)
- Right to privacy and security of life. (Article 12)
- Freedom of thought, expression, conscience and religion. (Article 18)
- Freedom of peaceful assembly and association. (Article 20)
- Right to equality and non-discrimination. (Articles 1, 2 & 7)
- Freedom from slavery or servitude. (Article 4)
- Freedom from arbitrary arrest, detention or exile. (Article 9)
- Criminal procedure rights:

- (a) Right to consult a lawyer:
 - (b) Right to be presumed innocent unless proved guilty. (Articles 10 and 11)
 - (c) Right not to be subjected to retrospective legislation.
1. Right to nationality (Article 15),
 2. Right to exercise franchise and take part in governance of the country (Article 21),
 3. All other rights for preserving human dignity and self-pride.

In Sunil Batra case (AIR 1980 SC 1578, pp 1601-1603), the SC quoted extensively from the international instruments on Human Rights.

1.3 ROLE OF THE GOVERNMENT

- ❖ A new spirit emerged in the minds of the framers of the Indian Constitution in the sphere of human rights and human welfare. The Constitution framers referred to the UN Charter on various political, economic and social matters. The fundamental rights and the Directive Principles of State Policy are based on the principle of humanitarianism and human rights.
- ❖ On the basis of the Directive Principles of State Policy, the Union Government enacted a number of Acts related to human rights including:
 - a) Abolition of Untouchability Act 1955,
 - b) Immoral Traffic (Prevention) Act, 1956,
 - c) Dowry Prohibition Act, 1961 (Amendment 1985, 1986)
 - d) The Protection Human Rights Act, 1993
 - e) The National Human Rights Commission (Procedure) Regulations, 1994
 - f) The Commission of SATI (Prevention) Act, 1987
 - g) The National Commission for Backward Classes Act, 1993
 - h) The National Commission for Minorities Act, 1992
 - i) The National Commission for Safai Karmacharis Act, 1993
 - j) The Persons with disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 and Rules, 1996.
 - k) The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
 - l) The Protection of Civil Rights Act, 1955 and Rules, 1977

- m) The Scheduled Castes and the Scheduled Tribes (Prevention and Atrocities) Act, 1989 and Rules 1995.
- ❖ To ensure human rights and safeguard the interests of minorities and weaker sections of the society, several independent bodies have been created under provisions of the Constitution, such as:
 - a) The Minorities Commission
 - b) The Language Commission
 - c) The Scheduled Caste and Scheduled Tribes Commission
 - d) The National Commission for Women
 - e) The National Human Rights Commission
 - f) State Human Rights Commissions (15)
 - g) The National Commission for Backward classes
 - h) The National Commission for Minorities
 - i) The National Commission for Safai Karmacharis
 - j) The National Commission for Protection of Children's Rights
- ❖ The issue of human rights received wide attention in the media during the 1980s because of extremist and separatist activities in Punjab and Assam.

The United Nations asked India to solve the problem by negotiation with the extremists.

- ❖ There had been a steady erosion of human rights in Jammu and Kashmir State in the 1990s. Massacres continue to be in the last decade with increasing ferocity being committed by extremists in Jammu and Kashmir State. Pakistan tried many times to internationalize the matter. However, Pakistan had insufficient support from the United Nations. On 17 August 1995 the UN Security Council expressed its concern about the killings of a Norwegian tourist, Hans Christian Ostro, by the terrorists.
- ❖ The 1990s have seen the enactment of human rights legislation in India. 'The Protection of Human Rights Act', 1993 provided for the constitution of a National Human Rights Commission, State Human Rights Commissions in individual States and a Human Rights Court.

- ❖ V.R. Krishna Iyer J, reacting to the establishment of the National Human Rights Commission observed “The mendicancy to which this nation is reduced . . . even in regard to human rights ideology is a matter for pity.” He also opined that “we should have the Human Rights Division of the Supreme Court of India. It will be useful. Similarly we may have at the High Court level and then they can operate with infrastructure, which is provided. . . . We really want, therefore, a commission which is vitalized, a commission which has an independent investigating staff not deputed from the police.”
- ❖ In favour of the NHRC T.K. Thommen J, observed: “The commission is not a court. Its function is to be the watching of human rights. Its procedure is not expected to be adversarial or accusatorial. It must not allow itself to be bogged down by procedural formalities.”
- ❖ Bureaucracy and administrative law remain as stumbling blocks to genuinely interested individuals or bonafide agencies in obtaining information from government files, regardless of the right of information that can be claimed.
- ❖ Authorized snooping and surveillance of the opposition, and even of friends, continues, regardless of the governments in power.
- ❖ In a rescue of 450 ‘child sex workers’, who were subjected to mandatory testing for AIDS, it was stated that a rare opportunity had been provided ‘for gathering epidemiological data’ that ‘cannot be lost on grounds of human rights or morality’. Half of the subjects were between 10 and 15 years, and many between 20 and 25 years and above, yet they were all declared minors and were shunted from orphanages to beggars’ homes.
- ❖ India has the largest number of working children, who have no option but to work for the survival of themselves and the families that find them ‘usable’.
- ❖ The Prevention of Immoral Traffic Act, 1956 as amended in 1986 recognizes the criminality of child prostitution, yet few are convicted.

- ❖ The agony is aggravated when, under the Juvenile Justice Act, 2000 as amended in 2006, these children are arrested and rescued as vagrants or missing persons.
- ❖ In enforcing 14 different Acts the problem of child labour gets sidelined.
- ❖ The National Police Commission in its 8-volume report deals with the rights of the accused under the Criminal Procedure Code and the Evidence Act; custodial rape is an aggravated offence punishable with a deterrent sentence, and yet it occurs.
- ❖ In 1997 and 1998, indiscriminate police firing caused mindless cruelty and deaths. People survive in fear, while cases against police are withdrawn.
- ❖ Individuals and organizations run the risk of being labelled as agents of imperialism, as Amnesty International has.
- ❖ A career in human rights involves truckling to the powers that be. Human rights activists can blindly buy the versions put across by governments and their allies.
- ❖ The Proclamation of Emergency of 1975 and Terrorist and Disruptive Activities (Prevention) Act of 1985 demonstrated how the law-enforcing agencies made room for government lawlessness. Human rights situations were never to be the same again, particularly after the criminalization of politics.
- ❖ Militant communalism and fundamentalism have threatened the democratic values being cultivated in society.
- ❖ The struggle for the human rights of prisoners goes beyond the Constitution and Jail Manual and, through the media, into homes and hearts of the people.
- ❖ The need to enforce human rights goes beyond Constitutional obligations.
- ❖ The initiative to create new responses with the introduction of appropriate procedures by NHRC will bring about structural

changes that will communicate verifiable results. The status quo in law is being changed, but not at the rate of expectations from NHRC.

- ❖ The affirmation of human rights of all people in Constitutional texts is not adequate. The key lies in having a grievance redressal mechanism, and instruments, which are yet to be accepted as pre requisites. We have now arrived at a stage in our political development where people's rights against the State have been legitimised.
- ❖ After reviewing all the decisions in respect of the State liability, the Supreme Court of India in *Nilabati Behra v. State of Orissa* (AIR 1993 SC 1960) declared that the defence of sovereign immunity is not applicable; it is alien to the concept of guarantee of fundamental rights. Further, the Court stressed that such defence is not available in the Constitutional remedy. The Court declared that award of compensation under Articles 32 and 226 is a public remedy based on the strict liability for contravention of fundamental rights for which sovereign immunity does not apply. This ruling clarifies that sovereign immunity may be defence in the proceedings under private law of torts.

The impact of this historic ruling is that anyone whose fundamental rights are adversely affected by the State action can approach either Supreme Court or High Court under Article 32 and 226 of the Constitution respectively and, in such a case, the State is not entitled to raise the plea of sovereign immunity in public law proceedings. When once the defence of sovereign immunity is made non-applicable in the area of public law, the courts can effectively protect the fundamental freedoms of a person from the unauthorized infringement of such rights of State action and thereby can uphold the Rule of Law.

1.4 STATUTORY OBLIGATION OF THE DISTRICT MAGISTRATE

District Magistrate (D.M.) is the pivotal functionary in all matters of governance in the district and, hence, he has to act as a major custodian of human rights. The following matters and decisions are incidental to their important public office.

1. Appointment of D.M.

It has to be made by the State Government 1965 Sc. 1619.

2. Head of the Executive in the District

The D.M. occupies a very important position in the district and is the Head of the Executive there; he exercises powers of superintendence and control over the other (Executive) Magistrates in the district. [AIR 1969 SC. 483; 1969 Cr. L.J. 803]

3. His manifold functions

Merely because the D.M. has been vested with certain power u/s 10 (old Cr. P.C.) now Sec. 20 of the new Cr. P.C., it does not follow that he has no other powers which are not contemplated by Cr. P.C. He is also the District Officer and, in that capacity, he has to perform many functions, which are not covered by the Cr. P.C.

AIR 1940 Calcutta 30; 41 Cr. L.J. 440 (DB)

4 Law and order is his charge

The maintenance of law and order is a function of the District Magistrate

AIR 1988 SC. 93; 1988 Cr. L.J. 189.

5. Only one D.M.

There can be only one person in the district who can be a District Magistrate.

AIR (31) 1944 Nagpur 84

There is only one District Magistrate in one District. 45 Cr. L.J. 196.

6. His responsibility

The D.M. is primarily responsible for the peace of the district.

13 Cr. L.J. 693, 15 Cr. L.J. 39, AIR 1914 Mad 613 (FB)

7. D.M. includes an officiating D.M.

The expression D.M. includes an officer who is designated as an officiating D.M. in the order of his appointment. AIR 1953 Allahabad 664.

8. D.M. on casual leave – the post does not fall vacant

An officer absent on casual leave is not treated as absent from duty. The next senior officer remains in charge of the current duties. There is no temporary succession, particularly so where the D.M. has not left the district. AIR 1924 Oudh 162.

9. District Magistrate and Additional District Magistrate

An Additional District Magistrate is below the rank of District Magistrate, though he is invested with the powers of District Magistrate. AIR 1969 S. 483; 1969 Cr. L.J. 813.

The object of appointing an Additional District Magistrate is to relieve the District Magistrate of some of his duties. 1975(2) Cr. L.J. 583, 1969 Cr. L.J. 813.

10. D.M. and A.D.M.

A.D.M., even if he is vested with all the powers of a District Magistrate, does not thereby acquire status and rank of D.M. 1989 Cr. L.J. 1112 Delhi (DB).

11. Power of the D.M. for Preventive Detention – A.D.M. cannot exercise

An officer below the rank of District Magistrate cannot exercise the power of preventive detention AIR 1965 Sc. 1619, 1965(2) Cr. L.J. 553
An Additional District Magistrate, though empowered to exercise functions of D.M., is not competent to pass an order of detention u/s 3 of National Security Act 1980.
1981 Cr. L.J. 1526, Allahabad (DB)

12. Power of the D.M. under Arms Act – A.D.M. may exercise

An A.D.M. empowered u/s 20(2) Cr. P.C. to exercise the power of D.M. under the Arms Act, which falls within the meaning of the expression “any other law” as occurring therein may accord sanction u/s 39 of Arms Act.
AIR 1960 Assam 45, 1969; 1969 Allahabad Law Journal 347.
[Vide also 1959 Cr. L.J. 211; AIR 1959 Manipur 15]

13. Defence of India Act – Power of requisitioning property

The power is vested in D.M., and A.D.M. is not competent to exercise that power of D.M.

1969 Cr. L.J. 803; AIR 1969 Sc. 483.

When the High Court directed the D.M. to dispose of a matter arising out of obstruction to giving a telephone connection under s. 16 of the Telegraph Act, it was quite permissible for the A.D.M. to perform that task. AIR 1984 Col. 294.

14. S 22 read with S20(1)

District Magistrate – his jurisdiction

His jurisdiction extends over the whole of the district. 1968 Cr. L.J. 256.

15. Sec. 23

Subordination of Executive Magistrate

A Magistrate who is subordinate to S.D.M. or A.D.M. is also subordinate to D.M.

Indian Law Report 14 Mad., 399

A S.D.M. or A.D.M. is subordinate to D.M. AIR 1969 Mysore 181.

16. A Special Executive Magistrate is subordinate to District Magistrate.

AIR 1952 All 70.

17. An A.D.M. is not subordinate to D.M., Vide Sec. 23 Cr. P.C.

18. An A.D.M. is an officer below the rank of D.M. 1965 SC 1619.

19. A.D.M. is not D.M.

An Additional District Magistrate, who is vested with the powers of a District Magistrate, does not thereby attain the status of the District Magistrate. AIR (31) 1944 Nagpur 84.

20. Distribution of Work

Distribution of work is confined to the D.M. and cannot be exercised by S.D.M. or A.D.M. or Senior Magistrate. AIR 1914 All. 202

21. Section 24 Cr. P.C. Appointment of Public Prosecutor – consultation between D.M. & Sessions Judge

It is for the Sessions Judge to assess the merit and professional conduct of the persons recommended for appointment as public prosecutor and Additional Public Prosecutor and the D.M. to express his opinion on the suitability of persons so recommended, from the administrative point of view. The consultation between Sessions Judge and D.M. about the merit and suitability of persons to be appointed as Public Prosecutor or as Addl. Public Prosecutor, contemplated in S 24(4), must be effective and real. 1993(3) SCC 552 Allahabad.

22. The Magistrate for the purpose of section 97 Cr. P.C. – Issue of search warrant includes D.M. and S.D.M.

23. District Magistrate has no power u/s 144 Cr. P.C. to postpone the meeting of the members of the Municipal Committee. Motion of no confidence passed in such meeting held in defiance of the order of D.M. is valid.

AIR 1995 P&H 98(DB)

24. S. 144 – D.M. to maintain public order u/s 144

It is for the D.M. to exercise his powers in consonance with the provision of S. 144 Cr. PC for the purpose of maintaining public order, which would be in the larger interest of the Society. The exercise of Fundamental Rights under Articles 25 and 26 of the Constitution is not an absolute right, but must yield or give way to maintenance of public order. AIR 1988 SC 93; 1988 Cr. L.J. 189

25. D.M.'s power to transfer case

D.M. can transfer a case u/s 147 from one Court to another.
AIR 1949 Allahabad 616; 50 Cr. L.J. 429

26. Sec. 446 – Whether A.D.M. can accept the bond in place of D.M.?

Accused was directed to be released on bail to the satisfaction of the D.M. A.D.M. is also competent to accept bail bond and ultimately draw up proceedings u/s 446 to impose penalty in the event of the bond being forfeited for violation of its terms and conditions. AIR 1967 Calcutta 314.

27. Bond – D.M. and A.D.M.

Bond to the satisfaction of the D.M. may be accepted by the A.D.M.
AIR 1969 SC 189

1.5 CASE STUDIES

POLICE EXCESSES CUSTODIAL DEATH

Custodial death of Mohammad Irshad Khan (Case No. 2387/30/2000-2001-CD)

The Commission received information from the Deputy Commissioner of Police (DCP), North East District, Delhi about the death of Mohammad Irshad Khan. A complaint was also received from Shri Acchan Khan, father of the deceased, alleging that his son had died as a result of brutal beating by the police. Shri Acchan Khan added that the family of the victim had not been informed of the circumstances of the death. The intervention of the Commission was requested, as also an independent investigation into the case and protection for the complainant's family in view of threats by the police personnel who had been accused of being involved in the death of Mohammad Irshad Khan.

In response to a notice from the Commission, the Home Secretary, Government of the National Capital Territory of Delhi, stated that the matter had been investigated by DCP (Vigilance), Delhi. The latter's report indicated that, on 12 October 2000, while the victim was driving his two-wheeler scooter, he had collided with a cycle rickshaw. In a scuffle that ensued, a policeman had intervened and reportedly beaten the victim, who had collapsed on the spot. The victim was then taken to GTB Hospital, where he was registered at Police Station Usmanpur, and the accused Sub Inspector Vijay Kumar and Constable, Swatantra Kumar had been arrested. A magisterial inquiry had been conducted by the S.D.M., Seelampur.

A further report, dated 9 April 2001 from the Deputy Secretary, Home Department, Government of National Capital Territory of Delhi, stated that a charge sheet had been filed against the delinquent police official's u/s 302/34 IPC.

Upon further consideration of the matter, the Commission directed that a show-cause notice be issued to the Government of National Capital

Territory of Delhi asking as to why immediate interim relief in the amount of Rs. 3 lakhs u/s 18(3) of the Protection of Human Rights Act be not granted to the next-of-kin of the deceased.

The Government of National Capital Territory of Delhi, in response, stated that Rs. 3 lakhs had been sanctioned towards the payment of compensation to the next-of-kin of the deceased. It was later confirmed that the amount was paid to the wife of the deceased on 30 May 2001.

TORTURE

Torture of Dayashankar by Police: Uttar Pradesh (Case No. 791/24/2000-2001)

One Dayashankar Vidyalankar, a resident of Haridwar, Uttaranchal submitted a complaint alleging that while he was propagating the teachings of Swami Dayanand at Haridwar Railway Station on 29 February 2001, he was beaten and manhandled by a Constable and, as a result, his left ear was badly injured and a bone behind his right ear was broken.

The reports received from the Superintendent of Police Railways, Moradabad and the Director General, Railway Protection Force, Railway Board, in response to a notice issued by the Commission, indicated that the allegations of the complainant against the Constable were found to be correct. The Constable was punished by a reduction in his present pay-scale by 3 stages for 3 years, and a case u/s 323/326 IPC and section 145 of Railways Act, 1989 was also registered against him.

The Commission after considering the aforesaid reports and giving a personal hearing to the complainant, as well as after obtaining an opinion from a Medical Board of the All India Institute of Medical Sciences, New Delhi, regarding the nature of the injuries suffered by the complainant, recommended a payment of Rs. 10,000 to the petitioner by the Ministry of Railways. This has been paid.

Illegal detention and torture of D.M. Rege: Maharashtra (Case No. 1427/13/98-99)

D.M. Rege, an officer of Shamrao Vithal Co-operative Bank Limited, Versova Branch, Mumbai, complained to the Commission that he was illegally detained and tortured by the police in connection with an incident involving

the misplacement of cash in the Bank and requested for an inquiry into the matter.

Upon directions of the Commission, a report was received from the DCP, Zone – VII, Mumbai. It indicated that the complainant was indeed innocent, and that his detention and torture were unjustified. The report also mentioned that the guilty Constable had been awarded a minor punishment by way of forfeiture of his increment for one year, while the delinquent Sub-Inspector had been transferred out. After consideration of the report, the Commission directed the Police Commissioner, Mumbai to have the matter re-examined in order to ensure that the erring police personnel were suitably punished in a manner that would be commensurate with the wrong that had been done. The Commission also issued a show-cause notice as to why Rs. 30,000 is not awarded as immediate interim relief to the victim.

The State Government, through its letter of 4 January 2001, requested the Commission to reconsider the issue of payment of compensation on the ground that two of the policemen had been immediately transferred, and that the Constable had been awarded punishment of stoppage of his increment for one year for his misconduct. The Commission, in its order dated 10 April 2001, rejected the plea of the State Government, and held that, since the guilt of the public servants had been established, there were no grounds to justify a re-consideration of this matter and directed that compensation of Rs. 30,000 be paid by the State Government to the complainant for violation of his human rights.

1.6 IMPLEMENTATION OF LEGISLATIVE BACKGROUND. PROVISIONS AT THE STATE LEVEL

- Human rights can be regarded as the civic counterpart (civil society/ NGOs) of political power, which is vested in those who govern the State.
- Power of the State, whenever lawless and brute, needs to be counterbalanced by power of the people arising from human rights.
- Democracy is established when people's power ("Lok Shakti") transcends over the power of the State. This is fortified by an independent Indian judiciary which is more or less independent, a fairly investigative and alert media and a fairly good movement for

the promotion of human rights in India by advocates of and activists for civil society, as also of the NGOs.

- Awakening of general awareness in Indian people about human rights as their very own, sacrosanct and inherent rights in the country's democratic and participatory governance.
- There is a tendency on the part of the police / the para-military / the military to disregard human rights while dealing with an alleged terrorist, and this is approved by pro-establishment politicians.

The manifestation of such human rights violations by the law-enforcement agencies are:

1. Custodial violence, including the so-called "third-degree methods",
2. Custodial death,
3. Mass arrests and physical and psychological torture,
4. Scorched-earth policies, herding up people in areas under cover of heavy security measures, resembling to some extent open concentration camps with extremely fettered freedom of movement and weak supply line for procuring daily necessities including medicare,
5. Disappearance of person's kidnappings and abductions,
6. Cooked-up prosecutions and suspicion discoveries by law-enforcement agencies of mass-inciting literature and arms and ammunition, which may as well be implanted by the agencies themselves,
7. Rape, molestation, gang rape and custodial rape of women by security forces, law-enforcement agencies and detention camp/prison officials/tough and brutal prison inmates,
8. Sodomy, collective beating of such male (including young) detainees / prisoners by hardened criminal inmates encouraged by or unobstructed by security / prison / law-enforcement officials,
9. Encounter deaths, which may be fake and just sadistic and bloodthirsty killings of innocent and guilty persons, alike as a crude method of so-called 'shock treatment' by security forces,
10. Deprivation of the right of the prisoner to obtain adequate food and water, medical assistance, sanitation and toilet facilities, consultation with a lawyer of his choice, media news, interviews with members of family or friends etc.,
11. Use of handcuffs and / or fetters,

12. Solitary confinement,
 13. Drastic control of communication with fellow detainees.
- State violence may be committed
- a) by State officials by overstepping the law or
 - b) by the State in passing “lawless laws” like the TADA.

THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA (NHRC) and ITS DIRECTIVES

- ✓ Started in 1993,
- ✓ Initially it concerned itself with civil rights,
- ✓ The issues of custodial deaths as a result of violence perpetrated by the police brought to focus its (NHRC) work.
- ✓ Bijbehra village in Kashmir where a BSF unit was alleged to have mowed down 40 civilians. BSF initially refused access to these records to NHRC, but ultimately agreed. From the very BSF records NHRC came to a conclusion and advised the Government to proceed on that basis. The Government accepted these conclusions and court-martial proceedings were initiated against the perpetrators of this violence.

That was the turning point in the history of NHRC.

- Investigation of the case of suicide in jails due to its high incidence. Each case of suicide or unnatural death, be it in judicial custody or police custody, should be enquired into by a Magistrate or an independent person. Such inquiry should aim at ascertaining whether there was any negligence or dereliction of duty on the part of any public servant and should suggest such appropriate measures and safeguards as may prevent the recurrence of such a tragedy in future. The Commission considers this mode of inquiry to be mandatory.
- The DMs / SPs to ensure prompt communication of incidents of custodial deaths / custodial rapes in police as well as judicial custody to the Commission.
- All post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes should be sent to the Commission along with the post-mortem report.

- Commission has prescribed the Model Autopsy Form (Annexure – I) and the additional procedure for inquest (Annexure – II) to be followed by instructions to be followed carefully for detention or torture (Appendix A).
- Encounter deaths and recommendation of the Commission on the correct procedure to be followed by all the States.
- Commission’s guidelines regarding arrest and enforcement of such guidelines are noted in Appendix B.
- Commission’s guidelines relating to the administration of Lie Detector Test are noted in Appendix C.

Information collated by NHRC in its Annual Report for 2001-2002 (Group D) indicate the implementation of the legislative provisions at the State level through the Commission’s reporting, investigating and remedial action taken procedure. Similar action is also taken by the State-level Human Rights Commissions.

1.7 PUBLIC INTEREST LITIGATION

- Several cases came before the Supreme Court since 1980 where the Court entertained Writ petitions by one on behalf of another on the allegation that fundamental rights of such others had been affected.
Sunil Batra V. Delhi Administration (1980) 2 SCR 557
- The Supreme Court liberalized the rule of maintainability by almost taking away the restriction of locus standi.
Transfer of Judges Case – S.P. Gupta V. Union of India & Ors. (1981) (Suppl Sec. 87)

The Court (Justice Shri Bhagwati) held that “... whenever there is a public wrong or public injury caused by an act or Commission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal or such public wrong or public injury.”

In *Bandhua Mukti Morcha* case the Supreme Court found that State Governments were under an obligation to release bonded labourers. It also directed the Government of Haryana to draw up a scheme or programme for “a better and more meaningful rehabilitation of the freed bonded

labourers” in the light of the guidelines set out by the Secretary to the Government of India, Ministry of Labour, in his letter dated September 2, 1982. The Court also felt unhappy at the denial of minimum wages and pure drinking water to the workmen. Again, it issued the directions to the Union of India and State of Haryana that so far as implementation of the provisions of the Minimum Wages Act., 1948 was concerned, they should take necessary steps, for the purpose of ensuring that minimum wages are paid to the workmen employed in the stone quarries and stone crushers in accordance with the principles laid down by the Court.

1. Origin of the Public Interest Litigation in India.

1976: Roots of Public Interest Litigation in India.
In *Mumbai Kamgar Sabha vs. Abdul Bhai* – A.I.R. 1976 –
SC 1465 Krishna Ayer J, observed

“Test litigation, representative actions, probono publico, broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher Courts, where the remedy is shared by a considerable number, particularly when they are weaker and less litigant, consistent with fair process, is the aim of adjective law.”

Through a process of steady expansion of the doctrine of locus standi, starting with Dhabolkar’s case, the Supreme Court enabled access on matters involving public interest even to total strangers to the dispute.

2. Development of Public Interest Litigation in India.

There are four stages through which the public interest litigation developed in India or during the last decade, namely,

- (a) Steady expansion of Locus Standi doctrine;
- (b) Expansion of epistolary jurisdiction;
- (c) Democratization of judicial remedies; and
- (d) New constitutional philosophy for social justice.

3. Steady Expansion of Locus Standi:

- (a) Restrictive Rule of Locus Standi : ‘Person aggrieved’.
- (b) Flexibility introduced in narrow concept.

In writ of Quo-Warranto, any member of public, irrespective of any special injury or damage to him, could challenge the appointment of a holder of public office. A Writ of Habeas Corpus could be moved on behalf of the person illegally detained by his friend or relative but not by a complete stranger.

Justice Shri Krishna Iyer and Justice Shri Bhagwati are undoubtedly acknowledged champions of the new philosophy of judicial activism in India, which has been assimilated by and absorbed in our judicial system.

(a) 1976: Need for liberalization of locus Standi: In the year 1976 Justice Shri Krishna Iyer, noted for his unconventional approaches and iconoclastic spirit in the cause of social justice and development of public interest litigation, advocated liberal interpretation of Locus Standi in public interest litigation in Dhabolkar's case. It was felt by the Court that it must be possible for some public spirited individual to seek remedy on behalf of poor, disadvantaged, deprived and dispossessed people. Through this case, a process of steady expansion of doctrine of Locus Standi was set in.

(b) Initial Stages of PIL and Locus Standi

In 1978, in Maneka Gandhi case, the Supreme Court gave a new dimension to the concept of "procedure established by law in Article 21 of the constitution". This Article was interpreted to confer both substantial and procedural due process, which brightened further the prospects of public interest litigation.

The scope of PIL was further enlarged in 1979 when the Supreme Court allowed maintainability of a petition by an advocate based on a newspaper report, which brought out the conditions of undertrials in Tihar Jail. Through public interest litigation a shock treatment was given to our tardy and bullock cart system of investigation and trial in criminal cases, and the concept of fundamental right of citizens for speedy trial was held necessary as 'just and reasonable procedure'.

1.8 ROLE OF POLICE VIS-À-VIS UNIVERSAL DECLARATION OF HUMAN RIGHTS

- Law observance by the police is the best form of law enforcement that one can conceive of in a country under the Rule of Law.
- Required in India is an honest, humane and unbrutalised police force whose members are trained to act fairly and within the bounds of law.

- “None should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it”.

State of Rajasthan Vs. Gurucharan Das AIR 1979 SC 1895,
per Fazal Ali, J

- to contribute towards liberty, equality and fraternity in human affairs.
- To help and reconcile freedom with security, and to uphold the rule of law.
- To uphold and protect human rights.
- To contribute towards winning faith of the people.
- To strengthen the security of persons and property
- To investigate, detect and activate the prosecution of offences
- To facilitate movement on highways and curb public disorder.
- To deal with major and minor crisis and help those who are in distress.
- The Governments of States and Union Territories of India need to implement the recommendations of the National Police Commission aimed at freeing the police from external pressures in carrying out day-to-day police work.
- Every policeman is an agent of the Government, who is required to maintain a proper equilibrium between the public and the Government and protect one against the other.
- Increasing crime with a rising population, violent outbursts, growing terrorism and religious fanaticism have added new dimensions to the role of police.
- The police are required to be an efficient and impartial law enforcement agency.
- Abuse of powers by the police gross violation of the Fundamental Rights and Human Rights (as in UDHR) encroaching upon the personal liberty, dignity, honour and privacy of individual citizens galore and must be curbed and eliminated ruthlessly by the State Organs.
- “a policeman is the axis on which the rule of law rests and rotates It is he who enforces the law, maintains the public order, keeps the lawless elements in check, brings the offender to book and by his constant vigil preserves the coherence and solidarity of the social structure.”
- Police has been degraded by the political system as a State agent in violating Human Rights.
- Police has to be accountable to the people as they represent the law and order of the organized society.

- ❑ There must be absolute professional independence of police in the matter of investigation of crime for effective and efficient functioning of criminal justice system.
- Third degree methodology of police investigation only alienates the police from the public. People dread police, and do all they can to avoid any connection with a police investigation. It brutalizes the police official and degrades him even to the level below the criminal in his custody. Section 29(1) of the Police Act, 1961 and Article 20(3) of the Constitution of India clearly forbid custodial torture of the third degree. Such actions are serious offences punishable under Sections 330 and 331 of the Indian Penal Code. The United Nations in December, 1982 issued a circular entitled “Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.” Social control in the form of approval or disapproval of police action can motivate the police to become just, fair and law abiding.
- Remand in police custody misused to extort a confession from the accused by adopting Third Degree methods is useless as:
 - a) a confession made under pressure is not at all admissible in evidence under Section 27 of the Evidence Act, in view of the guarantee against testimonial compulsion
 - b) Such a confession, even if judicially recorded, is often considered as false, being unverifiable, and is often retracted in court.
- Padding, concoction and fabrication of evidence in police investigation in specific cases with a view to showing a high percentage of conviction in cases investigated by them are contrary to all principles of justice.
- One indirect cause perhaps is that too high a standard of fool-proof evidence is often insisted upon by the Courts from the prosecution. Commenting on this aspect of the matter Krishna Iyer, J of the Supreme Court observed, “Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the Court asks for manufacture to make truth look true. No, we must be realistic.” *Inder Singh Vs. State*, 1978, Cr.L.J. 766 (SC – Para 2 of the Report).

- Concealment and minimization of crime by a large scale “burking of crimes” that is failure to record crimes or not recording a clear picture of the crime. Section 154(1) Cr.P.C. makes it mandatory for an officer in charge of a police station to register an FIR, when information is given to him regarding a cognizable offence. Section 154(2) Cr.P.C. enjoins him to give a copy of the FIR forthwith and free of cost to the informant.
- Non-performance of duties by police due to their involvement in politics or similar affiliations immensely damages the police image. Police in their professional capacity have to be apolitical and impartial in their application of the law.
- Police can cooperate with the aftercare agent, the probation officer or the social worker by doing work of surveillance in a covert fashion, so that the process of rehabilitation initiated by the correctional services are not nullified by hasty and precipitate police action. The police too can give a helping hand in finding employment for ex-convicts. This will bring the police close to the public by improving their image.

1.9 PRISON REFORMS

Definition of Open Prison:

“An open prison is characterized by the absence of material or physical precautions against escape (walls, locks, bars, armed or speared security guards) and by a system based on self-discipline and the inmates sense of responsibility towards the group in which he lives.”

[UN Congress on the Prevention of Crime and the Treatment of Offenders at Geneva in 1955]

An open prison shall mean a Prison House not surrounded by walls of any kind. (Rule 635 of the West Bengal Jail Code).

Advantages of Open Prison:

- more favourable to the social readjustment of the prisoners;
- more conducive to their physical and mental health;
- liberalization of the regulations;
- tensions of prison life are relieved;
- discipline improves;
- conditions of life resemble more closely to those of normal life and this helps to preserve family ties;

- less costly because of lower building costs;
- rational organization of cultivation results in higher income.

Objectives of Open Prison

- ✓ development of self-respect and sense of responsibility
- ✓ useful preparation for freedom
- ✓ discipline is easier to maintain
- ✓ punishment is seldom required
- ✓ tensions of normal prison life are relaxed
- ✓ conditions of imprisonment can approximate more closely to the pattern of normal life
- ✓ importance of the group approach in correctional treatment
- ✓ success of the correctional process can be greatly enhanced by the energetic, resourceful and organized citizen participation
- ✓ inculcates among inmates the value of self-help, constructive work and social usefulness
- ✓ generates a sense of dignity and a positive change in their attitude and behaviour.

Types of OPEN PRISONS (according to West Bengal Jail Code)

Open Prisons shall be of three types as follows:

1. 'A' type open prisons. These prisons shall generally be organized as agricultural farms and prisoners taken in 'A' type open prisons shall be given opportunity of learning better and scientific methods of crop production.
2. 'B' type open prisons. In these prisons, the principal industry shall be fruit gardening, but some areas may be earmarked for improved type of agriculture. Dairy and poultry on scientific methods shall also be established in these prisons under the guidance of experts recruited from outside. If there is sufficient space for excavation of tank, pisciculture may be introduced.
3. 'C' type open prisons. These prisons shall function practically as pre-release parole camps, where prisoners may be allowed to live in Government built cottages along with their respective families. The principal industry in these prisons shall be handicrafts and cottage industry.

Object of open prisons:

1. The object of maintaining open prisons is to grant the prisoners more and more freedom so that, on their release, they may easily adapt themselves to community life of the outside world. In 'A' type open prisons, the night lock-up shall be opened at such hours in the morning as are provided in the Code. There shall be no day lock-up in open prisons, except in cases where a particular prisoner behaves contrary to jail rules and is found to be uncontrollable.
2. The provisions of this rule shall also apply to the prisoners accommodated in 'B' type open prisons.

“New Delhi Correction model” of Prison Reform – Tihar Central Jail

- The basic emphasis is on humanizing and resocialising the prisoners
- emphasis shifted to ‘creating security’
- three basic features are:
 - a) bringing the community into the prison
 - b) formation of a self-contained prison community
 - c) participative management – a ‘Sampark Sabha’ is held. Staff members and prisoners are involved in decision-making in their respective fields.
 - d) emphasis on spirituality and an innovative way of correction
- job-work facilities and economic security
- recreation and reformation of criminal behaviour
- community involvement in prison
- social auditing and ventilation of grievances
- psychological treatment: meeting the special needs
- system of segregation: a step towards prevention of further character deterioration

Constitutional Safeguards and the Supreme Court

Article 21 – no person shall be deprived of his life or personal liberty, except in accordance with the procedure established by law. The Supreme Court has repeatedly held that the procedure must be:

- o just and fair and
- o not in any way arbitrary, fanciful or oppressive
- o satisfying the essence of Article 14, which guarantees to every citizen equality before law and equal protection of the law
- o prohibitive of any inhuman, cruel or degrading treatment or punishment

Article 22 – no person detained in custody shall be denied the right to consult or to be defended by a legal practitioner of his choice.

Article 39A – mandates the State to ensure free legal aid in deserving cases and to ensure that fundamental right through suitable legislation

Article 19 – the right to liberty of movement and freedom can be curtailed only by a law that imposes a reasonable restriction in the interest of general public.

The Supreme Court has issued a number of important directives to the prison administration that

- the prisoner must be allowed exercise and recreation
- to read and write
- minimize creature comforts like protection from extreme cold and heat
- freedom from indignities of life like compulsory nudity, forced sodomy and other unbearable vulgarities
- movement within the prison campus, subject to requirement of discipline and social security.
- the minimum joy of self-expression
- to acquire skills and techniques
- to all other fundamental rights as tailored to the limitations of imprisonment
- physical assaults are to be totally eliminated
- even pushing the prisoner into a solitary cell, denial of necessary facilities, transferring a prisoner to a distant prison, allotment of degrading labour, putting him with desperate or tough gangs, etc. must satisfy Articles 21,14 and 19 of the Constitution
- young inmates must be separated and freed from exploitation by adults
- subject to discipline and security, prisoners must have the right to:

- a) meet friends and family members, and the facility of interviews
- b) visits and confidential communications with lawyers nominated by competent authorities.

The Supreme Court has directed that District Magistrates and Sessions Judges must visit prisons and afford effective opportunities for ventilating legal grievances and for expeditious enquiries and action. The State must bring legal awareness home to prisoners by way of a prisoners' handbook, periodical jail bulletins and a prisoners' wallpaper.

Steps to abide by the United Nations Standard Minimum Rules for the treatment of prisoners must be taken, especially with regard to:

- a) work and wages
- b) treatment with dignity
- c) community contracts and
- d) correctional strategies

The Supreme Court has observed that:

- a) the Prison Act needs reviews and revision.
- b) the Prison Manual needs total overhaul
- c) the Jail Manual is out of focus with healing goals

The Supreme Court has developed a new jurisprudence of prisoners right on the basis of Articles 20(1) and (2), 21, 22 (4 to 7) under the Indian Constitution.

The Supreme Court held that:

- i) A prisoner is entitled to invoke Art 21 for protection of his rights.
- ii) Practice of keeping under trials with convicts in jails offends the test of reasonableness in Art 19 and fairness in Art 21 (*Sunil Batra case* – AIR 1980 SC 579).
- iii) An arrested person or under trial prisoner should not be subjected to handcuffing (*Sunil V. State of M.P.* – 1990 2 SCJ 409)
- iv) If the prisoner is subjected to mental torture, psychic pressure or physical infliction beyond the legitimate limits of lawful imprisonment, the prison authorities shall have to justify their action or be liable for the excess (*Sheela Barse V. State of Maharashtra* – AIR 1983 SC 378 (Para 1))

There are several problems of U.T. prisoners, particularly their number vis-à-vis total prison population (i.e., 70% approx.) and the delay in disposal of cases in the criminal court, which makes the programme of reformation of prisoner more difficult in Indian criminal justice administration. The problem became more acute due to the fact that most of the under trial of prisoners under continued detention are poor and could not fulfil minimum monetary requirements for bail. The Supreme Court in Hussainara Khatoon and other cases asserted the need of speedy trial. The Court further laid down that the under trial prisoners who remained in jail without trial for a period longer than the maximum term for which they could have been sentenced, if convicted, was illegal and is a violation of their fundamental right contained in Article 21 of the Indian Constitution. The Parliament passed a legislation for free legal aid services to indigent persons in deserving cases entitled Legal Services Authorities Act, 1987.

The Supreme Court observed that:

“The literature of prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention.

These are:

1) overcrowding, 2) delay in trial, 3) torture and ill-treatment, 4) neglect of health and hygiene, 5) insubstantial food and inadequate clothing, 6) prison vices, 7) deficiency in communication, 8) streamlining of jail visits, and 9) management of open air prisons.”

The judges urged that the century old Indian Prison Act, 1894 should be replaced.

The National Human Rights Commission has prepared an outline of an All India Statute.

1.10 ADMINISTRATION OF CRIMINAL JUSTICE

Criminal Justice System has four Sectors: Police, Prosecution, Courts and Prisons

POLICE

The Police Act 1861 made elaborate provisions for two basic purposes:
The establishment and administration under strict magisterial control of a single unified police force in every province (now State or UT)
Using it to keep the people of the country effectively under control.

The police force is organized in a hierarchical structure. Details about such structure.

Some example from the States of West Bengal (Annexure G), Maharashtra (Annexure H) Punjab (Annexure i), Karnataka (ANNEXURE K), Andhra Pradesh (ANNEXURE L), National Capital Territory of Delhi, (ANNEXURE M)

ANNEXURE G

WEST BENGAL POLICE ORGANIZATION AND STRUCTURE

Strength and Composition:

The West Bengal police force 14 is classified horizontally and stratified vertically. A firm division exists between the two categories of the police armed and unarmed. The unarmed branch or civil constabulary staffs are in the police stations and departments of criminal investigation. They are uniformed but unarmed. They are the people with whom the public has contact in the usual course of business. The armed police live in cantonments concentrated at given points in the State. They are kept as a reserve to be utilized as striking force in situations of difficulty, e.g. quelling public disturbances. In West Bengal, there are three categories of Armed police: The District Armed Police (DAP), the State Armed Police (SAP) and the Eastern frontier Rifles. Table II shows the strength of Armed and Civil Police in the State of West Bengal.

The Police force is organized in a hierarchical structure. At the top is the Director-General and Inspector General of police (one post). There are three more posts of equivalent rank, viz., DG (Training), DG (Intelligence Bureau) and DG (Home Guards), followed by the Additional Director-General (16 posts) and Inspector-General of Police (24 Police). Down below are the posts of Deputy Inspector General, Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police and Assistant Superintendent of police in the superior ranks. The full rank structure is shown in Table II below.

Table I - Hierarchical Structure Of Police

	Rank
	Director General of Police
	Addl. DG

	Inspector General of Police
	Dy. Inspector General of Police
	Superintendent of Police
	Commandant
	Addl.Suptd. of Police
	Dy. Suptd. Police
	Dy. Commandant
	Asst. Commandant
	Asst. Suptd. of Police
	Inspector of Police – Unarmed Branch (U.B.)
	Inspector of Police – Armed Branch (A.B.)
	Sub-Inspector of Police (U.B.)
	Sub – Inspector of Police (A.B.)
	Asstt. Sub – Inspector of Police
	Head Constable (U.B.)
	Head Constable (A.B.)
	Naik
	JCO
	Constable (U.B.)
	Constable (A.B.)
	Head Police Driver
	Police Driver

Source: Police Directorate, West Bengal.

Organizational Set Up

The State of West Bengal presently comprises an area of 88,752 sq kms and a population of 8.02 crores. For the Purpose of policing, the entire area is divided into zones, ranges, districts, etc. There are, at present, three zones, nine territorial ranges and twenty-one districts in the State. Each zone is under an Inspector General (IGP), while the ranges are under the Deputy Inspectors General of Police (DIG). The administration of the Police, in each district, under the general control and direction of the District Magistrate, is vested in the District Superintendent (SP) and / or Assistant District Superintendent. The districts are comprised of sixty-four subdivisions, in charge

of the Sub Divisional Police Officers (SDPO), who may be either an Assistant or a Deputy Superintendent of Police. The sub-divisions are further divided into circles. A police circle consists of a group.

Organizational Set-Up

Zone Range	Territorial	District	Sub-Division	Circle Station	Police Station
03	09	1	64	10	404
Office	D.I.G. L. S.P.	SP/ADD	SDPO Inspector	Circle In charge	Office

Police Unit

The West Bengal Police Force is divided into several functional units. The basic purpose of this division is to improve the efficiency and functional capability of the entire police force. There are forty-eight units in all: twenty-one districts (each district being a separate unit), thirteen SAP Battalions (i.e. 13 units), and three Eastern Frontier Rifles (i.e. three units) and eleven other units. The last category includes the following:

Police Directorate (PD)
 Intelligence Branch (IB)
 Criminal Investigation Department (CID)
 Enforcement Branch (EB)
 Bureau of Investigation (BL)
 Police Computer Center / State Crime Records Bureau (PCC / SCRB)
 Traffic
 Vigilance Commission
 Telecommunication
 Police Training School (PTS)
 Commandant General – Home Guards (CG – HG)
 Police Directorate

The West Bengal Police Directorate (PD) is responsible for the management of a large police force consisting of about 60,000 personnel. The DGP and IGP, West Bengal is at the top of the PD. The officers of senior rank posted at the Directorate are not integrally linked to a vertical structure. The Directorate has essentially a spatial spread, each officer more or less heading the branches independently and taking orders directly from DGP and IGP

The disposition of the senior officers at the Directorate, besides DGP and IGP is as follows:

- ADG (Administration)
- ADG (Planning and Welfare)
- IG (Organization)
- IG (Head quarters)
- IG (Planning and Welfare)
- IG (Law and Order)
- DIG (Headquarters)
- DIG (Organization)
- DIG (Modernization and Coordination)
- DIG (Personnel, IPS Cell)
- DIG (Planning and Welfare)
- AIG (S)

Besides, one more post of ADG (Legal Affairs) had been created recently.

Intelligence Branch

The Intelligence Branch (IB) of the West Bengal Police had its genesis in the Thuggee and Dakaiti Department, set up by the British Government in the 19th century, to act as a nodal group for collection of political intelligence. At present there is one State Intelligence Branch headed by the Director, who is of the rank of Additional DG, and several District Intelligence Branches (DIB), headed generally by the DSPs. In important districts, however, the DIBs are headed by officers of the rank of Additional SP. The basic issues with which the intelligence units are concerned are terrorism, ethnic and separatist movements, communal fundamentalist forces, caste and sectarian conflicts, student and youth movements, industrial security, VIP security, etc.

Enforcement Branch

The Enforcement Branch (EB) has two tiers—the Central Enforcement Branch (CEB) at the State level and the District Enforcement Branch (DEB) at the district level. The DEBs are under the administrative and functional control of the Superintendent of Police, while the CEB is under the direction and control of the ADG and IGP. The EB is responsible for enforcement of the following Acts— Essential Commodities Act, 1955, Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, Consumer Protection Act, 1986 and West Bengal Anti Profiteering Act, 1958. The EB also looks after action against police personnel, etc.

The Criminal Investigation Department (CID), a specialised agency for investigation and collection of criminal intelligence, was created in 1906. It plays a crucial role in ensuring a high standard of investigation and thorough preparation of a strategy for prevention of crimes in the State. The department is headed by the ADG (CID). In accordance with the changing needs, CID has set up certain specialized branches like:

Anti Dacoity and Robbery Section
Anti Cheating Section
Narcotic Cell
Anti Bank Dacoity Section
Anti Burglary and Theft Cell
Video Piracy Cell
Bomb Disposal section
Anti Fraud Section
Photography Section
Anti Wire Theft Cell
Homicide Squad
Women's Grievance Cell
Missing Persons Squad

The State Finger Print Bureau, Statistical Bureau, Criminal Intelligence Bureau, Collateral Section and Research and Development were previously a part of the CID. But in 1994–95, the Government of West Bengal transferred these five units to the State Crime Records Bureau.

State Crime Records Bureau

Computerization of police records started in mid-seventies by the Police Computer Centre. The State Computer Centre came into existence in 1976 and was renamed, later on, as State Crime Records Bureau (SCRB). The SCRB is required (1) to act as a storehouse of information on crimes and criminals in the State and (2) to disseminate information of inter-State and international crimes and criminals.

Initially, the DIG (Computer Centre) took over as Director, SCRB. In 1990, the post was upgraded to the rank of IG of Police and in 1992 to the rank of ADG of Police.

Besides the SCRB, there is also the District Crime Records Bureau (DCRB) concerned with maintenance of index of crime in the districts, records of active criminals, etc.

Traffic Unit

Regulation of Traffic is a statutory responsibility of the police. Section 31 of the Police Act, 1861 defines the duties of the police with regard to the regulation of traffic. Unfortunately, the traffic branch of West Bengal Police remains unorganized till date. There is skeletal sanction of trained traffic staff. Traffic is maintained in the urban complexes of the district with a small force, which is understaffed and unskilled.

The State Government has sanctioned a scheme for a separate traffic branch. As a result, one post of Additional DGP (Traffic), one traffic and one DIG (Traffic) have been created.

Railway Police Unit

The Government Railway Police (GRP) is a distance unit of the West Bengal Police force. They have no local jurisdiction; their jurisdiction extends over open railway lines within the railway fencing. Where no fencing exists, the jurisdiction extends upto 10 feet on either side of the lines and over all railway stations, goods sheds, yards and buildings on railway lands.

In West Bengal, there are three railway police districts, namely, Howrah Sealdah and Siliguri, comprising forty-one police stations. Each district is headed by a Superintendent of Police; while the railway police hierarchy in the State is headed by the additional DGP (Traffic and railways), aided by one IG and one DIG. The overall strength of the GRPs is approximately as given below.

ANNEXURE J PUNJAB COMPOSITION AND POLICE HIERARCHY SANCTIONED STRENGTH OF PUNJAB POLICE AS ON 1 JANUARY 2000

Source: Data on Police Organizations in India (as on 1.1.2000) New Delhi: Bureau of Police Research and Development BPR&D, 2001), pp.26-31.

Punjab Police Hierarchy

The posts in Table 3.6 are listed in hierarchical order, the post of constable being at the bottom and that of Director General of Police being at the top of the hierarchy. The post of ASP, which is held by an officer of Indian Police Service, is considered superior to the post of DSP, which is held by an officer of State police Service, though the functions of the

incumbents of these two posts are identical. Officers of and above the rank of DSP are called gazetted officers (GoI). Inspectors, Sub-inspectors and Assistant Sub- inspectors are known as upper subordinates. They are also called non-gazetted officers (NGOs). Officers of and below the rank of head constable are known as lower subordinates. They are also called other ranks (Ors). The upper and lower subordinate officers are also called enrolled officers and they are appointed under section 7 of the Police Act, 1861.

ANNEXURE K KARNATAKA

Constitution of the Karnataka State Police Force:

The Karnataka State police force is constituted under the Karnataka Police Act 1963 (Act 4 of 1964). The direction and administration of the police force throughout the State is vested in an officer to be styled as officers in the headquarters and officers in charge of Special and Field Units in the performance of his duties. Another officer of equivalent rank within the department, designated as Director General of Police, Corps of Detectives, Training, Special Units and Economic officers heads a number of other units. The Director General and Inspector General of police is assisted by the following officers of the rank of either Additional Director General of police/ Inspector General of police in the headquarters.

Additional Director General of Police, Administration

Additional Director General of Police, Law and Order

Additional Director General of Police, Crime and Technical Services

Additional Director General of Police Transport, Telecommunication and Modernization.

Additional Director General of Police, Karnataka State Reserve Police

Commissioner for Traffic and Road Safety

Inspector General of Police, Grievances Cell

The Additional Director General of Police, Administration supervises and coordinates all administrative work in Police headquarters.

The Forensic Science laboratory is under the charge of a Director, assisted by experts while in various fields of Forensic Science, while the Fingerprint Bureau is under the charge of a Superintendent of Police, assisted by experts of the rank of Inspector and Sub-inspector. The Inspector General of police, Grievances Cell, attends to all.

Special and Field Units

The officers in charge of the Special and Field Units may be listed below.

Director General of Police, Corps of Detectives, Training, Special Units and Economic Offences.

Additional Director General / Inspector General of police,
Additional Director General of Police, Directorate of Civil Rights Enforcement.

Commissioner of Police, Bangalore city.

The DGP and COD oversees the work of all the specialized investigation units like the Corps of Detectives, Training, food and forest cells and the unit dealing with economic offices. He is assisted by an Additional Director General / Inspector General of police, Corps of Detectives, Additional Director General/ Inspector General of police, Economic Offences, Inspector General of police, Training , Inspector General of Police, Forest Cell and Deputy Inspector General of Police Food Cell.

THE PROSECUTION

The Code of Criminal procedure, 1973, has introduced a new set up of prosecution in this country. A study undertaken in the National Police Academy about the impact of the change in Criminal procedure code on the prosecution machinery reveals that the State of prosecution in most of the States including West Bengal in a bad shape and that the conditions of prosecution prevailing are almost chaotic. It further discloses that the standard of prosecution, specially in the Courts of Magistrates, has been deteriorating in many States since introduction of the new Code of Criminal Procedure, to the detriment of the administration of criminal justice.

If the two sub-systems, the Police and the Prosecution, do not work in close harmony and utmost cooperation, then the Criminal Justice System is likely to break down. Hence, it is very essential that the areas of conflict between these two wings should be identified with a view to finding out a solution to the problem arising out of such conflicts. One thing is very clear. A successful investigation leads to prosecution and a successful prosecution ends in conviction and delivery of justice, which means that the innocent should be acquitted and guilty should be punished.

ORGANIZATION AND CONTROL

One of the most important components of criminal justice administration is 'Prosecution'. Prosecution has been defined thus: "Prosecution is the institution or commencement of criminal proceedings, the process of exhibiting formal charges against an offender before a legal tribunal, and

pursuing them to final judgment on behalf of the State Government. A prosecution exists until terminated in the final judgment of the Court to wit the sentence, discharge or acquittal.”

Thus the proceeding conducted in criminal cases on behalf of the State against the accused in a Court of Justice is called Prosecution. The function of the prosecution commences with the initiation of the case in the Court of law but the paramount responsibility on the shoulder of the prosecutor lies as soon as the investigating authority submits Police Report and the trial of the case commences. The person who conducts the prosecution is called prosecutor.

Sector 2 (u) of Cr.P.C. defines ‘Public Prosecutor’ as a person appointed under Section 24 of the Cr.P.C. and includes a person acting under the direction of the public prosecutor so appointed.

Before the commencement of the Code of Criminal Procedure, 1973, prosecution of cases in Courts of Magistrate was handled by selected police officers, trained and employed as Prosecuting Sub-Inspectors or Prosecuting Inspectors. They were part and parcel of the district police set up; prosecution of cases in Sessions Courts was handled by a functionary called “Public Prosecutor” appointed by the Government from the local Bar for a specified term. Over a period, in due course, a cadre of Assistant Public Prosecutors was developed to handle prosecution work before Magistrates. Persons qualified in law and having some experience at the Bar were recruited to this cadre and they functioned under the administrative control of the Superintendent of Police and the District Magistrate in each district. The Code of Criminal Procedure 1973 brought into effect a new scheme for the appointment of Public Prosecutor at the High Court level for conducting any prosecution, appeal, or other proceeding on behalf of the State before the High Court. The scheme envisaged that there should be a Public Prosecutor and Additional Public Prosecutor at the district level for handling sessions cases and Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates. All these appointments are to be made by the State Government. The Central Government has concurrent power of appointing a Public Prosecutor to handle its cases before the High Court. Appointment of an experienced Advocate from the Bar as a Special Public Prosecutor for the purposes of any particular case or class of cases by the Central Government or the State Government is also permissible under the Code.

West Bengal

In the State of West Bengal, different categories of Prosecutors are functioning under different controlling authorities and their function, work, control, supervision, etc. are conducted by different authorities, and they are not under a single umbrella. The following categories of prosecutors are functioning in the State of West Bengal as per provisions of Cr. P.C.:

A Public Prosecutor and Additional Public Prosecutors for High Court appointed by the State Government in consultation with the High Court. [Sec. 24(1) Cr. P.C. 1973]

A Public Prosecutor and also one or more Additional Public Prosecutors for each district from the panel prepared under sub-section (4) of Sec. 24 Cr. P.C.[Sec 24(2), Cr. P.C. 1973]

A Special Public Prosecutor appointed by the State Government for each District. [Sec. 24(8), Cr. P.C. 1973]

Assistant Public Prosecutor appointed by the State Government for each District. [Sec. 25(1), Cr. P.C., 1973]

Assistant Public Prosecutor appointed by District Magistrate for each District [Sec. 25(3), Cr. P.C., 1973]

In West Bengal the entire Prosecution system is broadly divided into three categories:

Prosecution at High Court
Prosecution at Sessions Court
Prosecution at Court of Magistrate.

1.11 POLICE – PUBLIC RELATIONSHIP: ISSUES

A. An obsolete and outdated organizational system:

- Governed by Indian Police Act, 1861 which is more or less unchanged despite the end of Colonial Rule and emergence of a radically different socio-political milieu.
- The emphasis still remains on ‘order’ rather than the ‘law’.
- It is not a service. It is a force.
- No major reform has been launched to make police structure, role, attitudes, etc. compatible with the needs of a democratic polity.
- In British colonial designs police was:

- a) a force to suppress people's aspirations
- b) silence their dissent and disobedience
- c) stamp out by any means any problem that threatened the observance of their 'laws' and the maintenance of the 'order' according to their perceptions. This policing system is the root cause of many malaise.
- The police force is reportedly ruthless as before
- The charges are usually of
 - a) corruption
 - b) inefficiency
 - c) oppression tantamounting to torture
 - d) custodial rapes and deaths
 - e) fake encounter killings
 - f) false arrests
 - g) demanding and dehumanizing methods of investigation and interrogation
 - h) varied forms of excesses and abuse of authority against police in large number and substantiated in quite a number of official documents including the reports of National Police Commission, Indian Law Commission, National Human Rights Commission and State Human Rights Commissions.

The Vestiges of Colonial Police Sub-Culture

- this sub-culture
 - a) encourages servility to those in authority,
 - b) induces them not to say 'no' to the superiors regardless of the illegality of their orders,
- these traits in the Indian Police have encouraged cynicism in their conduct and character. (Ved Marwah, 1977),
- the negative overtones of a ruler-responsible police force as evidenced in the discharge of duties and responsibilities (T.P. Anthachari, 1977)
- the police sub-culture allows handling of the law violators by lawless methods and tramples upon the rights of the accused. Its parts are:
 - a) Sadism
 - b) Barbarity
 - c) Arrogance
 - d) Abusive language

- e) Corruption and
 - f) Callousness, with the overall result of lowering them in the esteem of the public
- Given the pervasive influence of this culture, policemen have little respect for human rights principles and philosophies. They are, therefore, squarely accused of gross human rights violations.

The mindset disdains Human Rights

- ✓ The general apprehension or the fear is that if human rights directions and dictates enter into policing, their power will be controlled and ‘crisis policing’ will be impossible (James Vadakumchery, 1996),
- ✓ It makes police force open to court strictures and compels them to refrain from behaving in a recalcitrant manner.
- ✓ In the face of stringent criticism, high-ups in the police force routinely, though reluctantly, order departmental inquiries.

The result is that the human rights violators in the police force get emboldened and merrily believe that they would not be touched whatever be the accusations of human rights NGOs and liberals advocate for a restrained and responsible policing.

Stranglehold of Political Interference in the day-to-day working of police:

- ❖ Ruling political parties pressurize the police to enable them to reap political harvest. The result is the practice of torturing political opponents by the police and framing of cooked-up charges against them.
- ❖ The interdependence of political authority and police. The result is that the political masters are unable to question the human rights violations by the police.
- ❖ The policemen are judged not by honesty or hard work but on considerations of kow-towing the persons in authority (Marwah 1977).
- ❖ The policemen succumb to political pressure because of temptations of recognition, promotion, decoration, reward and favour, threats for not carrying out illegal verbal instructions of the political masters.
- ❖ When ends become important and the means redundant, human rights become the first casualty.

Ambivalent Public Attitude

- ❑ The complex nature of crime problems and the painfully slow judicial process make the public desperate and they quite often approve of the police excesses if those restore tranquility and effectively combat the dreaded terrorists, gangsters, dacoits and professional criminals, who let loose terror in the area and victimize thousands of unresourced citizens.
- ❑ The policemen who confront these dreaded criminals in real or fake encounters earn people's appreciation. The public is not bothered whether human rights of these criminals are respected or violated.
- ❑ The condoning attitude of police high hand is used as an alibi for justifying police excesses.
- ❑ The crowd reaction to crime problem is often needed by police force as a legitimate argument to cover up their unlawful conduct.
- ❑ The ambivalent public attitude in regard to human rights violations by the police force in crisis situations derails the human rights discourse in:
 - a) insurgency or terrorism
 - b) in areas where the guns, and goons of thunder; and
 - c) in areas where the activities of the underworld have undermined people's faith in the rule of law.

The Confused Police Force

- It faces a crisis arising out of:
 - a) pressures of work;
 - b) increasing demands from politicians and public;
 - c) growing criticism from the media;
 - d) unending stream of court verdicts of human rights violations;
 - e) an undermanned and ill-equipped force is being subjected to daily denigration for (i) its failure to arrest the awesome crime wave, (ii) increased lawlessness, and (iii) mounting socio-political tensions;
 - f) the political masters demand (i) quick results on the law and order and direct the police to show instantaneous effects, (ii) the police to keep the alarming law and order situations of disturbed areas seemingly under control or else face the consequence of transfer, suspension and punishment posting;
 - g) Faced with such order, the police (i) keep the crime figures low by non-registering the cases, and (ii) resorting to quick-fix solutions

to local crime situation, such as by resorting to indiscriminate arrests and other oppressive and unlawful activities.

Most police functionaries at all levels, conveniently forget what is taught in police academies or in training institutions. Once they enter the real field of policing, the malaise of the existing police sub-culture overtake them. The process of unlearning deepens when they see their immediate superiors working more on the basis of experience and expediency than on education and skills imparted in training institutions. Their role models are their superiors who regard human rights discourses entirely utopian and idealistic, and hence unacceptable. The police culture needs to be changed, if training has to make a dent. A civilized policing is all that the ordinary citizen wants.

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The result is that (i) the police keep the crime figures low by non-registering the cases, (ii) resort to quick-fix solutions to local crime situation, (iii) resort to indiscriminate arrests and other oppressive and unlawful activities.

To conclude, the note as a correlating entity, they are roundly criticized for committing a variety of human rights violations. They confront a dilemma of choosing between being lawful pursuits and lawless news in carrying out the wishes of their masters. The force becomes confused and uncertain about its role, status and future. They resort to short-cut methods of arrests, interrogations and investigations. They stumble on people’s right to life and

liberty and other Constitutional and legal safeguards falling under the ambit of human rights.

1.12 ATROCITIES INFLICTED BY THE POLICE IN JAIL AND OUTSIDE

I. Police Torture and Rights of the accused while in custody

The Supreme Court in *Smt. Nandini Satpathy vs. P.L. Dani*, AIR 1978 SC 1025 Quoting Lewis Mayers stated:

“To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other is a perennial problem of statecraft.”

An undertrial or convicted prisoner cannot be subjected to a physical or mental restraint (a) which is not warranted by punishment awarded by the court, or (b) which is in excess of the requirement of the prisons discipline, or (c) which constitutes human degradation (*Sunil Batra vs Delhi Administration*, AIR 1978 SC 1675, *Sitaram vs State of UP* < AIR 1979 SC 745; *Sunil Batra vs Delhi Administration* AIR 1980 SC 1579; *Javed vs State of Maharashtra* AIR 1985 SC 231; *Sher Singh vs State of Punjab*, AIR 1983 SC 465.

Public-spirited citizens should be allowed to interview prisons in order to ascertain how far Article 21 of the Constitution is being complied with. But the interview has to be subject to reasonable restrictions which themselves are subject to *Juridical* review (*Prabha Datta vs. Union of India* (1982) 1 SCEI prisoner agreeable to meet the press should be allowed to interview them unless weighty reasons to the contrary exists 1982, Cr. L.J. SC 148.

Persons arrested have right to medical examination AIR 1983 SC 378.

Voluntary causing hurt to extort or to compel restoration of property is forbidden by Section 330 of the Indian Penal Code. Police is not beyond the reach of law and while performing their duties, they have to bear in mind that, if they transgress their limits and embark upon a situation wherein an offence can be contemplated, they were to suffer the consequences of the same. (*State of H.P. vs Ran. L.C.* 73)

The Supreme Court has urged the Government and superior officers to ruthlessly root out the evil of third degree (AIR 1980, SC 108).

II. Article 5 of Universal Declaration of Human Rights States that no one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment. Article 10 states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

- ❑ Rule 33 of the Standard Minimum Rules for the Treatment of Prisoners, 1955 states:

“Instruments of restraint such as handcuffs, chains, irons and straitjackets shall never be applied as a punishment. Furthermore, chains or irons shall not be used, except in the following circumstances:

 - a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
 - b) on medical grounds by direction of the medical officer;
 - c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.”
- ❑ Handcuff means a pair of metal rings, generally made of iron joined by short chain for securing prisoners’ hands.

It is to hoop to punish harshly and humiliatingly and to vulgarize the viewers also. Iron straps are insult and pain writ large animalizing victim and keeper.

Prem Shankar V. Delhi Administration AIR 1980 SC 1534 at p. 1542.
Such treatment offends human dignity. For a self-respecting man death is preferable to dishonour. Handcuffing is condemned now as inhuman, unreasonable, over-harsh and arbitrary.
- ❑ Article 1 of Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 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 committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’

Torture is a tradition in many penal systems. Article 8 and 9 of the 'Declaration of the Protection of All Persons from being subjected to torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' adopted by the UN General Assembly in 1975 state:

“Article 8 – Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to and to have his case impartially examined by the competent authorities of the State concerned.

“Article 9 – Whenever there is reasonable ground to believe, that an act of torture as defined in Article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation, even if there has been no formal complaint.”

The Supreme Court in a recent decision in the case of *Shri D.K. Basu V. State of West Bengal* observed:

“Custodial death is perhaps one of the worst crimes in civilized society governed by the Rule of Law.”

The rights inherent in Articles 21 and 22(1) of the Constitution require to be protected covetously and scrupulously.

Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become lawbreakers, it is bound to breed contempt for law and encourage lawlessness and every man would have the tendency to become a law unto himself leading to anarchy.

- ❑ Causative factors for custodial violence
 - A. According to National Police Commission,
 - i) Inability of the criminal justice system to deliver justice promptly and pressure from victim, public or police for instant punishment;
 - ii) pressure of senior officials to produce results.

The first casualty of 'Demand of quick results and no questions on means' is Human Rights, followed by Rule of law and due process.

- B. According to Amnesty International;
 - 1) Lack of transparency and denial of access to relatives and lawyers.
 - 2) Lack of mechanism to scrutinize police behaviour.
 - 3) Lack of independent authority to visit and inspect police records regarding arrest.
 - 4) Interference – lack of operational autonomy and lack of support for professionalism.

Remedies:

- 1) Formation of Lok Adalat and other systems to deliver judgments quickly.
- 2) Neither victim nor public nor senior officers nor politicians should exert pressure to oversee sensitive cases.

- In *Kharak Singh V. State of Uttar Pradesh* (AIR 1963 SC 1295), “life” was held to cover the right to the possession of each limb and organ of the body and a prohibition of physical mutilation or deliberate inflicting the pain or suffering under the Indian Penal Code Sec 330 and 331 cover offence or causing hurt while in custody.
- Physical or mental pain amounts to torture.
- Police functioning and public morality – The Vohra Committee Report has recently highlighted and cautioned against the nexus between politicians and criminals. When after their best efforts the police are able to arrest a criminal, but have to let him off due to political pressure, they genuinely feel frustrated and release their anger and helplessness through violence against less influential suspects.

HUMAN RIGHTS OF VICTIMS

After adopting the Universal Declaration of Human Rights on 10 December 1948, the scope of the Human Rights concept is expanding day by day. Broadly they fall into the categories of:

1. Civil and political rights,
2. Economic, social and cultural rights,
3. Group rights.

Whenever a person becomes a victim by the violation of these rights, the perpetrator is answerable for the victim. It is known to the elite and enlightened people in the society. What about the downtrodden victim who are living in the huts of a remote area?

Human Rights ensure that the victims are:

- To be free from intimidation,
- To get back stolen or other personal, property which is no longer needed as evidence, and
- A speedy investigation and trial of the case.
- The victim should be treated in the Police Station in a sensitive manner so that he is not subjected to any additional emotional damage.

- The victim should be appraised of the possibilities of receiving financial, medical and psychological help.
- He should be advised about the restitution claims and compensation from the State.
- The victim should be protected from secondary victimization, i.e., additional damage during the process of criminal justice.
- The family and friends of the victim should be protected from further victimization and threat.

1. The Right of Protection from Criminal Victimization

This is the right to know about the protective measures, which a person may take to avoid possible victimization.

It is for the law enforcement agencies to educate the public about crime prevention measures and also to take necessary steps to improve the community's self-protection ability.

2. The right to preparation of consequences of Criminal Victimization (Physical, injury, loss or trauma)

This right is aimed at ensuring physical, psychological, social and financial well being of the victims. Consequently, the victims of crime should have:

- a) The right to have access to professional services and other support from the relevant agencies;
- b) The right to Government compensation for physical injury;
- c) The right to punish the offender through civil and criminal proceedings for the loss and damages suffered by the victim;

3. The Rights pertaining to the Agencies of Criminal Justice System the victim must also have

1) The right to be informed about the procedures and practices of the Criminal Justice System in simple language.

This is further stressed by the National Human Rights Commission in its communication to all unit officers are:

- ❖ FIR should be issued promptly to the complainant on receipt of a complaint and an entry to the effect to be made in the First Case Diary itself.
 - ❖ If the complaint does not reveal a cognizable offence, the complainant should be intimated accordingly.
 - ❖ If the investigation of a case is not completed within three months from the date of registration, the complainant should be intimated in writing, the specific reasons for not completing the investigation.
 - ❖ The proof of sending such an intimation should be obtained and kept on the case file. This should be repeated after six months and one year also.
 - ❖ When the chargesheet is filed before the court on completion of investigation, similar intimation should be sent to the complainant along with the copy of the charge sheet.
 - ❖ In case the complaint is not available for any reason, such notices can be handed over to any other member of the family.
1. The right to fair treatment from the agencies of criminal justice system.
 2. The right to privacy, dignity and respect.
 3. The right to legal advice and assistance.
 4. The right to ask for a speedy disposal of the case.
 5. The right to have his recovered property returned early.
 6. The right to receive fair treatment when testifying in the Court.

Compensation to victims

Section 357(1) of CrPC provides that when a Court imposes a sentence, which includes a fine, the Court may direct that the fine amount should be utilized.

- a) In defraying the expenses of prosecution.
- b) In making payment to the loss caused to the victim.

It is the only method we adopt.

The General Assembly of the United Nations has recommended payment of compensation to the victims of crime by the State, where compensation is not fully available from the offender or the accused is acquitted of the charge by the criminal court.

The Law Commission of India has mooted the proposal to make an exhaustive amendment of CrPC in order to implement various important decisions of the Supreme Court and recommendation of Law Commission of India, which include, *inter alia*, constitution of a Compensation Board for the payment of compensation to the victims of crime.

REMEDIAL MEASURES

Law enforcing officials

The method of investigation in India needs revamping. Collection of evidence followed by arrest of accused should be systematically followed.

Society

Our Society has not accepted the sexual assault or rape of victims. She is considered a social stigma and is never allowed to lead a normal life. This attitude of the people has to change. Awareness can be created by NSS students in village camps, Women Organizations, Social Welfare Organizations and Non-Governmental institutions.

Media

Media has to play a positive role in this regard. Significant judgments have to be high-lighted and detailed cover stories have to find a place in them. Discussions and debates could be encouraged in matters of sensitive nature.

VICTIM Compensation

In case of custodial death, the accused himself becomes the victim. The National Human Rights Commission has taken the view that compensation is to be paid to such a victim by the delinquent Public Officer and not the State.

CONCLUSION

The implementation of the Declaration of Basic Principle of Justice for victims of crime and abuse of power, recommendations given by the Supreme Court to constitute a Criminal Injuries Compensation Board, and conducting Human Rights of Victims awareness programme by the students and other NGO's and media can help in compensating the victim to an extent

economically. But his mental torture remains haunting to him, leaving a scar permanently.

[Acknowledgement – Article on “Human Rights of Victims” by R. Thirunavukkarasu in the book “Human Rights and Criminal Justice Administration” Ed. By. Dr. R. Thilagary’]

1.13 GUIDELINES FOR POLICE

ACCOUNTABILITY TO LAW OF CRIMES

The police is accountable to the law of the land which, in essence, is the expression of the will of the people. Therefore, while enforcing the law, the police is also bound by it. This accountability of the police to the law is ensured by judicial review at several stages.

India’s principal criminal laws are the Indian Penal Code and the Code of Criminal Procedure.

A police officer is a “Public Servant” as defined under Section 21 of the I.P.C.

Various provisions of the I.P.C. make the police accountable for neglect of or failure to perform duty, deliberate and wilful omission of duty, misuse of office or causing harm or injury to others. These legal provisions are enumerated below:

Section 119 I.P.C., penalizes a public servant for concealing a design to commit an offence which that person is duty-bound to prevent.

Section 161 I.P.C., penalizes a public servant for taking any gratification other than the one which is legally admissible.

Section 164 I.P.C., penalizes a public servant who abets another in taking illegal gratification.

Section 166 I.P.C., penalizes a public servant who disobeys the law with the intent to cause injury to another person.

Section 167 I.P.C., penalizes a public servant who frames an incorrect document in order to cause injury to another person.

Section 169 I.P.C., penalizes a public servant who unlawfully purchases property.

Section 217 I.P.C., penalizes a public servant who disobeys the law in order to save another person from legal punishment or to prevent property from being forfeited.

Section 218 I.P.C., penalizes a public servant who deliberately frames an incorrect record in order to protect another person from legal punishment or to save property from forfeiture.

Section 219 I.P.C., penalizes a public servant, who in a judicial proceeding makes a report or order contrary to law.

Section 221 I.P.C., penalizes a police officer who intentionally omits to apprehend or intentionally allows or aids to escape any person whom the officer is legally bound to apprehend.

Section 222 I.P.C., penalizes a police officer who intentionally omits to apprehend or intentionally permits to escape any person sentenced by a Court of Law.

Section 223 I.P.C., penalizes a police officer who negligently allows the escape from confinement of a person convicted or charged by law.

Section 225A I.P.C., penalizes a police officer who negligently or intentionally fails to apprehend or keep in custody any person accused of a jailable offense.

Section 376B and C I.P.C., penalizes a police officer who has sexual intercourse with a woman in custody.

The provision to Article 311 of the Constitution is also employed by senior police officers to dismiss a subordinate without holding an inquiry. While, on the one hand, the law makes police action and conduct accountable to the judiciary, on the other it also protects police officers from false, vexatious and frivolous complaints. Section 132 of the Cr. P.C. protects police officers from prosecution for acts committed under sections 129, 130 and 131 of the Cr. P.C. (dispersing an unlawful assembly by use of force, etc.). According to sub-section 1 of Section 132, no prosecution can be launched against police official except acting in good faith while dispersing an unlawful assembly he; would be deemed to have committed no offence.

Section 197 Cr. P.C. protects all public servants who are not removable from their office, except with the sanction of the Government. Thus, without the State Governments' sanction, no court is authorized to take cognizance of an offence committed by a public servant if the alleged act has been committed while the official was acting or purporting to act in the discharge of official duties. Sub-section 3 of Section 197 empowers the State Government to make any class or category of the police immune to prosecuting except with the Government's prior sanction.

1.14 CONCLUSION

The greatest challenge before the civil society today, globally, is to find out an appropriate strategy of ensuring law and order for the greater good of the community and, in doing so, not to transgress the basic human rights of the accused and the victim.

Anglo-Saxon law presumes every person as innocent unless proved guilty through a judicial process of trial. If every accused is presumed to be a criminal at the outset, the entire edifice of criminal justice evolved through centuries of trial and error crumbles to the ground.

There are also other principles which have evolved and have been accepted by the society.

The privilege against self-incrimination

This “privilege is declared in Article 14(3)(g) of the International Covenant on Civil and Political Rights, the right ‘not to be compelled to testify against himself or to confess guilt’ and it is one of two closely linked rights – the other is the right of silence – which the Strasbourg Court has implied into Article 6, on the basis that the two rights are internationally recognized as lying at the heart of the notion of fair trial.” [Andrew Ashworth in ‘Human Rights, Serious Crime and Criminal Procedure’]

“The ‘Asian values’ approach carries considerable social implications for the powerless: given the social circumstances of most of those accused of crime by the law enforcement agencies, these extensive qualifications of human rights represent telling inroads into basic standards and safeguards.” (Andrew Ashworth).

Threats, dangers and apprehensions about human rights are often concocted by the construction of “suitable enemies” and attendant negative

labeling, denial, avoidance and exclusion. This is quite often based upon a communality of fear.

The Indian Jurisprudence signalled the dangers behind such eventuality long back in history.

ASHOKA edict Number XII at Erragudi on tolerance of diversity states – “... a man must not do reverence to his own sect or disparage that of another man without reason.”

Right in our contemporary period, the great Indian poet Rabindranath Tagore raised his firm but golden voice only a few months before his death in his immortal words.

“... As I look around, I see the crumbling ruins of a proud civilization strewn like a vast heap of futility. And yet I shall not commit the grievous sin of losing faith in Man. I would rather look forward to the opening of a new chapter in his history after the cataclysm is over and the atmosphere rendered clean with the spirit of service and sacrifice.”

The ‘faith in man’ as proclaimed by Tagore is fundamental to the concept of universal human rights. However, we live in a society of heterogeneity, characterized by human beings or groups of diverse motivations. Such motivations do not often obtain the sanction of civil society and require to be curbed, reprimanded and stamped out in the greater interest of the civil society based on universal values. The methodology of the same constitutes the ‘means’ which must not after all defeat the rational norms of the ‘end’.

The present exercise is only a modest attempt to outline the contours of vindication of human rights vis-à-vis human wrongs.

Chapter 2

Custodial Justice

This chapter consists of three units; i. General guidelines, ii. Commentary on various aspects, and iii. Important instruments and instructions.

The first unit will introduce the basic principles that are related to ‘custodial justice’. These principles are well settled by now as part of custodial justice jurisprudence. While enumerating them, proper care has been taken to distinguish various aspects associated with both pre-custodial and custodial requirements. In this unit, no reference is specifically made to any instrument, national or otherwise, judgment, or any other authority. The endeavour is to present the principles underlying the major instruments, landmark judgments and best practices/conventions in a systematic and organised fashion. This unit can be used as a ready reckoner.

The second unit would demonstrate the paradigm shift in interpretation of ‘human rights’ in general and ‘custodial justice’ in particular, adapted over a period of time by the judiciary and National Human Rights Commission. This unit is further divided under different heads as per the contents. Care has been taken to make passing references to all judgments and recommendations on the subject of ‘custodial justice’.

Third unit is a compilation of important instruments and instructions on ‘custodial justice system’. A separate content has been prepared for the convenience of the reader. Though several instruments, instructions and guidelines are existing on the topic, this compilation would suffice the present purpose.

1. General Guidelines

Unit –1

Role of a District Magistrate:

Effective monitoring: This is a method of improving protection of human rights in general, and ensuring custodial justice in particular. The principal objective of custodial justice monitoring is to reinforce State responsibility to

protect human rights. One should also perform a preventive role. When a law enforcement official is monitored, he/she becomes more careful about his/her conduct. District Magistrates must relate their work to the overall objective of human rights protection. A District Magistrate can record observations and collect information for immediate action and latter use. He/she can communicate the information to appropriate authorities and/or bodies like Government of the day, National Human Rights Commission, State Human Rights Commission, etc. A District Magistrate should not only observe developments, collect information, and perceive patterns of conduct, but should, as far as his/her mandate allows and competence permits, identify problems, diagnose their causes, consider potential solutions, and assist in problem solving. While exercising good judgment at all times, District Magistrates should take the initiative in solving problems and should not wait for a specific instruction or express permission before acting to prevent human rights violation.

Do not harm: The actions and/or inaction's of a District Magistrate should not jeopardize the safety of victims, witnesses or other individuals with whom they come into contact, or the sound functioning of custodial justice system.

Respect the limitations: A District Magistrate should always work strictly within the broad parameters indicated in the respective jail manual or any other law for the time being in force and decide and determine his/her level of intervention accordingly.

Know the standards: A District Magistrate should be fully familiar with the requirements of custodial justice system, which are relevant to his/her and the responsibility of State in a given circumstance.

Exercise good judgment: Whatever their precision, rules cannot substitute for the good personal judgment and common sense of the District Magistrate. He/she should exercise good judgment at all times and in all circumstances.

Seek consultation: Wisdom springs from discussion and consultation. When a District Magistrate is dealing with a difficult case, a case on the borderline of the role or case which could be doubtful, it is always wise to consult other officers, experts and, whenever possible, superiors.

Respect the authorities: The District Magistrates should keep in mind that their objective and the principal role is to encourage the law enforcement

official to perform as well as to improve their behaviour. Hence they should respect proper functioning of the law enforcement agencies, should welcome improvements, should seek ways to encourage policies and practices which will continue to implement appropriate standards for all times to come.

Credibility: The District Magistrate's credibility is crucial for ensuring custodial justice. He/she should be sure not to make any promises they are unlikely or unable to keep and follow up action on any promise that he/she makes. When interviewing detainees/prisoners and witnesses of violence, the District Magistrate should introduce himself/herself, briefly explain the purpose of his/her visit, should also briefly describe what can and cannot be done by him/her, emphasize the confidentiality of the information received, and stress the importance of obtaining as many details as possible to establish the facts (for example, whether there has been a human rights violation).

Confidentiality: Respect for the confidentiality of information is essential, because any breach of this principle could have very serious consequences: (a) for the person interviewed and for the victim; (b) for the District Magistrate's credibility and safety; (c) for the level of confidence enjoyed by the visit/inspection in the minds of inmates of the prison; and thus (d) for the effectiveness of the inspection/visit.

Security: The District Magistrate should always bear in mind the security of the people who provide information. They should obtain consent of witnesses for interviews and assure them about confidentiality and their security. If need be, security measures should also be put in place to protect the identity of informants, interviewees, witnesses, etc.

Understanding the local problems: The District Magistrate should endeavour to understand the place where he/she works, including its people, history, administrative structure, culture, customs, language.

Evaluation of the information received: The District Magistrate should carefully, sometimes critically, examine information received and have it compared and verified before acting upon the same.

Accuracy and precision: Written communication is always essential to avoid lack of precision, rumour and misunderstanding.

Impartiality: It should always be remembered that a District Magistrate has to carry out his/her work and/or discharge his/her role with complete

impartiality. He/she should not only be impartial but also should seem to be so.

Sensitivity: While inspecting/visiting a place of detention or jail or custody, the District Magistrate should be sensitive to the suffering which an individual may have experienced, as well as to the need to take the necessary steps to protect the security of the individual.

Integrity: The District Magistrate should treat all informants, interviewees and the staff with decency and respect. He/she should carry out the visit in an honest and dignified honorable manner.

Visibility: A District Magistrate should be sure that both the law enforcement officials and inmates of the prison are aware of his or her presence. The presence and visibility of District Magistrate can deter human rights violation.

A Law Enforcement Official should know:

- i. He/she is a representative of and responsive and accountable to the community as a whole.
- ii. Effective maintenance of ethical standards among law enforcement officials depends on identification of well-conceived, popularly accepted and human system of laws and subsequent implementation thereof.
- iii. Every law enforcement official is a part of the criminal justice system, the aim of which is to prevent and control crime and the conduct of every official has an impact on the entire system.
- iv. Every law enforcement agency should discipline itself to uphold human rights standards and actions of law enforcement officials should be open to public scrutiny.
- v. Standards for humane conduct of law enforcement officials lack practical value, unless their content and meaning become part of the creed of every law enforcement official through education, training and monitoring.

Ten Basic Rules to ensure “Custodial Justice”

These rules are intended as a quick reference, and not as full explanation of or commentary on the applicability of human rights standards vis-à-vis custodial justice relevant to law enforcement. Fairness, accountability, commitment, excellence, integrity and trust are the essentials for strict implementation of this set of rules.

It is hoped that all concerned with enforcement of law will be able to use these ten basic rules as a starting point to develop detailed guidance for the training and monitoring of the conduct of police personnel. Certainly, it is the duty of all officers to ensure that their colleagues/sub-ordinates uphold the ethical standards of their profession-the rules outlined here are essential for exercising that responsibility.

Basic Rule-1: Everyone is entitled to equal protection of the law, without discrimination on any ground and especially against violence or threat. Be especially vigilant to protect potentially vulnerable groups, such as children, the elderly, women, refugees, displaced persons and members of minority groups.

This rule requires recognising:

- 1.1 Everyone has the right to liberty and security of the person;
- 1.2 No one should be subjected to arbitrary arrest, detention or exile;
- 1.3 All persons deprived of their liberty have the right not to suffer torture or cruel, inhuman or degrading treatment;
- 1.4 Everyone is entitled without any discrimination to equal protection of the law; and
- 1.5 Everyone has the right to a fair trial.

Basic Rule-2: Treat all detainees in custody or under detention with compassion and respect, and in particular protect their safety and privacy.

This rule demands:

- 2.1 Ensure that, if needed, measures are taken to ensure the protection and safety of detainees/arrestees from intimidation and retaliation;
- 2.2 Inform detainees/arrestees without delay of the availability of health and social services and other relevant assistance;
- 2.3 Provide without delay specialist care for women who have suffered violence;
- 2.4 Develop investigative techniques that do not degrade/disgrace women who have been arrested/detained;
- 2.5 Give particular attention to detainees/arrestees who have special needs because of factors such as race, colour, gender, sexual orientation, age, language, religion, nationality, political or other opinion, disability, ethnic or social origin, etc.

Basic Rule-3: Do not use force, except when strictly necessary and to the minimum extent required under the circumstances.

This rule mandates:

- 3.1 Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- 3.2 Minimize damage and injury, and respect and preserve human life and personal liberty;
- 3.3. Ensure that all possible assistance and medical aid are rendered to any injured or affected detainee/arrestee at the earliest possible moment;
- 3.4 Ensure that relatives or close friends of the injured or affected detainee are notified at the earliest possible moment;
- 3.5 Where injury or death is caused by the use of force by police officers/jail official, they shall report the incident promptly to their superiors, who should ensure that proper investigation of all such incidents is carried out.
- 3.6 In all cases of custodial death a magisterial inquiry should be conducted for fact finding.

Basic Rule-4: Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.

This rule warrants:

- 4.1 In policing of assemblies that are unlawful but non-violent, police officers must avoid the use of force. If force is indispensable, for example, to secure the safety of others, they must restrict such force to the minimum extent necessary and in compliance with the requirements of Rule-3;
- 4.2 Firearms shall not be used in the policing of non-violent assemblies. The use of firearms is strictly limited to the objectives mentioned in Rule-5;
- 4.3 In the dispersal of violent assemblies, police officers may use force only if other means remain ineffective or without any promise of achieving the intended result. When using force, police officers must comply with the requirements of Rule-3;
- 4.4 In the dispersal of violent assemblies, police officers may use firearms only when use of less force is not practicable and only to the minimum extent necessary to achieve one of the objectives mentioned in Rule-5 and in accordance with the provisions of Rule-3 and Rule-5.

Basic Rule-5: Lethal force should not be used, except when strictly unavoidable in order to protect your life or the lives of others.

This rule sets the following objectives and strictly warns against use of lethal force, except in the following situations:

5.1 In self-defence or in defence of others against the imminent threat of death or serious injury;

5.2 To prevent the perpetration of a particularly serious crime involving grave threat to life;

5.3 To arrest a person presenting such a danger and resisting the police officer's authority;

5.4 In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life;

5.5 Police officers must identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the officers at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident;

5.6 Use of firearms by police officers should be strictly in accordance with the Rules and regulations on the use of firearms.

Basic Rule-6: Do not arrest a person, unless there are legal grounds to do so, and the arrest is carried out in accordance with lawful arrest procedures.

This rule directs:

6.1 Arrest or detention shall only be carried out strictly in accordance with the provisions of the law and guidelines formulated by the judiciary and NHRC and only by competent officials or persons authorised for that purpose;

6.2 Police or other authorities who arrest a person shall exercise only the powers explicitly granted to them under the law;

6.3 Any one arrested must be informed at the time of arrest of the reasons for the arrest;

6.4 The time of the arrest, the reasons for the arrest, precise information identifying the place of custody, and the identity of the law enforcement officials concerned must be recorded; in addition, the records must be communicated to the detained person or to his or her lawyer.

6.5 Official carrying out the arrest should identify himself/herself to the person arrested and, on demand, to others witnessing the event;

6.6 Police officers and other officials, who make arrests, should wear name tags or numbers, so that they can be clearly identified. Other identifying marks, such as the insignia of soldier's battalions or detachments, should also be visible;

6.7 Police and military vehicles should be clearly identified as such. They should carry number plates at all times;

6.8 A person should not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other officer authorised by law to exercise judicial power, and be entitled to a trial within a reasonable time;

6.9 Persons awaiting trial need not necessarily be detained in custody, but their release on bail may be subject to reasonable guarantees for trial;

6.10 All detainees should only be kept in recognised places of detention. Such places of detention should be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention;

6.11 The detention of refugees and asylum seekers should normally be avoided. No asylum-seeker should be detained, unless it has been established that detention is necessary, is lawful and complied with one of the grounds recognised as legitimate by international standards. In all cases, detention should not last longer than what is strictly necessary;

6.12 All asylum-seekers should be given adequate opportunity to have their detention reviewed by a judicial or similar authority. Reference regarding the detention of refugees and asylum seekers should be made to the competent authorities, as well as to the office of the United Nations High Commissioner for Refugees (UNHCR) and other refugee assistance organisations.

Basic Rule-7: Ensure that all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.

This rule postulates:

7.1 Detainees should be promptly told of their rights, including the right to lodge complaints about their treatment;

7.2 A detainee, who does not understand or speak the language used by the authorities responsible for his or her arrest, is entitled to receive information and have the assistance, free of charge if necessary, of an interpreter in connection with the legal proceedings subsequent to his or her arrest;

7.3 A detainee who is a foreigner should be promptly informed of his or her right to communicate with the relevant consular post or diplomatic mission;

7.4 All detained refugees and asylum seekers should be allowed access to the local representative of the UNHCR and to refugee assistance organisations, regardless of why they are being detained. If a detainee identifies himself/herself as a refugee or an asylum seeker, or otherwise indicates his fear at being returned to his country, it is incumbent on the detaining officials to facilitate contact with these organisations;

7.5 Police officers or other competent authorities must ensure that all detainees are fully able in practice to avail themselves of the right to notify family members or others immediately of their whereabouts;

7.6 Police officers or other competent authorities must ensure that accurate information on the arrest, place of detention, transfer and release of detainees is available promptly in a place where relatives and others concerned can obtain it;

7.7 They must ensure that relatives are not obstructed from obtaining this information and that they know or are able to find out where the information can be obtained;

7.8 Relatives and others should be able to visit a detainee as soon as possible after he or she is taken into custody. Relatives and others should be able to correspond with the detainee and make further visits regularly to verify the detainee's continued well-being;

7.9 Every detainee must be informed promptly after arrest of his or her right to a legal counsel and be helped by the authorities to exercise this right. Moreover, every detainee must be able to communicate regularly and confidentially with his or her lawyer, including having meetings with his or her lawyer within sight, but not within hearing of a guard or police officer, in order to help prepare the detainee's defence and to exercise his or her rights;

7.10 An independent doctor should promptly conduct a proper medical examination of the detainee, after he/she is taken into custody, in order to ascertain that the detainee is healthy and not suffering from torture or ill-treatment, including rape and sexual abuse. Thereafter, medical care and treatment shall be provided whenever necessary;

7.11 Every detainee or his or her legal counsel has the right to request a second medical examination or opinion. Detainees must never be subjected to medical or scientific experimentation;

7.12 Female detainees should be entitled to medical examination by a female doctor. They should be provided with all necessary pre-natal and post-natal care and treatment. Restraints should only be used on pregnant women as a last resort and should never put the safety of a woman or foetus at risk. Women should never be restrained during labour.

Basic Rule-8: All detainees must be treated humanely. Do not inflict, instigate or tolerate any act of torture or ill-treatment, in any circumstances, and refuse to obey any order to do so.

This rule demands:

8.1 Detainees are inherently vulnerable, because they are under the control of law enforcement officials who, therefore, have a duty to protect them from

any violation of their right to life by strictly observing procedures designed to respect the inherent dignity of the human person. Accurate record-keeping is an essential element of the proper administration of the process of detention;

8.2 The existence of official records which are open for consultation helps to protect detainees from ill-treatment including torture. The implementation of Basic Rule-8 requires, among other things, that:

8.3 No person under any form of detention should be subjected to torture, or to any cruel, inhuman or degrading treatment or punishment,

8.4 No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor they should invoke superior orders or exceptional circumstances such as a state of war or threat of war, or political instability or other public emergency as a justification for such acts;

8.5 Law enforcement officials should be instructed that molestation or rape of women in their custody constitutes a grave crime that will not be tolerated. Similarly, they should be instructed that any other form of sexual abuse may constitute torture or cruel, inhuman or degrading treatment and that offenders will also be brought to justice;

8.6 The term “cruel, inhuman or degrading treatment or punishment” should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including holding a detainee in conditions which deprive him or her, even temporarily, of the use of any of his or her natural senses, such as sight or hearing, of his or her awareness of place or passing of time. Compliance with other basic rules for law enforcement are also essential safeguards against torture and ill-treatment;

8.7 A detainee may not be compelled to confess, to otherwise incriminate himself or herself or to testify against any other person. While being interrogated, no detainee may be subject to violent threats or methods which impair his or her capacity of decision or judgment. Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees;

8.8 Children should be detained only as a last resort and for the shortest possible time. They should be given immediate access to relatives, legal counsel and medical assistance and relatives or guardians should be informed immediately of their whereabouts;

8.9 Juvenile detainees should be kept separate from adults and detained in separate institutions. They should be protected from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees;

8.10 Refugees and asylum seekers detained for non-criminal reasons should never be detained together with common law prisoners. Conditions and treatment should be humane, and appropriate to their status as refugees;

8.11 Detainees should be kept separate from imprisoned persons. All detainees should, if possible, wear their own clothing if it is clean and suitable, sleep singly in separate rooms, be fed properly and be allowed to buy or receive books, newspapers, writing materials and other means of occupation as are compatible with the interests of justice;

8.12 Registers of detainees should be kept in all places of detention including police stations and military bases. The register should consist of a bound book with numbered pages which cannot be tampered with. Information to be entered in them should include:

- The name and identity of each person detained;
- The reasons for his or her arrest or detention;
- The names and identities of officials who arrested the detainee or transported him or her;
- The date and time of the arrest and of the transportation to a place of detention;
- The time, place and duration of each interrogation and the name of the persons conducting it;
- The time of the detainee's first appearance before a judicial authority, and;
- Precise information concerning the place of custody, the date, time and circumstances of the detainee's release or transfer to another place of detention.

Basic Rule-9: Do not carry out, order or cover up *extrajudicial executions or disappearances*, and refuse to obey any order to do so.

There are several important elements in the concept of an extrajudicial execution:

- It is deliberate, non accidental;
- It violates national laws such as those which prohibit murder, and/or international standards forbidding the arbitrary deprivation of life;
- Its unlawfulness distinguishes an extrajudicial execution form:

This rule strictly requires:

- A justifiable killing in self-defence;

- A death resulting from use of force by law enforcement officials which is nevertheless consistent with criminal law standards;
- A killing in an armed conflict situation, which is not prohibited by criminal law jurisprudence.

9.1 In an armed conflict, armed officers and soldiers of the Government are prohibited from carrying out arbitrary and summary executions. This would constitute violation of basic principles of criminal law;

9.2 All police officers and all other law enforcement personnel should be aware of their right and duty to disobey orders the implementation of which might result in serious human rights violations. Since those violations are unlawful, police officers and others must not participate in them. The need to disobey an unlawful order should be seen as a *duty, taking precedence over the normal duty to obey orders*. The duty to disobey an unlawful order entails the *right* to disobey it.

9.3 The right and duty to disobey an order to participate in “disappearances” and extrajudicial killings are implicit from the Constitutional guarantees;

9.4 To implement Basic Rule-9, it is important that the use of force and firearms by the police strictly complies with all the provisions in Basic Rule 3, 4 and 5.

Basic Rule-10: Report all breaches of these Basic Rules to your senior officers and to the office of the District Magistrate. Do everything within your power to ensure that steps are taken to investigate these breaches.

Glossary of Terms and Definitions.

Administrative detention: deprivation of liberty by Government action, but outside the process of the police arresting suspects and bringing them into the criminal justice system.

Administration of custodial justice: it includes the functioning and independence of the Courts; the role of prosecution; the role of lawyers; the role of law enforcement officials; human rights during criminal investigations, arrest and detention; the right to a fair trial; standards for the protection of prisoners; non-custodial measures; the administration of juvenile justice; the rights of minorities, non-nationals and refugees; women’s human rights in legal system; protection and redress for victims of crime and abuses of power; the administration of justice under a State of emergency; the right to habeas corpus.

Administration of juvenile justice: a system/protocol which ensures that juvenile persons are entitled to procedures that can take account of their age and the desirability of promoting their rehabilitation. Further, it requires: any child alleged to have committed a criminal offence shall be treated in a manner consistent with the child's dignity and worth as well as the desirability of promoting the child's reintegration in society. Such a child alleged to have infringed the penal law is entitled to the presumption of innocence; to be informed promptly of the charges; to have the matter determined without delay by a competent, independent and impartial judicial authority in a fair manner according to law, in the presence of legal or other appropriate assistance, and usually in the presence of the child's parents or legal guardians. In addition to the said rights the child will have all other rights conferred on an accused in general.

Arbitrary detention: when a public official or any other person acting in an official capacity or with official instigation, consent or acquiescence, deprives a person, without a valid reason, of his/her liberty by confining him/her in a prison or any other detention facility or compels him/her to stay in an assigned place.

Arbitrary execution: killing of a person perpetrated by an agent of the State or any other person acting under Government authority or with its complicity, tolerance, or acquiescence, but without any or due judicial process. Executions resulting from a death sentence issued by a Court, are also arbitrary executions, if the fair trials guarantees provided in Constitution and judicial authority are not respected.

Bail: conditional release of an accused person; in principle it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for execution of the judgment.

Derogation of rights: permissible limitation on rights. Under certain specific conditions set forth in the Constitution of India, limitations can be imposed by the State on exercise of some fundamental rights. It should be clear, however, that limitations on rights should be seen as exception, rather than the rule. Limitations on rights, where they are permitted, are specified in the various provisions of Constitution. In general, such limitations and restrictions must be those which are determined by law and necessary in a democratic society to (i) Ensure respect for the rights and freedoms of others; and (ii)

Meet the just requirements of public order, public health or morals, national security or public safety. Derogation imposed outside or beyond the above-mentioned conditions are not tolerated by human rights law, more specifically custodial justice system.

Disappearance: an action of taking persons into custody by agents of the state, yet whose whereabouts and fate are concealed. It is a grave violation of human rights to carry out disappearances.

Extra judicial execution: an unlawful and deliberate killing carried out by, or on the order of, someone at some level of government, whether national, State or local, or with acquiescence.

Enforced disappearance: when persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of the government, or by organised groups or private individuals acting on behalf of, or with the support direct or indirect consent or acquiescence of the Government, and followed by the Government's refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty.

Fair trial: with regard to a criminal case, it includes the rights to be informed promptly of any charges upon arrest; to be brought promptly before a judicial officer for an assessment of the legality of an arrest; to equal treatment before courts; to a fair and usually public hearing by a competent, independent and impartial court established by law; to be presumed innocent; to be informed promptly and in detail in a language in which one understands the nature of charges; to have adequate time and the facilities for the preparation of a defence; to communicate with the counsel of one's own choice; to be tried without undue delay; to be tried in one's presence; to defend oneself in person or through legal assistance of one's choice; to be informed that counsel will be appointed if one does not have sufficient funds and the interests of justice require such appointment; to examine or have examined witnesses; to obtain the attendance and examination of witnesses on the same conditions as adverse witnesses; to have the assistance of an interpreter if one cannot understand the language used in a Court; not to be compelled to testify against one's self or to confess guilt; to have a conviction reviewed by a higher Court according to law; to be compensated for any punishment which is conclusively shown to be a miscarriage of justice; not to be convicted for any offence for which one has already been finally convicted or acquitted (double-jeopardy); not to

be convicted for any act which did not constitute a criminal offence under criminal law at the time of the conduct (retrospective application of criminal law); to benefit from any subsequent decrease in punishment.

Habeas corpus writ: anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a Court, in order that Court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Human Rights: (*special characteristics*): inherent, universal, inalienable, indivisible and interdependent.

Human Rights violation: the expression includes governmental transgressions of the rights guaranteed by national, regional and international human rights law and acts and omissions directly attributable to the State involving the failure to implement human rights standards. Violations occur when a law, policy or practice deliberately contravenes or ignores obligations held by the State concerned or when the State fails to achieve a required standard of conduct or result. Additional violations occur when a State withdraws or removes existing human rights protections.

Human Rights abuses: it is a broader term than “violations”, which includes violative conduct committed by non-State actors.

Human Rights of children: the general thrust behind national and international action on behalf of children is the moral and legal recognition of their emotional, physical and psychological vulnerability, their need for special care, and recognition of the obligation to respect and to ensure respect for their rights, including having their views respected.

Internally displaced persons: persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or manmade disasters and who have not crossed any internationally recognised State border. Such persons are entitled to a treatment with due respect to their plight.

Interview: process of obtaining information through the use of planned but informal dialogue in a cordial atmosphere, where a person (interviewer) is more comfortable physically and psychologically.

Judicial access: the right to be brought promptly before a judicial authority, whose function is to assess whether a legal reason exists for a person's arrest and whether detention until trial is necessary. Also the right to challenge one's detention before a competent judicial authority.

Just treatment to women: prohibits any acts of gender-based violence which have the potential to result in physical, sexual or psychological harm or suffering to women, whether occurring in public or in private life. This further prohibits, in addition to violence perpetrated or condoned by the State, violence occurring within the family (domestic violence), and within the community. It is the duty of the law enforcement agency to prevent, investigate and punish all acts of violence against women, whether perpetrated by the State or by private persons, to provide women who are subjected to violence with access to the mechanisms of justice and to just and effective remedies, and to ensure that law enforcement officers and public officials concerned are sensitive enough to the specific needs of women.

Law enforcement officials: it includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. This should be given the widest possible interpretation, and includes military and other security personnel as well as immigration officials where they exercise such powers.

Non-derogable rights: the rights which can never be restricted, suspended or subjected to any limitation or curtailment even under emergency situation. Article 20 and 21 of the Constitution are declared as non-derogable by 44th amendment of the Constitution of India.

Non-discrimination: the practice of respecting and ensuring all rights recognised by a civil society, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, place of birth or other status.

Presumption of innocence: an accused/suspect should be presumed as innocent till his/her conviction by a competent court.

Protection of minorities: it requires absolute non-discrimination. All persons are equal before the law and are entitled without any discrimination to the equal protection of law. In this respect, it should be practiced to prohibit any discrimination and guarantee all persons equal and effective protection against

discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, place of birth, property or any other status.

Returnee: this term is used by the international community to identify a person who was a refugee, but who has recently returned to his/her country of origin.

Self-incrimination: making a confession or giving testimony against one's own self, Forced self incrimination is prohibited by the Constitution of India.

Torture: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.

2. Commentary on Various Aspects of 'Custodial Justice'

2.1 INTRODUCTION

District Magistrate, being in overall in-charge of law and order in the district, has a crucial role to play. He should be very well conversant with his direct responsibilities as District Magistrate and also as a supervisory officer responsible to the government for all that happens in his jurisdiction.

The topics covered in this chapter illustrate complexities of 'custodial justice'. The issues covered in the chapter show that there is a common set of factors which, when taken together, constitute a model for proper management of the custodial justice system.

Since it is intended that this manual would have application in every district of India, it is essential that the set of principles which are to be used as a reference point should be applicable everywhere, irrespective of regional compulsions. The chapter meets this requirement by taking various judgments pronounced by the Supreme Court of India, recommendations made by

National Human Rights Commission and, the international standards stipulated by various international instruments agreed to by India after-taking them into consideration.

Legitimacy of this chapter comes from its solid grounding in the formal endorsement of the principles under description by all major agencies involved in the administration of custodial justice; viz., the State, the Judiciary, NHRC and the International Community.

The custodial justice system has to operate within an ethical framework. Without a strong ethical context, one group of people who are vested with considerable power over another group can easily become abuser of that power. The ethical context is not just a matter of the behaviour of an individual officer towards detainees. A sense of the ethics of imprisonment needs to pervade the management process from the top downwards. A demand for operational efficiency, or pressure to meet management targets without prior consideration of ethical imperatives, can lead to great inhumanity. Administration of custodial justice is primarily about the management of human beings in custody. This further involves ensuring justice to men and women who have been deprived of their liberty, some of whom may be mentally disturbed, suffer from addiction, have poor social and educational skills and belong to marginalised groups in the society. Some of them could be a threat to the society; some may be dangerous and aggressive; while others may try their best to escape. None wants to be in prison.

In a democratic society like India, the law underpins and protects the fundamental values of the society. There has to be respect for the inherent dignity of all human beings, whatever their personal or social status. One of the greatest tests of this 'respect for humanity' lies in the way in which a society treats those who have broken, or are accused of having broken, the criminal law. These are the people who themselves may well have shown a lack of respect for the dignity and rights of others. All involved in administration of criminal justice system have a special role on behalf of the rest of the society in respecting their human dignity, despite any crime that they may have committed. Senior administrators and law enforcement officials will be able to maintain this commitment only, if they get a clear and consistent message from those in charge of the system that this is an imperative.

2.2 PRINCIPLES OF CUSTODIAL JUSTICE

Persons who are detained or imprisoned retain all their rights as human beings with the exception of those that have been lost as a specific

consequence of deprivation of liberty. All concerned with custodial justice need to have a clear understanding of the implications of this principle. Some issues are very clear. There is, for example, a total prohibition on torture and deliberately inflicted cruel, inhuman or degrading treatment. There has to be an understanding that this prohibition does not merely apply to direct physical or mental abuse. It also applies to the totality of conditions in which prisoners are held. In other words, “prisoners are kept in prison as a punishment and not *for* punishment”.

While dealing with detainees, particularly while imposing restrictions on them one should know which specific rights are forfeited. These are summed up as follows:

- i. the right of freedom of movement is obviously restricted by the nature of detention, as is that of free association. Even these rights are not completely removed, since detainees are rarely held in total isolation and, where they are, there has to be very good and specific reason.
- ii. The right to family contact is not taken away, but its exercise may be restricted. A father, for example, does not have unrestricted access to his children, nor they to him, while under imprisonment.
- iii. The rights of mothers and children to family life require special consideration. Mere imprisonment cannot be a ground to deprive the detainees from the natural love and affection of their families.

Constitutional Scheme: From the judicial perspective ‘the right to life and personal liberty’ contained in Article 21 of Indian Constitution encompasses all basic conditions for a life with dignity and liberty. Such an approach allows it to come down heavily on the system of administration of criminal justice; custodial justice in particular, and law enforcement. It also brings into the fold of Article 21, all those Directive Principles of State Policy which are essential for a ‘life with dignity’. The right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right but is the basic human right from which all other human rights stem. It is basic in the sense that the enjoyment of the right to life is a necessary condition for the enjoyment of all other human rights.

This right existed even prior to the commencement of Indian Constitution. In *A.D.M. Jabalpur Vs. Shivakant Shukla* case, Justice H.R. Khanna rightly observed: “... sanctity of life and liberty was not something new when the Constitution was drafted. It represented a facet of higher values which mankind began to cherish in its evolution from a State of tooth and claw to a civilised existence. Likewise, the principle that no one shall be deprived of his life and

liberty arbitrarily without the authority of law was not the gift of the Constitution. It was necessary corollary of the concept relating to the sanctity of life and liberty which existed and was in force before the coming into force of the Constitution....”

The Court adapted an annotation of Article 21, in *Kharak Singh Vs. State of U.P.* and expanded the connotation of the term ‘life’ and said “.... life is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, of the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world....”. In *Maneka Gandhi Vs. Union of India*, Bhagawati J. opined that “the fundamental right of life and personal liberty has many attributes and it covers a variety of rights which go to constitute the personal liberty of man, and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19”. In the same case it was held that the procedure contemplated under Article 21 is a right, just and fair procedure, not an arbitrary or oppressive procedure. The procedure which is reasonable and fair must now be in conformity with the test of Article 14. In other words, the Supreme Court, while considering the ambit of Article 21 in a number of cases, established that Article 21 does not exclude Article 19 and that, even if there is a law prescribing a procedure for depriving a person of ‘personal liberty’ and there is consequently no infringement of the fundamental right conferred by Article 21, such law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the requirements of that Article. Further any procedure contemplated by the State to curtail ‘life and personal liberty’ of an individual should meet the requirement of Article 14.

Death penalty

India has not abolished death penalty, but as a rule laid down by the Supreme Court, it is to be awarded by the competent courts only in the ‘rarest of the rare’ cases, in which the crime committed is so heinous that it shakes the conscience of mankind. Under the present criminal law, imposition of death sentence is an exception rather than the rule. Even in those exceptional cases, special reasons have to be given in justification of the imposition of death penalty. Section 416 of Cr. P.C. requires the High Court to postpone the execution of a capital sentence to imprisonment for life. In *Rajendra Prasad Vs. State of U.P.*, Krishna Iyer J. expressed his view by stating that the Criminal

law of Raj vintage has lost some of its vitality, notwithstanding its formal persistence in print in the Penal Code, so far as Section 302 of IPC is concerned. In the post Constitution period, Section 302 of IPC and Section 354 (3) of Cr. P.C. have to be read in the light of Parts III and IV of the Constitution. He further went ahead in saying that the death sentence would not be justified unless it was shown that the criminal was dangerous to the society. In *Bachan Singh's* case the Supreme Court elaborated 'special reasons' for awarding capital punishment and established that, when the conviction is for an offence punishable with death, the judgment should State the special reasons for such a sentence.

Constitutional provisions apart, the Supreme Court has evolved a number of safeguards to protect human dignity and liberty of persons awarded life sentence while waiting for execution of the sentence. These include their right to worship, right to see family members, right to remorse etc. In *Attorney General of India Vs. Lachman Devi* case the Court opined that the execution of death sentence by public hanging is barbaric and violative of Article 21 of the Constitution. The Court held that although the crime of which the accused have been found to be guilty was barbaric, that crime does not have to be visited with a barbaric penalty, such as public hanging.

Torture

Convention against Torture explicitly states that "No exceptional circumstances whatsoever, whether a State of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture". The Supreme Court of India and the National Human Rights Commission have upheld this view in their various judgments/recommendations and have jointly and individually established that the prohibition of torture is absolute and may not be suspended, no matter how heinous the crime for which someone has been arrested. It is a right from which the government is not permitted to derogate, even in situations of emergency. Forty fourth amendment of the Indian Constitution declares Article 20 and 21 as non derogable even in emergency situations.

The term 'torture' is defined in the Convention against torture and other cruel, inhuman or degrading treatment or punishment. Article 1.1 of the same 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 any third person has committed or is suspected of

having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions”. Article 21 of the Constitution only provides “no person shall be deprived of his life or personal liberty except according to procedure established by law”. The term ‘life’ or personal liberty has been held to include the right to live with human dignity and, therefore, includes within its ambit a guarantee against torture and assault by the State or its functionaries. Any person subjected to torture or to cruel, inhuman or degrading treatment or punishment can move the higher Courts for various judicial remedies under Articles 32 and 226 of the Constitution.

Arrest and detention

The Supreme Court initiated the development of “custodial Jurisprudence” in *D.K.Basu Vs. State of West Bengal*. The case came up before the Court through a writ petition under Article 32 of the Constitution by an NGO. In this case the Chief Justice of India’s notice was drawn to a news item published in ‘The Telegraph’ regarding deaths in a police lock-up and in jail in the State of West Bengal. It was requested in this petition to examine in depth and to develop custodial jurisprudence. In this case the Court outlined the following requirements, which should be followed in all cases of arrest or detention as preventive measures:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to have interest in his welfare being informed, as soon as practicable, that he

has been arrested and is being detained at the particular place, unless the attesting witness of the memo of the arrest is himself such a friend or relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police, where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of his right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of arrestee and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest. Within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous board.

The Court observed that the requirements, referred to above, flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed.

In *Nilabati Behera Vs. State of Orissa*, the Court observed that prisoners and detainees are not denuded of their fundamental rights under Article 21 and

that it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detainees. It was further observed “... there is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and, therefore, his interest in the limited liberty left to him is rather precious. The duty of providing care on the part of the State is called for, if the person in custody of the police is deprived of his life, except according to procedure established by law...”. In this case Court awarded a sum of Rs. 1.5 lakhs to the mother as her son had died in police custody. The Court’s judgment also referred to Article 9 (5) of the International Covenant of Civil and Political Rights, which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Human dignity

The latin maxims *salus populi est seprema lex* (the safety of the people is the supreme law) and *salus reipublicae est seprema lex* (safety of the State is the supreme law) co-exist and are not only important but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. However, the action of the State must be “right, just and fair”. Practising any form of torture for extracting any kind of information would neither be right nor just nor fair and, therefore, would be impermissible, being violative of Article 21.

The Court noted in the *Basu* case that ‘there is no express provision in the Constitution of India for the grant of compensation for violation of a fundamental right to life. In spite of this lacuna, the Court has judiciously evolved a right to compensation in case of established unconstitutional deprivation of personal liberty’. In *Sunil Batra Vs. Delhi Administration*, the Court was called upon to determine the validity of solitary confinement and keeping a prisoner in fetters. Justice Desai, speaking for the majority, admitted that there was no provision in the Indian Constitution like the Eighth Amendment of American Constitution which forbids cruel and unusual punishment. But, he pointed out that conviction did not degrade the convict to a non-person, vulnerable to major punishments imposed by the jail authorities without observance of due procedural safeguards. He also emphasised a Court’s duty towards a prisoner as he was in prison under its order and direction. He held: “We cannot be oblivious to the fact that the treatment of a human being which offends human dignity, imposes avoidable

torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14”. In the same case, another fact was brought to the notice of the Court that undertrials were kept along with the convicts. Justice Shri Iyer observed: “The undertrials who are presumably innocent until convicted are being sent to jail, by contamination, made criminals a custodial perversity which violates the test of reasonableness in Article 19 and of fairness in Article 21. How cruel would it be if one went to a hospital for a check-up and by being kept along with contagious cases came home with a new disease”. The learned Judge drew the picture of Tihar prison thus: “Tihar prison is an arena of tension, trauma, tantrums and crimes of violence, vulgarity and corruption. And to cap it all, there occurs the contamination of pre-trial accused with habitual, and ‘injurious prisoners of international gangs’. The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cell. That is, there is a large network of criminals, officials, and non-officials, in the house of correction. Drug racket, alcoholism, smuggling, violence, theft, unconstitutional punishment by way of solitary cellular life, and transfer to other jails are not uncommon”.

The Court held in this case that personal liberty of the person who is incarcerated is to a great extent curtailed by punitive detention. **The liberty to move, mix, mingle, talk, share company with co-prisoners, if substantially curtailed would be a violation of Article 21, unless the curtailment has the backing of law.** In another important judgment delivered by the Supreme Court in *Francis Corallie Mullin Vs. The Administrator, Union Territory of Delhi*, Bhagawati J. observed: “the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving out and mixing and commingling with fellow human beings”.

In a number of cases, the Supreme Court held that handcuffing of prisoners is against human dignity and violative of Article 21. In *Prem Shankar Shukla Vs. Delhi Administrator*, while delivering the judgment Justice Shri Krishna Iyer drew attention to Article 5 of the Universal Declaration of Human Rights and held that handcuffing of a prisoner was unconstitutional, if there was any other reasonable way of preventing the escape of the prisoner. He reiterated that Article 21, now the sanctuary of human values, prescribes fair procedure and forbids barbarities, punitive as well as procedural. In *State of Maharashtra Vs. Ravikant*, the Court came down heavily on the Government

for handcuffing an undertrial prisoner and making him parade in streets in a procession by the police. In this case the Court directed the Government of Delhi to pay a sum Rs. 10,000/- to the victim for the humiliation he had suffered.

2.3 INTERROGATION

Provision enumerated in chapter-XII of Criminal Procedure Code confers power on the Police to examine accused persons and witnesses. However, while carrying out such a job it is of utmost importance to follow all other provisions of the Code as well as the Constitution to ensure human dignity and personal liberty of the person under examination. While examining an accused/witness for the purpose of fact-finding, the following legal provisions should be borne in mind:

- i. Section 54 of Cr. P.C. confers upon an arrested person the right to have himself/herself medically examined.
- ii. A confession made to a police officer is not admissible in evidence under Sections 25 and 26 of Indian Evidence Act.
- iii. Section 162 of Cr. P.C., also provides that no statement of a witness recorded by a police officer can be used for any purpose other than that of contradicting his statement before the Court.
- iv. Section 24 of Indian Evidence Act also provides that when admissible, confession must be made voluntarily. If it is made under any inducement, threat or promise, it is inadmissible in criminal proceedings.
- v. An additional safeguard is that, under Section 164 of the Cr. P.C., it is for the Magistrate to ensure that a confession or statement being made by an accused person is voluntary.

There are a few Constitutional safeguards provided to a person to protect his personal liberty against any unjustified assault by the State. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest, and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Article 22 (2) directs that the person so arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Article 20 (3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a

witness against himself. Manner in which examination of the accused should be conducted is elaborated under the head ‘confession’.

2.4 CONFESSION

Article 20 (3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. Section 161 (2) Cr. P.C. enjoins that any person supposed to be acquainted with the facts and circumstances of the case shall be bound to answer truly all questions relating to such case put to him by any police officer making an investigation under Chapter XII of the Code, other than questions the answers to which would have the tendency to expose him to a criminal charge or to a penalty or forfeiture.

Case of *Nandini Satpathy Vs. P.L. Dani*, is a classic example in this context, wherein the Supreme Court held that Section 161 of Cr. P.C. enables the police to examine the accused during investigation. The prohibitive sweep of Article 20 (3) goes back to the stage of police interrogation not, as contended, commencing in Court only. In our judgment, the provisions of Article 20 (3) and Section 161 (1) substantially cover the same area, so far as police investigations are concerned. The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of incriminating matter. We are disposed to read ‘compelled testimony’ as evidence procured not merely by physical threats or violence but psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like, not legal penalty for violation. So the legal perils following refusal to answer or answer truthfully cannot be regarded as compulsion within the meaning of Article 20 (3). The prospect of prosecution may lead to legal tension in the exercise of a Constitutional right, but then, a stance of silence is running a calculated risk. On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes ‘compelled testimony’, violative of Article 20 (3).

Legal penalty for refusing to answer or answer truthfully may by itself not amount to duress. It cannot be regarded as compulsion under Article 20 (3). But frequent threats of prosecution, if there is failure to answer, may take on the complexion of undue pressure violating Article 20 (3). The manner of

mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near compulsion.

Lawyer's presence is a constitutional claim in some circumstances in our country and, in the context of Article 20 (3), is an assurance of awareness and observance of the right to silence. The *Miranda* decision has insisted that if an accused person asks for a lawyer's assistance at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 20 (3) and Article 22 (1) may, in a way, be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Overreaching Article 20 (3) and Section 161 (2) will be obviated by this requirement. In the same case it was categorically stated that if an accused person expresses the wish to have his lawyer by his side, when his examination is going on this facility shall not be denied, without being exposed to the serious reproof that involuntary self-incrimination secured in secrecy and by coercing the will. The police need not wait more than for a reasonable while for an advocate's arrival. But they must invariably warn and record that fact about the right to silence against self-incrimination and, where the accused is literate, take his written acknowledgement.

The symbiotic need to preserve the immunity without stifling legitimate investigation persuaded the court to indicate that after an examination of the accused, where a lawyer of his choice is not available, the police official must take him, to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience, where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by judicial or some other custody for him where the police cannot reach him. That collocutor may briefly record the relevant conversation and communicate it, not to the police, but to the nearest magistrate. Pilot projects on this pattern to guide the practical processes of implementing Article 20 (3) were strongly suggested in the case.

It was further observed that, above all, long run recipes must be innovated whereby fists are replaced by wits, ignorance by awareness, 'third degree' by civilised tools and methods. Special training, special legal courses, technological and other detective updating are important. An aware policeman is the best social asset towards crimelessness. The consciousness of the official as much as of the community is the healing hope for a crime-ridden society. Judge-centered remedies do not work in the absence of community-centered rights. Investigator's personnel must be separated from the general mass and

given in-service specialisation on a scientific basis. The policeman must be released from addiction to coercion and sensitized to Constitutional values.

Considering the statutory safeguards to protect this right in *Sarwan Singh Vs. State of Punjab*, the Court held that “act of recording confession under Section 164 Cr. P.C. is a very solemn act and, in discharging his duties under the said Section, the Magistrate must take pains to see that the requirements of sub-section (3) of S. 164 are fully satisfied. It would, of course, be necessary in every case to put the questions prescribed by the High Court circulars, but the questions intended to be put under sub-section (3) of S.164 should not be allowed to become a matter of mere mechanical inquiry. No element of casualness should be allowed to creep in, and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary.

Emphasising the importance of Section 164 of the Cr. P.C. the Court observed: the whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by any inducement, threat or promise having reference to the charge against the accused person as mentioned in S.24 of the Indian Evidence Act. There can be no doubt that when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear of any possible influence of the police, and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule about the time which should be allowed to an accused person in any *given* case. However, speaking generally, it would, we think, be reasonable to insist that an accused person should be given at least 24 hours to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period than this may have to be given to him before his statement is recorded”.

In the same case it was further held that “even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and probabilities in the case”. The Court reiterated its view in *Devendra Prasad*

Tiwari Vs. State of U.P. by saying that before a confessional statement made under S.164 of the Code of Criminal Procedure can be acted upon, it must be shown to be voluntary and free from police influence.

While determining the Magistrate's role, Supreme Court in *Shivappa Vs. State of Karnataka* held: 'From the plain language of Section 164 of Cr. P.C. and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 Cr. P.C., it is manifest that the said provision emphasises an inquiry by the Magistrate to ascertain the voluntary nature of the confession'. This inquiry appears to be the most significant and important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Cr. P.C. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance, not merely in form but in essence, with the provisions of Section 164 of Cr. P.C. and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and render the confession unworthy of credence. Before proceeding to record the Confessional statement, a searching inquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case, the Magistrate discovers, on such inquiry that there is ground for such supposition, he should give the accused, sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides, sounding, the caution/ warning, specifically provided for in the first part of sub-section (2) of Section 164, namely, that the accused is not bound to make a statement and that, if he makes one, it may be used against him as evidence in relation to his complicity in the offence at the trial that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like, in case he declines to make a statement and be given the assurance that even if he declined to make the confession he shall not be remanded to police custody.

The Magistrate, who is entrusted with the duty of recording confession of an accused coming from police custody, to jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 Cr. P.C. and the rules framed by the High Court for the guidance of the Subordinate Courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the Court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with.

Even though an accused makes a confession and pleads guilty, the Magistrate should examine him under Section 313 Cr. P.C. to enable him to explain the circumstances under which the offence was committed.

The confession of a co-accused is not substantive evidence. It can be used in service when the Court is inclined to accept other evidence and feels the necessity of seeking an assurance in support of his conclusion deducible from other evidence. When there is no substantive evidence about a fact or circumstance, the previous statement of the accused to prove that fact or circumstance cannot be relied upon, and no conviction can be based solely on such a statement.

2.5. INFORMATION LEADING TO DISCOVERY

While investigating an offence, it is obvious for the investigative agency to seek information related to weapons of offence, stolen property, dead body of the victim and other similar vital constituents of the offence from the accused/suspect. However, it is very important to remember that while eliciting such information from the accused, the investigating official should not resort to torture or any other similar methods. All requirements elaborated under head 'confession' is equally applicable while seeking information from the accused for the purpose of discovery.

2.6. BAIL

The innovative interpretation of Constitutional provisions by the Supreme Court and High Courts have developed bail as a human right. The Code of

Criminal Procedure contains provisions for bail. Section 57 of the Code provides:

“No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.”

The Supreme Court observed that the right to bail is an invaluable right available to a person and that this right should not be denied arbitrarily, and that denial of this contravenes the fundamental right to personal liberty. As an innocent person he is entitled to defend his freedom.

Relying on this principle in *Vidya Sagar Vs. State of Punjab*, the Court observed: “though the stage for raising the presumption of innocence in favour of the accused person does not arise till the conclusion of the trial and appreciation of entire evidence on the record, yet the matter of granting bail has to be considered in the background of the fact that in the criminal jurisprudence, which guides the Courts, there is a presumption in favour of the accused.”

In *Kashmira Singh Vs. State of Punjab*, Justice Shri Bhagawati observed: “it would be indeed a travesty of justice to keep a person in jail for a period of five to six years for an offence which is ultimately found not to have been committed by him. Can the Courts ever compensate him for his incarceration which is found to be unjustified?” Krishna Iyer J., expressing his view in *Godikanti Vs. Public prosecutor* case, observed: “Bail or Jail? As the pretrial or post conviction stage belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion”. In the same judgment it was emphasised that “personal liberty, deprived when bail is refused, is too precious a value of our Constitution recognised under Article 21 and that the crucial power to negate it is a great trust exercisable, not casually but judicially, with likely concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of ‘procedure established by law’. The last four words of Article 21 are the life of that human right”. In another case Krishna Iyer, J. stressed: “reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for

punitive purpose but for the bi-focal interest of justice to the individual involved and society affected”.

It has been noticed in several cases that an accused is not able to furnish bail bond because of his poverty. This important aspect was dealt in *Moti Ram Vs. State of Madhya Pradesh*. In this case, the Court held that there is a need for a liberal interpretation of social justice, individual freedom and indigent’s rights and, while awarding bail, covers release on one’s own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

In *Hussainara Khatoon Vs. State of Bihar*, Bhagawati J., while effectively raising the inherent weaknesses of monetary bond said: “the bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them, and that too not a major one. The experience of enlightened projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor, since the poor would not be able to furnish surety on account of their poverty, while the wealthier persons otherwise in a similar situation would be able to secure their freedom, because they can afford to furnish such surety. This discrimination arises even if the amount of the bail as fixed by the Magistrate is not high, for a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount.”

Justice Shri Bhagawati suggested that, under the law as it stands today, the Court must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pre-trial release which has been developed in socially advanced countries, and particularly the United States, should now inform the decisions of our Courts in regard to pre-trial release. If the Court is satisfied, after taking into account, on the basis of information placed before the Court, that the accused has his roots in the community and is not likely to abscond,

the Court can safely release the accused on his personal bond. To determine whether the accused has his roots in the community, which would deter him from fleeing, the Court should take into account the following factors concerning the accused:

- i. The length of his residence in the community.
- ii. His employment status, history and his financial condition.
- iii. His family ties and relationships.
- iv. His reputation, character and monetary condition.
- v. His prior criminal record including any record of prior release on recognisance or on bail.
- vi. The identity of responsible members of the community who would vouch for his reliability.
- vii. The nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non-appearance, and
- viii. Any other factors indicating the ties of the accused to the community or bearing on the risk of willful failure to appeal.

3. Guidelines

1. Arrests without substantial grounds need to be avoided.
2. While recording First Information Report (FIR), it should be ensured that the same is in accordance with established procedures and names of innocent and uninvolved persons are not unnecessarily placed in the report.
3. If 'caution', 'fine' or any thing similar will serve the purpose, the same should be used instead of arrest.
4. Procedures of arrest need to be followed meticulously; offenders being duly informed of their rights and their relatives being informed of the offender's arrest and whereabouts.
5. Procedures carried out at the Police station should be transparent.
6. Women arrestees should be handled with special care and attention to their gender.
7. Proper records of cases brought before each police station should be maintained and should be readily available for examination by those who are entitled to examine the same.

8. Officers, who are in charge of investigation of cases, should not be part of the prosecuting agency to avoid tough stances against arrestee person to justify arrest.
9. Where police have the power to grant bail, the power should be exercised.
10. Extension of remand should not be sought for automatically or mechanically.

Standards particularly applicable to pre-trial detainees:

Detention pending trial should be an exception rather than the rule. There are several issues to be considered to assess whether pre-trial detention is necessary in a given case, including:

- Are there reasonable grounds to believe that the person has committed the offence?
- Would the deprivation of liberty be disproportionate to the alleged offence and expected sentence?
- Is there a danger that the suspect will abscond?
- Is there a danger that the suspect will commit further offence?
- Is there a danger of serious interference with the course of justice if the suspect is released?
- Would bail or release on condition be sufficient?

3.2 TRIAL

Trial is the process through which judiciary determines criminal liability of an accused. During trial it is the duty/burden of the prosecution to prove charges against the accused beyond any reasonable doubt. It is established criminal law that a person shall be presumed innocent till finally convicted by a competent court. It is the duty of all concerned with 'custodial justice system' to conduct themselves in accordance with the Criminal Procedure Code.

(a) FAIR TRIAL

In the determination of any criminal charge, every person shall be equally entitled to the following minimum guarantees necessary for defence:

- i. to be informed promptly of any charges upon arrest; to be brought promptly before a judicial officer for an assessment of the legality of an arrest;

- ii. to equal treatment before courts; to a fair and usually public hearing by a competent, independent and impartial Court established by law; to be presumed innocent;
- iii. to be informed promptly and in detail in an intelligible language one understand the nature of charges; to have adequate time and facilities for the preparation of a defence; to communicate with counsel of one's own choice;
- iv. to be tried without undue delay;
- v. to be tried in one's presence;
- vi. to defend oneself in person or through legal assistance of one's choice;
- vii. to be informed that counsel will be appointed if one does not have sufficient funds and the interests of justice require such appointment;
- viii. to examine or have examined witnesses;
- ix. to obtain the attendance and examination of witnesses on the same conditions as adverse witnesses;
- x. to have the assistance of an interpreter if one cannot understand the language used in court;
- xi. not to be compelled to testify against oneself or to confess guilt;
- xii. to have a conviction reviewed by a higher court according to law;
- xiii. to be compensated for any punishment which is conclusively shown to be a miscarriage of justice;
- xiv. not to be convicted of any offence of which one has been finally convicted or acquitted (double-jeopardy);
- xv. not to be convicted for any act which did not constitute a criminal offence under criminal law at the time of the conduct (retrospective application of criminal law); and
- xvi. to benefit from any subsequent decrease in punishment.

(b). REMAND AND CUSTODY

The whole spirit of the Constitution and the Criminal Procedure Code is that the custody and liberty of the accused/detainee is entirely governed by the authority and sanction of a Court of law beyond the initial 24 hours between the first arrest and production before the Magistrate thereafter. By no twisted interpretation can this power in actual fact and practice be passed on into the mere discretion of the investigating agency. Once an accused is produced before the court, it is the Court's responsibility and power

as to whether he is to be remanded to further custody or granted bail or released altogether. To seek remand, the investigation agency has to prefer an application stating therein weighty reasons for the same. Under no circumstances remand order can be passed mechanically and the Magistrate passing an order of remand ought, as far as possible, to see that the detainee is produced before the court when remand order is passed.

3.3 SPEEDY TRIAL

Article 14 (3) of the International Covenant for Civil and Political Rights provides for the right “to be tried without undue delay”. The right to speedy trial is incorporated under the Indian Constitution as part of personal liberty. However, there is no specific provision under the Indian Constitution which deals specifically with speedy trial. In spite of this, there is no dearth of judicial decisions which have given new dimensions to speedy trial, and made it almost a fundamental right.

The landmark case is *Hussainara Khatoon Vs. State of Bihar*. Justice Shri Bhagawati observed in this case that although speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. The Supreme Court had held in *Maneka Gandhi Vs. Union of India* that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except in accordance with the procedure prescribed by law. If a person is deprived of his liberty under a procedure which is not ‘reasonable, fair or just’, such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Obviously, a procedure established by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. “Any procedure which does not ensure a reasonably quick trial cannot be regarded ‘reasonable, fair or just’ and would fall foul of Article 21”. Therefore, by speedy trial we mean reasonably expeditious trial which is an intrinsic and essential part of the fundamental right to life and liberty enshrined in Article 21. The Supreme Court further observed that speedy trial was the essence of criminal justice system, and delay in trial by itself constitutes a denial of justice.

In *Kadra Pahadiya Vs. State of Bihar*, four young boys who were designated as petitioners were lodged in Pakur sub-jail in Santhal Parganas for a period of eight years without trial. They all belonged to the Paharia, a backward tribe. Out of four, two of them were arrested on 26th November

1978, while the other two, on 19th December 1972. The jail record showed the ages of the petitioners being between 18 to 22 years at the time of their arrest, but the writ petition stated that they could not have been more than 9 to 11 years old when they were arrested. Shri Bhagawati J. said, on behalf of the Court: “We hoped that after the anguish expressed and the severe strictures passed by us, the justice system in the State of Bihar would improve and no one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should not exceed one year for a sessions trial, but we find that the situation has remained unchanged and these four petitioners, who entered the jail as young lads of 12 or 13 have been languishing in jail for over eight years for a crime which perhaps ultimately they may be found not to have committed”. The position continues to be very disappointing and still a large number of prisoners languish in jail without their trial having commenced.

This issue related to speedy trial again came before the Supreme Court in *Raghuvir Singh Vs. State of Bihar*, wherein the Court held: “... the Constitutional position is now well settled that the right to speedy trial is one of the dimensions of the fundamental right to life and liberty...”.

Chapter 3

Terrorism and Human Rights

The contemporary world is passing through unusual movements emanating from the worldwide unrest. There is an intense debate on these eruptions and ways and means to deal with this rapidly changing alarming global context. The central anxiety regarding these movements is that those who are questioning or challenging the system are armed and do believe in using the force to win their point. The State maintains that the ordinary laws meant for regulating the public affairs are not adequate, as most of these laws assume a normal society with citizens whose character, conduct and demeanors are broadly in conformity with the laws of the land and the norms of civility, decency and decorum set by the society for the rest. It is, therefore, a moot question as to how to strike a balance between these two diametrically opposite tendencies. The success of governance lies in arriving at a workable equilibrium.

The jurisprudential equilibrium rests not only on the nature of the State, which is dependent not only on the integrity and character of the ruler but also on the levels of development, quality of life, the nature of social institutions and instruments of civil society in mediating the relationships in the society. However, it has been the human experience that the 'equilibrium' is never everlasting. It is always open to challenge and, therefore, to the possibility of disequilibrium.

It is also postulated that human beings enjoyed unrestrained freedom in the State of nature. Surrender of a part of the freedom was a part of the contract. This surrender was in exchange of security. Thus guaranteeing right to security, in a way, has come to define the basic function of the State. It is precisely for these reasons that the State has been given the power to use force, but the force can and should be used only the way that the procedure mandates. The procedure is evolved in pursuance of the objectives for which the State came into being. Therefore, essence of any law should necessarily be the concern for the right to life and security of the individual. And every law is an expression of that part of human nature which privileges the security.

The question that maintenance of law and order rests on mere passing of law is problematic. Many liberal scholars interpret law as an end in itself.

It is common sense that where there is wide spread deprivation, there cannot be order. A hungry man cannot be expected to be a law abiding citizen. There have to be ways and means through which people should be enabled to earn a decent livelihood to start with and opening and widening up of opportunities which will be conducive to improve their quality of life .If such conditions are not created, it is not only that the individual violates the law but the law cannot be enforced because of its poor moral and material base. Thus ‘welfarism’ becomes a part of the governance warranting passing of several laws. In fact, it is this process that has enlarged the very notion of rights.

It is in this backdrop that one has to discuss terrorism, so as to contextualise it. It would be useful to discuss the origin and changing contours of terrorism, but in a paper of this kind , it is not possible. But what is possible is to deal with the way terrorism is interpreted and understood. Broadly, there are two interpretations: one is contextualist and the other is confrontationalist.

The contextualists maintain that the origin of the outburst lies not inside the outburst but in the outside larger historical and socio- economic processes. They assume that an average human being craves to live an orderly, peaceful and (given the proper conditions and opportunities) a dignified life. There are a number of ways through which human beings could be divided, alienated and deprived. These undesirable processes could be overcome, if only the mainstream political processes strive towards a responsible, responsive and sensitive political system. It is the drift of the mainstream politics from the democratic and transformative visions to one which is insensitive, bordering on exploitative, and one which allows critical situations of drift instead to grappling with and overcoming them within the boundaries of the Constitution and Rule of Law that can be one of the important causes for immediate provocation for protest which can grow into frightful violence. The contextualists hold that those dealing with such situations should get into deeper processes and find the historical alternative possibilities of dealing with the situation more through imaginative political action than use of brute force.

The confrontationalist approach, on the contrary, maintains that human beings are basically peace, loving and, therefore, prefer to lead a peaceful and orderly life. But there are always misconceived causes exposed by the misled and crime-prone individuals and groups whose sole purpose is to disturb the social order, as that is the way they express themselves. Such

individuals or groups are not amenable to reason. Since the law is rooted in human reason, such rational ordinary laws cannot deal with explosive situations. They argue that these ‘distortions’ should be put down with iron hand. They dismiss attempts at reasoning out the movements as useless, if not dangerous. They go one step forward and maintain that contextualists are indirect associates and abettors of violence and disorder.

There is also a new trend of cross border terrorism. In a globalising world order, the States, unable to respond to the internal demands, can shift the balance to the neighbouring countries or generate fear to divert the public attention. Once a State succeeds in tracing the causes for internal crisis to external adversaries, it becomes difficult for the people to put pressure on their government for solving the basic problems. There are also several instances where nations are at loggerheads for various historical reasons breeding violence. Such violence cannot be dealt by the ordinary municipal laws. It is this context that gives rise to repressive laws, which could be used not only against the external enemy but also to suppress and repress internal dissent. Thus cross border terrorism contributes in a large measure to arbitrary exercise of power.

India is one nation which confronts wide ranging challenges, which have come to assume terrorist forms. How these challenges are dealt and what are the implications for human rights can be a useful exercise. The laws enacted to cope with the ‘outbursts’ include Armed Forces Special Powers Act, TADA and POTA. It is not that these are only the Acts that post-independent India witnessed. There are about twenty to thirty Acts passed either at the Central or the State levels. If one looks at the history of legislation on terrorism or disturbance, there was the Preventive Detention Act at the advent of Independence, followed by Punjab security Act, 1955, Assam Disturbed Areas Act, 1955, and the Armed Forces (Assam and Manipur) Special Powers Act, 1958. In the decades of sixties and seventies, there were two major Acts in each decade, in eighties there were five Acts, in nineties, there were two Acts. Of all these legislations, three legislations are selected for a critical examination, as they have been not only extensively used or misused but have been very seriously debated.

II

The Armed Forces (Assam and Manipur) Special Powers Act, 1958, was one of the earliest to be introduced in the post-independent India. This is a reflection on several emerging developments and trends. Primarily, it is a

reflection on Indian Independence which was certainly a landmark in the evolution of democratic governance, as it was the movement that challenged the colonial and imperial forces for their undemocratic and exploitative stranglehold over the sub-continent. The North-eastern India has been problematic, as certain parts have been claiming autonomy, if not, cessation from Indian union. As there were armed rebellions, there was the Armed Forces Special powers Act, 1958 to deal with the problem. It is characterized as “an Act to enable certain special powers to be conferred upon the members of the Armed Forces in disturbed areas in the State of Assam and the Union Territory of Manipur”

The Act notes “if the Governor of Assam or the Chief Commissioner of Manipur is of the opinion that the whole or any part of the State of Assam or the Union Territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of Armed Forces in aid of the civil power is necessary, he may, by notification in the official gazette, declare the whole or any part to be disturbed area”. The Act confers the power to any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces to “fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or the order, if he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary”. It also gives the power to these officers for “prohibiting the assembly of five or more persons, or carrying of weapons or the things capable of being used as weapons or fire-arms, ammunition or explosive substances”.

The Act also gives the power to the Armed forces to destroy any arms dump or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed groups. The officer can also “arrest without warrant any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest”. In addition, the armed forces have the power “to enter and search without warrant any premises, to make any arrest, recover any person to be wrongfully restrained or confined or any arms, ammunition or explosive substances, believed to be unlawfully kept in such premises.”

In 1972, the Act was amended, so as to substitute Assam and Manipur the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and Union Territories of Arunachal Pradesh and Mizoram”.

In 1983, the Armed Forces (Punjab and Chandigarh) special powers Act was enacted. This Act also is similar to the earlier Act, except that it enlarges the scope of the power such as “any property reasonably suspected to be stolen property” and added an additional provision “stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person who is a proclaimed offender, or any person who has committed a non-cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a non-cognizable offence or any person who is carrying any arms, ammunition or explosive substance believed to be unlawfully held by him and may for that purpose use such force as may be necessary to effect such a stoppage, search or seizure as the case may be.”

In 1990, the Armed Forces (Jammu & Kashmir) Special Powers Act was enforced in Kashmir. The Act, like the earlier Acts, has all the provisions, but enlarged the disturbed areas and dangerous conditions so as to include “activities involving terrorist acts directed towards overthrowing the government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people” and further enlarged it by adding activities “directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about secession of a part of the territory of India from the union or causing insult to the Indian National Flag, the Indian National Anthem and the Constitution of India”.

Terrorist and Disruptive Activities (Prevention) Act, 1987

In the Statement of Objects and Reasons of TADA Act (1987), it is stated that the 1985 Act was in the background of escalation of terrorist activities, and it was expected that it would be possible to control the situation within a period of two years and, therefore, the life of the said Act was restricted to a period of two years from the date of commencement. However, the statement admits that on account of various factors such as stray incidents in the beginning are now becoming a continuing menace specially in States like Punjab. It is further stated that “on the basis of experience, it was felt that in order to combat and cope with terrorist and disruptive activities effectively, it is not only necessary to continue the said law but also to strengthen it further”. It, therefore, proposed that “persons in possession of certain arms and ammunition specified in the Arms rules 1962 or other explosive substances unauthorisedly in an area to be notified by the State government shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life and with fine.”

It is further proposed to provide that confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or any mechanical device shall be admissible in the trial of such a person for an offence under the proposed legislation or any rules made thereunder.

It is also proposed to provide that the designated court shall presume, unless the contrary is proved, that the accused has committed an offence. It is further proposed to provide that in the case of a person declared as a proclaimed offender in a terrorist case, the evidence regarding his identification by witnesses on the basis of his photograph shall have the same value as the evidence of a test identification parade.

It is these objectives that guided the 1987 Act, which was extended to the whole of India and its citizens both within and outside India. While earlier, the duration of the Act was two years, this time it was as many as eight years.

So far as the punishment is concerned, the Act states that “if such an act has resulted in the death of a person, it may be punishable with death or imprisonment for life and shall also be liable to fine”. In other cases, “it is punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine”.

The Act does not stop with the offenders but extends to “whoever conspires or attempts to commit or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act shall also be punishable in the same manner and with the same quantum of punishment”.

The Act also includes disruptive activities which are catalogued in a different way from the terrorist activities. The disruption is defined as “any action taken, whether by speech or through any other media or in any other manner whatsoever, which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India or which is intended to bring about or supports any claims, whether directly or indirectly, for the secession of any part of India”.

With respect to conferment of powers, the Central Government can confer on any officer of the Central Government powers exercisable by

a police officer such as arrest, investigation and prosecution of persons before any Court. The Act mandates that all officers of police be required to assist the officers of the Central Government. The officer is empowered “that he has reason to believe that any property derived or obtained from the commission of any terrorist act and includes proceeds of terrorism, he shall, with the approval of Superintendent of Police, make an order seizing such property or attach the property.”

The Act further empowers the designated Court that in the case of those persons who are convicted of any offence under this Act,” can, in addition to the punishment, order for declaring any property forfeited to the government.

This Act also makes a major departure from the established practice with regard to the admissibility of evidence. The Act states “notwithstanding anything contained in the Code or in the Indian Evidence Act 1872, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer in writing or on any mechanical device like cassettes, tapes or sound tracks out of which sounds or images can be reproduced shall be admissible in the trial of such person for such an offence under this Act.” In the normal criminal law, the accused is innocent until the guilt is proved, whereas in this Act it states, “the designated Court shall presume, unless the contrary is proved, that the accused had committed such offence”. It also provides for impunity when it says that “no suit, prosecution or other legal proceedings shall lie against the Central Government or the State Government or any officer or authority of the Central or State Government or any other authority on whom powers have been conferred under this Act or any rules made thereunder, for anything which is in good faith done or purported to be done in pursuance of this Act”.

The Central Government may make such rules that provide for “regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas and also the entry into and search of any vehicle, vessel or aircraft or any place”.

The Prevention of Terrorism Act, 2002

In the introduction to the Act, as was the case with the earlier Acts, there is a statement of objects and reason which reflects the context and the

conditions leading to the prevailing state of affairs. The statement points out that “the country faces multifarious challenges to the management of its internal security. There is an upsurge of terrorist activities, intensification of cross-border terrorist activities, and insurgent groups in different parts of the country. Very often, organized crime and terrorist activities are closely inter-linked. Terrorism has now acquired global dimensions and has become a challenge for the entire world. The search and methods adopted by terrorist groups and organizations take advantage of modern means of communication and technology using high-tech facilities available in the form of communication systems, transport, sophisticated arms and people at will. The existing criminal justice system is not designed and equipped to deal with the type of heinous crimes which the proposed law deals with.

The Act extends to the whole of India. The provisions of this Act apply to citizens of India, outside India, persons in the service of the Government, wherever they may be, and persons on ships and aircrafts, wherever they may be.

The Act carries the same provisions and similar tone and tenor of the TADA in the case of punishment for and measures for dealing with the terrorist activities. The Act enlarges the scope of offence by including those acts that “cause damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies”.

The more striking feature of this Act, unlike its predecessor TADA, is inclusion not only of Power of Declaration of an organization as a Terrorist organization but there is a schedule listing the organization. The Central Government has been given the power to add or remove an organization from the schedule. There is a clause that the organizations can approach the Central Government for the removal. This is considered by a review committee which can denotify an organization.

The clause on burden of proof is completely contrary to the normal standards. The Act says ‘a person commits an offence if he belongs or professes to belong to a terrorist organization.

A person commits an offence if he addresses a meeting for the purpose of encouraging support for a terrorist organization or to further its activities.

It also includes fund raising for a terrorist organization to be an offence. It says a person commits an offence “if he invites another to provide money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used for the purpose of terrorism.

There is also a clause for recording evidence in absence of the accused wherein the Court is competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses produced on behalf of the prosecution and record their depositions and any such deposition, may on the arrest of such person, be given in evidence against him on the inquiry into or trial for, the offence with which he is charged. The higher Courts can direct any magistrate of the first class to hold an inquiry and examine any witnesses who can give evidence concerning the offence and any deposition so taken may be given in evidence against any person who is subsequent accused of the offence.

That POTA is more stringent than the TADA is nowhere more striking than in the clauses under the Chapter V of the Act relating to interception of communication.

The Act gives the power of interception. A police officer not below the rank of SP supervising the investigation of any terrorist act under this Act may submit an application in writing to the competent authority for an order authorizing or approving the interception of wire, electronic or oral communication by the investigating authority when he believes that such interception may provide or has provided some clues to any offence involving a terrorist act. The Act also authorizes the concerned authorities to direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the police forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference of the services that such a service provider, landlord custodian is providing to the person whose communication are to be intercepted”.

The Act also provides for protection of information. Law enforcing agency is required to preserve the contents of the communication intercepted without any alteration or editing.

The Act also incorporates a provision that the information gathered through interception is admissible as evidence against the accused in the court during the trial of a case. The Judge can waive the ten days condition, if he is

convinced that it was not possible to furnish the information to the accused during this period. There is the provision for a Review Committee which should be furnished the details of the interception and be satisfied that the interception was necessary, reasonable and justified. The Review Committee has the power to approve or disapprove the orders of the competent authority authorizing the interception. In cases where it is disapproved, it is not admissible for evidence; it has to be destroyed. There is also a clause which makes the interception violative of the Act punishable.

The Act empowers that if the investigating officer fails to complete the investigation in a period of ninety day, the special court shall extend the said period upto one hundred and eighty days on the report of the public prosecutor indicating the progress of the accused beyond the said period of ninety days. The normal Cr. P. Code — of arrest do not apply in these trials, as no person accused of an offence punishable under this Act in custody be released on bail or on his own bond unless the Court gives the public prosecutor an opportunity of being heard and if the latter opposed the bail, the accused cannot be released until the court is satisfied that there are reasons to believe that the accused might have not committed the offence.

The Act further requires that whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or relative and the arrested person be permitted to meet the legal practitioner representing him during the course of interrogation of the accused person.

As was the case with TADA, even in POTA the presumption of offence as the special court is called upon to draw an adverse inference from any evidence that is brought to its notice. It also provides immunity to the officer as it provides for protection of the action of officer in good faith. For, it provides that no suit, prosecution or other legal proceedings shall lie against any officer or authority on whom powers have been conferred under this Act for anything done in good faith or purported to be done in pursuance of the provisions contained in this Act. However, any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, the Court may award such compensation as it deems fit to the person. The Act also has a provision for impounding the passport and arms licence of person charge-sheeted under this Act. As was the case with TADA, the Act also provides for power for regulating the conduct of persons and the removal of such persons from the area and also the entry into vehicle, vessel or aircraft or any place whatsoever.

These Acts present the ways and means through which the Indian State has been grappling with explosive situations. It is clear that the State organs are provided with extraordinary powers and vests the individual officer with wide discretionary powers, and much depends on the quality and approach of the concerned officers. From a human rights point of view what is important is whether the officers take the limits imposed on procedures laid down seriously or not. It is in respecting and observing these limitations one should recognize that fairness of procedure and economy in use of force are always positive inputs as they protect and promote democratic values which lend legitimacy to State action. It can be better understood if we take a look at the international thinking on terrorism and human rights and humanitarian concerns

III

UN Conference on measure to eliminate International Terrorism:

UN in its General Assembly Resolution (9-12-1994) considered the question of elimination of international terrorism and approved the Declaration on measures to eliminate international Terrorism. It urged the States to take all the measures at the national and international levels to eliminate terrorism. The UN felt deeply disturbed by the worldwide persistence of acts of international terrorism, which endanger or take innocent lives, have a deleterious effect on international relations and may jeopardize the security of States. It is also concerned by an increase in acts of terrorism based on intolerance or extremism and the growing dangerous links between terrorist groups and drug traffickers and their para-military gangs which have resorted to all types of violence endangering the Constitutional order of States and violating basic human rights. The UN is also convinced of the desirability for closer coordination and cooperation among States in combating crimes closely connected with terrorism, including drug trafficking, unlawful arms trade, money laundering and smuggling of nuclear and other potentially deadly materials, and stressed the imperative need to further strengthen international cooperation and take and adopt practical and effective measure to prevent, combat and eliminate all forms of terrorism that affect the international community.

In this Resolution, the State members of the UN affirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable. They constitute a grave violation of the purpose and principles of the UN and pose a threat to international peace and security, jeopardize friendly relations among the States, hinder international cooperation

and aim at the destruction of human rights, fundamental freedoms and the democratic bases of the society.

The Resolution called upon the States to fulfil their obligations under the UN charter and other provisions of International Law with respect to combating international terrorism and urged the States to take the following measures:

- a) to refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities and ensure that their territories are not used for terrorist installations or training camps;
- b) to ensure the apprehension and prosecution or extradition of perpetrators of terrorist acts;
- c) to endeavor to conclude special agreements to that effect as a bilateral, regional and multi lateral basis and prepare model agreements on cooperation;
- d) to cooperate with one another in exchanging relevant information concerning the prevention and combating of terrorism;
- e) to take promptly all steps necessary to implement the existing international conventions on this subject to which they are parties, including the harmonization of their domestic legislation with those conventions;
- f) to take appropriate measures before granting asylum for the purpose of ensuring that the asylum seeker has not engaged in terrorist activities and see that refugee status is not used in a manner contrary to the provisions of international law.

The States are also urged to review the scope of the existing international legal provisions on the prevention, repression and elimination of terrorism in all forms with the aim of developing a comprehensive legal framework. The Resolution also urged those states which have not yet become parties to international conventions and protocols relating to fighting against international terrorism to become parties.

The following measures are suggested to enhance international cooperation:

- a) A collection of data on the status and implementation of existing multi lateral, regional and bilateral agreements relating

- to international terrorism, including information on incidents caused by international terrorism and criminal prosecution and sentencing, based on information received from the depositaries of those agreements and from member States;
- b) A compendium of national laws and regulations regarding the prevention and suppression of international terrorism in all its forms based on information received from member States;
 - c) An analytical review of existing international legal instruments relating to international terrorism, in order to assist States in identifying aspects of this matter that have not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions dealing with international terrorism;
 - d) A review of existing possibilities within the United Nations system for assisting States in organizing workshops and training courses on combating crimes connected with international terrorism.

IV

The above account of growing terrorism and the legal measures that have been initiated from time to time reflects the changing nature of the political capacity of the State to deal with the magnitude of the problem of terrorism. A simple analysis of the legal measures during the five decades after independence shows that no legal measure or no quantum of power in terms of use of force and the severity of punishment has been helpful in totally containing terrorism. On the contrary, its spread and intensity has been admitted by the State time and again. It was in the decade of seventies that the problem took the form of 'disturbed areas' and 'terrorism', calling for far more comprehensive measures. The story of the decades of eighties and nineties is no different. It was during this period that legislations like TADA and POTA have been introduced. However, the essence of experience of five decades with social turmoil indicates that the use of force and severity of punishment may be necessary from the point of the State but that they are not sufficient is so self-evident that it does not need any further evidence or substantiation. It is pertinent to raise the question that if a particular Act with increased power for the State proved to be inadequate, does this inadequacy pertain to the power of the State? Or lack of political capacity of institutions and individuals in power needs to be otherwise critically examined.

As there has been growing problems emanating from the so called terrorism, correspondingly there has been growing human rights consciousness. There has been substantial documentation of these violations of rights by human rights groups in Punjab, Kashmir, the North East, Andhra Pradesh, Maharastra, Tamil Nadu, West Bengal and other problem States of India. There has also been documentation of these violations by the International human rights agencies like Amnesty International, Asia Watch, and so on. The violations are also recorded by the enquiry Commissions appointed from time to time by the governments themselves and also State and National Human Rights Commissions. There are also Judicial Pronouncements as a testimony to the blatant violations of the rights of the citizen. The media, with all its limitations, played no less significant role in exposing these excessive actions of the State agencies.

However, in the course of handling terrorism the basic position that the State (as an institution) is a product of the law is either ignored or forgotten. For, no law can confer absolute and arbitrary power to any organ of the State. The rule of law should not be mistaken to rule by law. These two things are qualitatively different: the former deals with objective standards for conduct of the agencies of the State while exercising power, which is both legal and moral, and the latter stands for whims and fancies of the rulers. It is legal to the extent that power is derived from the law, and it is moral in the sense that the power conferred on the agents of the State is also a product of trust. The trust implies that the power shall not be arbitrarily exercised. The restraints that every law provides for essentially rests on the apprehension that unrestrained power is likely to take not only an arbitrary form but can become ruthless and brutal. The restraints are also necessary to see that at no point force used by the State lose sight of human reason. It is also built in the logic of the situation that 'unleashing of force by an organised State' instead of containing terrorism may aggravate the overall situation at one level and the State machinery itself may start acquiring the methods and habits of the adversary, resulting in disappearance of the qualitative difference between the legally constituted State and emotionally or contextually constituted terrorist.

The excessive use of force by the State apparatus not only does harm to the cause of human rights but becomes counter productive to the internal working of the State itself. The beauty of the law is that it not only defines the relation between the State agents and the citizens but structures the internal relations in terms of hierarchy, division of work, unity of command, and so on. The moment there is arbitrariness in the use of force,

it has the intrinsic propensity to lead to deinstitutionalisation of behaviour. This is a process where the controls and regulations built into the system to direct the collective effort and behaviour get eroded, as those working at the cutting edge and subordinate levels fail to make the neat distinction between the inside and the outside. Selective application of legal procedures by supervisory levels or the political masters erode the universality of norms and sanctity of the law. This, in the ultimate can end up in despotic governance with no regard for any of the human rights standards – national or international.

The strength of the human rights depends on the depth of the law, vitality of the society, vision of the rulers, vibrancy of the institutions and discretionary use of discretionary powers. Terrorism is one part of societal experience which calls for unusual abilities and creativity. If one presupposes that terrorism has its roots in human “unreason’ or ‘irrationality’, the solution to terrorism should spring from human reason and creative potential. The tragedy of the governance has been that instead of bringing in values into a terror stricken society, the State and, more particularly, the law enforcing agencies are ending up initiating and imbibing terrorist methods and culture. That is the crisis of civilized governance.

Social, Economic and Cultural Entitlements and Legal Rights

Increasingly, since the middle of the twentieth century, in the long and arduous journey for the building up of a just, humane and peaceful world, more and more road-signs and milestones the world over are being articulated in terms of human rights. This paper will attempt to unravel the discourse around economic, social and cultural (ESC) rights, and briefly make out in the end a case for the legal justiciability of these rights.

Rights may be defined as a justiciable claim, on legal or moral grounds, to have or obtain something, or act in a certain way (Murray 1994, see **Book 4**). In other words, rights are entitlements that are backed by legal or moral principles. Amartya Sen (1981) defines entitlements as enforceable claims on the delivery of goods, services, or protection by specific others. This implies that rights exist when one party can effectively demand it from another party that is in a position to provide goods, services or protections, and there is a third party that may take action to secure (or at least not hamper) their delivery. The evolution of human rights has sought to safeguard three aspects of human existence: human integrity, freedom and equality. Axiomatic to these three aspects is the respect for the dignity of every human being.

The growing recognition of human rights since the turn of the 20th century has helped it to evolve from vague, diffused aspirational statements and assertions, to increasingly lucid and unambiguous enunciation in international and national statutory documents. However, the enforceability of many of these rights, especially by nation States, remains uneven and is particularly weak for social, economic and cultural rights of citizens.

The Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly on 10 December 1948, was a major landmark, because it consolidated for the first time in a single text a whole range of human rights and fundamental freedoms, based on international consensus. Subsequently, a dispute ensued which remains not fully resolved even up to the present day about the character and relationship between two categories of rights: namely, civil and political (CP) rights, and economic, social and cultural (ESC) rights.

The General Assembly in 1950 called upon the UN Commission on Human Rights to adopt a single convention, incorporating both CP and ESC rights, because of the interdependence of all categories of human rights. However, in 1951, most western countries combined to reverse this decision, directing the Commission to divide rights contained in the UDHR into two separate international covenants, one on CP rights and the other on ESC rights.

Supposed contradiction between CP rights on the one hand and ESC rights on the other often took place against the background of competing ideologies particularly during the Cold War with liberal democracies affirming the ascendancy of CP rights and the Socialist bloc declaring that the abridgement of CP rights is tolerable if this is necessary to advance the superior body of human entitlements, that is, the ESC rights.

In Socialist countries, and some newly independent countries of the South, it has been often argued that the pursuit of ESC rights (e.g. access to health, water, food, shelter, clothing, and education) should be prioritised over the pursuit of CP rights (e.g. freedom of assembly, associations, struggle and movement, and the right to personal liberty). The argument goes on to state that ‘realisation of civil and political rights is predicated upon access to economic and social right; without the latter, the former is unattainable. Accordingly, the curtailment of political freedoms may be necessary to attain economic development. Countries such as Singapore, Malaysia, and Indonesia have been cited as examples of the countries that attained economic growth at the expense of civil liberties’¹.

In liberal democracies of the North, on the other hand, the focus tends to be on CPR rather than ESR. ‘Economic and social rights are viewed as “second class rights” – unenforceable, non-justiciable, only to be fulfilled progressively” over time. Northern governments and news media quickly and strongly respond to banning of political parties, proscription of newspapers, and detention without trial in developing countries. However, their responses to poverty, unemployment, famine, malnutrition, and epidemics in the same countries are often informed by charity, not rights concerns’.

Most enforceable fundamental rights are CP rights. The result is that many rights, which are critical to the survival with dignity of the poor people, are rarely enforced. To illustrate, the right to shelter would have protected

¹ See UN Basic Rights Steering Committee Report , Kenya, 1998

urban homeless people and slum-dwellers from criminalisation and insecurity to which they are routinely subjected.

At another level, there is the more progressive rights of the persons with Disabilities (Equal Opportunities Protections of Rights and Full participations Act, 1995), which for the first time gave legal recognition to the rights of the disabled people in India. But once again most of its provisions do not incorporate penal outcomes for their infringement or non-compliance. Therefore, ESC rights of a marginalised group like the disabled are enunciated in the statute books, but are put in such a manner that they make little real difference to greater justice in their lives. There is a common pattern with other social justice legalisations in India as well, which seeks to protect the rights of women, dalits and tribal people, agricultural workers, bonded labourers and so on.

The ideological resistance to ESC rights has come from diverse sources. It has been opposed by capitalist countries of the North, because of their unshaken faith in economic liberalism, even in some cases a kind of market fundamentalism, and as a corollary, belief in a severely constrained role for the State in welfare and development. At the same time, it has been resisted by right-wing religious fundamentalism of various faiths, which are grounded in notions of patriarchal opposition to gender equity, to equal rights of women in the family, to education, wages, employment and inheritance.

ESC vs. CP Rights: Is the Divide Irreconcilable?

Those who believe that human rights ought to be divided into two distinct categories, make several assumptions about the fundamentally diverse character of these two sets of rights.

The major divergences between the two kinds of rights that are elaborated in the literature can be summarised as:

- i) CP rights mainly require freedom from State interference for the protection of individual freedoms. ESC rights, on the other hand, require the active agency of the State to provide goods, services or protection to the individual. Therefore CP rights incur only passive obligations of abstention from the State, whereas ESC rights require active measures by the State (Eide and Rosas 1995).
- ii) Related to this is the belief that CP rights come 'free' in the sense that they do not cost much in terms of enforcement. Their main contents

are assumed to be individual. The implementation of ESC rights, in contrast, is costly, since they are understood as obliging the State to provide welfare to the individual (Bossuyt 1975, Eide and Rosas 1995).

- iii) CP rights are considered to be ‘absolute’ and ‘immediate’, whereas ESC rights are held to be programmatic, to be realised gradually, and, therefore, not a matter of urgency in terms of their realisation (Vierdag 1978, Eide and Rosas 1995).
- iv) Another related distinction that is often made is that CP rights are ‘justiciable’ in the sense that people can approach the Courts and other judicial bodies for remedy in situations of right infringement, whereas ESC rights are more political in nature, without judicial remedy (Eide and Rosas 1995).

The present broadly stated consensus in the mainstream of development and rights literature is of the indivisibility of human rights. The principle of the indivisibility of human rights indicates that ESC rights must be given the same weight as CP rights. Right to health, for example, cannot be realised if people are unable to exercise their democratic right to participate in decision-making processes relative to service provision. Equally, people cannot participate in decision-making processes, if they do not have the health or general economic well being to do so. To take another example, for many poor people, particularly rural people in developing countries, access to land is essential to earn a living, as this is an element of ESC rights. Yet land rights are a judicial matter, requiring protection in the Courts, and this is a CP rights concern.

As aptly illustrated by Eide and Rosas (1995): ‘the efforts to bring torture, arbitrary detention and capital punishment to an end are laudable and have our full support. But to be somewhat provocative, what permanent achievement is there in saving people from torture, only to find that they are killed by famine or disease that could have been prevented, had the will and the appropriate controls been there? An integrated approach to international human rights as an invisible whole is necessary’.

At the close of the Cold War, the ideological edge of this somewhat sterile debate has weakened. In theory, today there is wide international acceptance of the notion that all human rights must be enjoyed by all people, everywhere in the world. Where humankind continues to flounder now is in its practice.

In 1993, representatives of 171 governments gathered at Vienna for the World Conference of Human Rights. They stated unequivocally that “all human rights are universal, indivisible, and interdependent and interrelated”². This was a fitting endorsement of the Preamble of the UNHR (1948), which stated in luminous words of hope, that ‘the highest aspiration of the common people is the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want’³.

SOCIAL RIGHTS

There are different dimensions in which rights, and their denial, can be analysed. On one axis may be groups whose rights are vulnerable to denial and, therefore, have to be secured for them, be they agricultural workers, dalits and tribal people, women, disabled people, homeless people and so on. On a second axis, we can look at the problem in terms of the content of rights that are to be secured, such as the rights to food, work, education, health, shelter and so on. And since rights are expected to be enforced by duty bearers, which may or may not be the State, a third axis of rights is the right to good governance. This variation is not merely for academic interest. It has close bearing on the nature of analysis and the agglomeration to interventions that emerge in a specific context.

According to Article 25(1) of the UDHR, every human being by virtue of being a human has a right to a life adequate for the health and well-being of her/himself and of her/his family, which is seen to include food, clothing, housing and medical care and necessary social services (Eide and Rosas 1995). It is recognised that people must be enabled to enjoy their basic needs under conditions of dignity. No one shall have to live under conditions whereby the only way to satisfy their needs is by degrading or depriving themselves of their basic freedoms, such as begging, prostitution or bonded labour (Ibid).

Among these rights, indisputably one of the most important is the right of food. The Universal Declaration on the Eradication of Hunger and Malnutrition of 1974, affirmed that “every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties”, while considering that

² The World Conference on Human Rights: The Vienna Declaration and Programme of Action (1993), UN doc. A/CONF.157/23, part I, para 5.

³ Second preambular paragraph.

society today already possesses sufficient resources, organizational ability and technology and hence the capacity to achieve this objective. Heads of States and governments gathered at the World Food Summit in Rome in November 1996 and adopted a resolution upholding “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”. The promotion and implementation of the right to adequate food must be a central objective of all States and other relevant actors in order to end hunger and malnutrition.

The right to food has been elaborated to mean that every man, woman and child alone and in community with others must have physical and economic access at all times to adequate food or by using a resource base appropriate for its procurement in ways consistent with human dignity.

The paramount responsibility of the State is to ensure that everyone is, as a minimum, free from hunger. Priority should be given, as far as possible, to local and regional sources of food in planning food security policies, including under emergency conditions (U, V – **Paper 1**). The State also has a major obligation to secure by law access to food producing resources, including agricultural and common lands, forests and water resources.

Another extremely significant social right is the right to adequate housing. The UN Committee on Economic, Social and Cultural Rights has stressed that the right to housing should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one’s head or shelter exclusively as a commodity. Rather the norm should be seen as the right to live somewhere in security, peace and dignity⁴. It has asserted that the following seven components comprise the core entitlements of this right: (1) legal security of tenure; (2) availability of services, materials and infrastructure; (3) affordable; (4) habitable; (5) accessible; (6) location; and (7) culturally adequate⁵ (Leckie 1995).

The UN Global Shelter Strategy (GSS) to the Year 2000, adopted unanimously by the UN General Assembly in 1988 defines the term adequate housing to mean: adequate privacy, adequate space, adequate security, adequate

⁴ General Comment No. 4, loc. cit (note 17), para 7.

⁵ See General Comment No.4 (1991) on the right to adequate housing (Article 11 (1) of the Covenant), adopted by the UN Committee on Economic, Social and Cultural Rights (UN doc. E/1992/23), annex 2 to this publication, para 8.

lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost (Leckie 1995).

This right places various obligations on the State. On the negative side, it requires security of tenure (protection of forced eviction from lands or homes), guarantees against discrimination and harassment in matters related to housing. At the same time, there is a positive obligation to secure progressively the right to adequate housing.

There are today more than one billion persons throughout the world who do not reside in adequate housing and that a further one hundred million have no home at all⁶ (Leckie 1995). Positive State action would require greatly enhanced public allocations for housing, government regulation of the land market to secure equitable access of poor people to adequate housing, regulation of land mafias and profiteers and redistributive fiscal measures.

There are State obligations to ensure basic services like water and sanitation. Globally, more than 1.2 billion people still lack access to safe drinking water, and 2.4 billion do not have adequate sanitation services. According to UN-Habitat, the number of urban dwellers not receiving safe water has more than doubled during the last decade, from 56 million in 1990 to an unprecedented 118 million in 2000 (United Nations 2003).

It is not always recognised how closely the right to health is related to the social rights already elaborated, particularly the rights to food and housing. This right places obligations on the State to secure the highest attainable State of health of each individual. Empirical evidence supports the conclusion that improvements in water and sanitation, nutrition, or housing, can be far more beneficial for the enhancement of health than curative, or preventive, health measures (Tomasevski 1995).

The precise nature of State obligations to secure the right to health has been contested strongly among international organisations, health activists and State authorities. The influential Alma-Ata declaration of 1978 articulated a global commitment to health for all. The WHO called for making primary health care effective, efficient, affordable and acceptable⁷. However, serious

⁶ See the Global Strategy for Shelter to the Year 2000, UN doc. A/43/8/Add.1; and General Assembly resolution 42/191 of 9 March 1988, Annex.

⁷ Health Research Strategy for Health for All by the Year 2000, WHO Advisory Committee on Health Research 1986, p.53.

differences persist about whether these services should be free of charge, and should be guaranteed entirely by the public health sector. The WHO has tended not to support such a demand, except for its advocacy of free medical services for pregnant women and for immunisation.

ECONOMIC RIGHTS

There are certain basic economic rights, which is seen both as important freedoms in their intrinsic character as well as necessary vehicles to secure various social rights elaborated earlier. These include the rights to property, work and social security.

Arguably, of all social and economic rights, the most contested is the right to property. It is often interpreted as a restraint upon the State from interfering in an individual's right to acquire private property. This right, often also presented as a civil right, has been defended passionately by countries of the North and has been expanded to include the right to intellectual property. It is seen as an essential component of the 'rule of law', along with the protection of contracts. The socialist countries as well as some newly independent nations of the South instead stressed the social nature of property, and justified interference with property rights in what is deemed to be in the public interest.

The provisions protecting property rights have been seen by many activists as barriers to redistributive justice, such as land reforms and prevention of excessive concentration of wealth. Housing rights may require rent control measures, and environmental rights may severely restrict the rights of a property owner to use his property.

However, there are also some contexts in which this right may actually benefit disadvantaged people. Various ILO conventions protect the property rights of workers, as well as the land rights of indigenous communities against compulsory acquisition by the State⁸. Some people have also argued for a right not of property but to property⁹ (Krause 1995). According to this view – in order for the right to property to be fulfilled and for everyone to really enjoy the right to property, every individual should enjoy a certain minimum

⁸ e.g. Convention concerning the Protection of Wages (No.95) of 1949; and Conventions concerning Basic Aims and Standards of Social Policy (No.117) of 1967) (See Communication No. 167/1984, 'Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada' and Communication NO.197/1985, 'Kitok v. Sweden'. See also A-C Bloch, 'Minorities and Indigenous People', pp.314-319, chapter 20 in this publication; and G. Alfredsson & A. de Zayas, 'Minority Rights: Protection by the United Nations', 'Human Rights Law Journal', Vol.14 (1993), pp.5-6)

⁹ see Waldron 1990 and Krause 1993

of property needed for living a life in dignity, including social security and social assistance¹⁰ (Krause 1995).

A far more widely accepted economic right is the right to work. Work is seen much more than a means of economic survival, but also essential to human dignity, freedom, self-esteem, self-realisation and social value.

There are many aspects to the right to work. The first is the freedom to choose work, unencumbered by the State or social coercion, bondage, slavery or social customs like caste taboos. A second aspect relates to rights during employment, such as of adequate and non-discriminatory wages, the right to safe and healthy working conditions, to rest, holiday and social security, and especially for women and young persons to protection at work. A third set of rights relate to the freedom of workers to protect their interests through free trade unions.

Several activists regard these mainly as rights *at* work, and suggest that the right *to* work implies a right to employment, or to be provided with work, if necessary by State intervention. Advocates of market economics often oppose this right, on the grounds that policies of full employment create economic inefficiencies and over-employment. On the other hand, this right has been legally guaranteed not only in several socialist countries, but also even in mixed economies like India (specifically in the State of Maharashtra which provides a statutorily binding employment guarantee as also through the National Employment Guarantee Act, 2005 (which has come into force from Feb.06)). Keynesian economists also advocate large public works strategies to combat cyclical unemployment in capitalist economies.

Overall, the right to work can be the most effective means of not only social security but also a vehicle for many social rights, for all able-bodied adults and members of their families.

Especially for vulnerable groups, the most significant economic right may be the right to social security. The 1948 UDHR, in Article 25, guaranteed every 'member of society' the right to social security. Subsequent international covenants have elaborated further this right, and created obligations on both employers and the right to establish and maintain systems of social security.

¹⁰ Such a view is enshrined in Article XXIII of the American Declaration of the Right and Duties of Man of 1948. For a discussion on the right to property versus the right of property, see J. Waldron 'The Right to Private Property', 1990, pp.20-24; and A. Rosas, loc. cit (note 10), p.137.

Social security includes firstly social insurance, or the 'earned' benefits of workers and their families, such as medical care and assistance during sickness, maternity, disability, old-age, unemployment, accidents at work, and support to survivors after death. In order that these social benefits are not discretionary and minimum standards are ensured, a legal basis is ensured thorough international covenants and national laws.

Social security also includes social assistance, provided to vulnerable people in need thorough tax revenues. The recognition of this as a human right elevates it from the stigma of charity to an entitlement, a State obligation to the more vulnerable members of society. This obligation stems from the right to life, and extends to widows, orphans, children without adult protection, persons with disability, old people without care, people living with stigmatised ailments like mental illness, leprosy and AIDS and so on.

The obligations of the State to these groups is much less disputed in principle, but because of their political powerlessness and invisibility, this right is among the least operationalised in practice in the majority of countries.

CULTURAL RIGHTS

Cultural rights are the rights of individuals and groups to preserve and to develop their culture. Culture may be understood as the accumulation of material and spiritual products and activities of a social group.

These rights place several obligations on the State. The state must itself respect the freedom of an individual to pursue a culture of his/her choice, and at the same time protect his/her from coercion by individuals and groups that are opposed to this cultural orientation. At the same time, the State should actively create conditions under which the right to promote and pursue the culture of one's choice is protected and fostered.

Cultural rights also include the right to education, although it can legitimately be seen also as a social right. The liberal human rights perspective on education tended to place the duty to educate children primarily on parents, but the State had a role by making school attendance compulsory and by regulating the curriculum. It was the Soviet Constitution in 1936 that for the first time guaranteed free and compulsory education at all levels. In this socialist human rights perspective, it became the human right of every person to receive education, and the primary duty of the State to provide it. In fact, in all socialist constitution, the right to education, along with the rights to work and social security, were given greatest importance.

This right entails most importantly the entitlement of every human being, and in particular every child, to receive education. There is now wide international consensus about State obligations to fulfil this right by means of positive action, but not all agree that education should be provided free to promote equality of opportunity.

The consensus of international covenants currently about the nature of State obligations for securing the right to education is that these are 'progressive obligations', that is, each State party undertakes to take steps 'to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights' concerned.

ECONOMIC, SOCIAL, CULTURAL RIGHTS AND JUSTICIABILITY

Our discussion in the previous sections of this paper has illustrated the significant strides made, especially in the second half of the twentieth century, in the acknowledgement and elaboration of a wide range of ESC rights, especially in historically discriminated groups such as women, children, indigenous communities and minorities. However, the actual practice of national governments, the principal duty-bearers responsible for the enforcement of many of these rights, has tended to be far less encouraging.

One major problem has been that unlike CP rights, ESC rights are widely viewed as aspirational moral goals, which are not legally binding. There is no flaw in human rights practice to declare rights with the aim of establishing standards even if they are not immediately achieved.

The obligation for enforcing the human rights contained in various international instruments vests primarily with national governments. Under Article 2 of the International Covenant on Economic, Social and Cultural Rights, States are legally bound to take steps to 'achieve progressively' to the maximum of their available resources, the full realisation of the rights contained in the Covenant.

The problem is that most non-socialist States have mirrored within their own Constitutions and laws, this assumed dichotomy between CPR, which are legal and justiciable, enforceable by courts, and ESCR, which are moral rights, not enforceable by courts. In India, most CP rights are contained, in the Fundamental Rights of the Constitution, whereas the majority of ESC rights are contained in a separate chapter, called the Directive Principles of

State Policy. Citizens can petition courts for the enforcement of the former, but not the latter. Even ESC rights not contained in the Indian Constitution, but subsequently legislated like the Equal Opportunities have no penal clauses. Therefore, effectively they remain pious statements of intent, but in practice afford a disabled person, whose rights are flouted, no real remedy.

However, in India as in many countries, some ESC rights are contained both in the law and the Constitution, enforceable through legal remedies. These include legislation for minimum wages, the rights of workers, the cultural and educational rights of minorities, and restraints on bonded and child labour.

A broad distinction is often made between rights that are 'justiciable', capable of being invoked in Courts of law and applied by judges, and those that are not. It is argued that many ESC rights, such as the rights to food, housing, health education and social security, are by their very character, not justiciable rights. They are no doubt legally binding in that they create obligations on States. However, they are not legal with regard to their applicability (Hoof 1984).

It is frequently argued also that Courts cannot intervene to enforce these rights, because States are legally bound to achieve these obligations progressively based on the availability of resources. It is suggested that CPRs require mainly abstentions by State authorities, involving no costs, whereas ESC rights require positive action by the State, including significant programme expenditure.

This distinction is overdrawn. Several CP rights do require expenditures, such as for legal aid, regulators and ombudsmen. On the other hand, there are ESC rights that only require the state to abstain from encroachment on people's rights, such as from the compulsory acquisition of the land of indigenous communities or the eviction of urban squatters. Several laws against discrimination against women, children, socially disadvantaged groups and minorities, involving primarily ESC rights, would also not involve more significant public expenditure as compared to CP rights.

However, in the end, it must still be admitted that some of the most vital ESC rights do involve substantial public expenditure, such as the rights to food, housing, education, social security, work and health care.

It is not that most national governments have no absolute resources for public expenditure. What is contested is the priorities attached to this

public expenditure. The analysis of budgets of most countries would reveal overwhelmingly large allocations to military expenditure, the salaries and other expenses of public officials, the police and urban infrastructure. Allocations to advance the ESC rights are typically low, and even these are inefficiently managed and typically involving major expenditures on salaries of generalist administrators. Therefore, the progressive achievement of these rights is even more tardy.

These trends are further aggravated by the ascendancy of neo-liberal policies of structural adjustment, promoted by the IMF and World Bank, which have resulted in a continuous dilution of the welfare obligations of the State, and a retreat of the State itself from its erstwhile paramount obligation to secure ESCR and development for all its citizens, to facilitating globalised market-led economic growth.

In these circumstances, the imperative has never been greater, for human rights activists to press for the inclusion of ESCR in national constitutions and laws, as legal rights that are fully justiciable, on par with CPR. Since these rights seek to safeguard the rights to survival with dignity, development and well-being of large masses of powerless-disenfranchised, oppressed women, men, girls and boys in countries across the world, justiciable social, economic and cultural rights will help strengthen their voices and struggles for a more just and humane social order.

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Chapter 5

Children

Administrative life is not just a career: it is a calling. Being ever in the midst of the people, constantly besieged by appeals for assistance and with opportunities for making a difference in the lives and aspirations of people, for the District Magistrate, his calling becomes a mission to be implemented with sensitivity and vision, blending the heart and the mind.

Human rights provide the very essence of meaningful living. Children constitute the most tender human resources known for their pristine purity, innocence, simplicity and guilelessness. They are our, most succeeding generation and our greatest gift to humanity. Childhood is the most tender, formative and impressible stage of human development. The excitement and joy associated with childhood once lost cannot be regained. Thus administration of child rights is perhaps one of the most important duties of a District Magistrate.

Children have been the focus of planning efforts since the very beginning of the planning process in our country, and it would be seen that the Constitution has anticipated the provisions of the Convention on the Rights of the Child (CRC). In many ways, our Constitution had comprehensively provided for holistic development and decent living conditions of children. However, legislation without implementation is meaningless, hence the importance of the role of executive machinery of which the District Magistrate is the leader. While discharging regulatory and developmental functions, human rights provide the District Officer with essential articles of faith that ensure that every individual is entitled to dignity and civil and political rights conferred by the law of the land as well as socio-economic rights to satisfy basic needs.

1. CHILD RIGHTS

A. Principles

1.1 Children (age group 0-18) account for about 40.5 per cent the population of our country, or, in absolute terms, 408 million. Of these, children in the age group 0-14 are about 350 million (34 per cent), and children in the age group 0-6 about 158 million (15 per cent).

1.2 Child protection and development have been central to India's development strategy since independence. The Indian Constitution has specific provisions regarding children and has in many respects anticipated the Convention on the Rights of the Child (CRC). The major provisions relating to children are:

Article 21A: "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

Article 23: "Traffic in human beings and *beggar* and other forms of forced labour are prohibited and any contravention of this provisions shall be an offence, punishable in accordance with the law."

Article 24: "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

1.3 The main provisions of Directive Principles of State Policy relating to children are:

Article 39(e) "Ensuring that "the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

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

Article 42: "Provision for just and humane conditions of work"

Article 45: “Provision of early childhood care and education for all children until they complete the age of six years”.

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

1.4 Article 37 lays down that while the Directive Principles shall not be enforceable by any Court, they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply them while making laws.

1.5 The CRC is an exceptional instrument in many respects. First, no other human rights instrument was acceded to with such rapidity; it is now near universal in that, with the exception of the United States and Somalia, every Member State has ratified it. The CRC owes its popularity to the emotive appeal of children and the widespread shock at the appalling living conditions of millions of children and their exploitation in many parts of the world. Even now, in spite of the considerable development that has taken place after the end of colonialism, in the world as a whole, nearly 11 million children still die each year before their fifth birth day, often from readily preventable causes; an estimated 150 million children are malnourished; nearly 120 million are out of school, 53 per cent of them girls; and 0.6 billion children are desperately impoverished, struggling to survive on less than one US dollar a day. And, India accounts for 36 per cent of the poor, 20 per cent of the out-of-school children, 20 per cent of the world’s gender gap in elementary education, 23 per cent of world’s under-5 child deaths every year, 25 per cent of world’s maternal deaths every year, 22 per cent of the world’s unsupplied demand for reproductive health services, and 30 per cent of the world’s deaths from poor access to water and sanitation. Thus, children’s well-being enlists universal support.

1.6 CRC adopts the second approach. Child rights are not identical to those of the adult. Thus children do not have the right to determine their residence. Instead, “as far as possible”, a child “has the right to know and be cared for by his or her parents” (Article 7), the right to preserve “family relations as recognized by law without unlawful interference” (Article 8). Further, the State shall “ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

B. Age of Child

1.7 Article-1 of CRC defines a child as a “human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier”. Thus the age of 18 is a normative ceiling and entitles the State to set minimum ages under different circumstances, balancing the evolving capacities of the child with the State’s obligation to provide special protection. Accordingly, Indian legislation has minimum ages defined under various law related to the protection of child rights. (Table-I)

	Boys	Girls
End of Compulsory Education	14	14
Marriage*	21	18
Sexual consent*	Not defined	16 (Section 375 of the IPC)
Admission to employment or work, including hazardous work, part-time and full-time work* <ul style="list-style-type: none"> ▪ Child Labour (Prohibition and Regulation) Act, 1986 ▪ Mines Act, 1952 (The minimum age of entry to the world of work in case of apprentices is 16) ▪ Merchant Shipping Act, 1958 ▪ Motor Transport Workers Act, 1961 ▪ Apprentices Act, 1961 ▪ Bidi and Cigar Workers Act, 1966 ▪ Plantation Labour Act, 1951 ▪ Factories Act, 1948 	14 18 14 14 14 14 14 14	14 18 14 14 14 14 14
Criminal responsibility*	Section 83 of the Indian Penal Code, according to which, nothing is an offence which is done by a child above seven years of age and under 12 years, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. It may be noted that children below the age of seven years are deemed to be incapable of criminal offence as per section 82 of Indian Penal Code)	
Juvenile crime	18 The Juvenile Justice and Protection of Children Act, 2000.	

Deprivation of liberty, including by arrest, detention and imprisonment, interalia in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions	There is no age limit for deprivation of liberty because as per Article 21 of the Constitution of India, all citizens have protection to life and personal liberty.	
Capital punishment and life imprisonment Giving testimony in Court, in civil and criminal cases	18 Section 118 of the Indian Evidence Act States that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them or from giving rational answers to those questions by virtue of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. Therefore, all persons irrespective of their age are competent to testify in Court provided the adult or child understands the question.	
Lodging complaints and seeking redress before a Court or other relevant authority without parental consent	There is no minimum age prescribed for lodging complaints and seeking grievance before a Court or other relevant authority without parental responsibility.	
Participating in administrative and judicial proceedings affecting the child	As mentioned above	
Giving consent to change identity, including change of name, modification adoption, guardianship	18 For modification of family relations, adoption, and guardianship, there is no minimum age prescribed.	
Legal capacity to inherit	According to Section 20 of the Hindu Succession Act, even a child in the womb has the right to inherit property and it shall be deemed to from the date of death of one who died interState. However, as per Section 4 of the Hindu Minority and guardianship Act, 1956, the guardian will have the powers to take care of the property of such a minor.	
To conduct property transactions	21 Section 11 of the Indian Contract Act, 1972, States that a person is competent to contract only if he/she is a major and is of sound mind.	
Consumption of alcohol and other controlled substances	21	21

C. Overarching Principles

1.8 Primacy of the Best interests of the Child.

1.8.1. Article 3 provides that -

- (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- (2) States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
- (3) States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the area of safety, health, in the number and suitability of their staff, as well as competent supervision.

1.8.2 The principle of best interests of the child also figures in a few other Article e.g: -

Separation from parents: The child shall not be separated from his or her parents against his or her will, “except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child”. (Article 9);

Parental responsibilities: Both parents have primary responsibility for the upbringing of their child and “the best interests of the child will be their basic concern” (Article -18);

Deprivation of family environment: Children temporarily or permanently deprived of their family environment “or in whose own best interests cannot be allowed to remain in that environment”, are entitled to special protection and assistance (Article 20);

Adoption: States should ensure that “the best interests of the child shall be the paramount consideration” (Article 21);

Restriction of liberty: Children who are deprived of liberty must be separated from adults “unless it is considered in the child’s best interest not to do so” (Article 37 (c))

1.9 Non-Discrimination

1.9.1 Article 2 of CRC provides that:

- (1) “State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability, birth or other status”, and
- (2) “States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians or family members.

1.9.2 This provision corresponds to Article 14 and (equality before law), Article 15, (prohibition of discrimination under the grace of religion, race, caste, sex, or place of birth) of the Constitution. The principle of non-discrimination needs to be interpreted in a pro-active manner so as to ensure the girls, children of SCs and STs, and other disadvantaged groups and children of disabled persons can exercise their rights.

D. Categorization of Rights

1.10 For analytical purposes, the rights enumerated by CRC can be classified into five categories.

- (i) Rights concerning the civil status of children: These includes the right to life (Article 6), the right to acquire a nationality (Article 7), the right to an identity (Article 8), the right to remain with parents, unless the child’s best interests dictate otherwise (Article 9), the right to family reunification (Article 10), the ban on torture (Article 37), the right to protection from physical violence (Article 19 and 34), freedom from arbitrary arrest (Articles 37 and 40) and the right to privacy (Article 16).

- (ii) Political rights: These include freedom of opinion (Article 12), freedom of expression (Article 13), freedom of association (Article 15), religion and conscience (Article 14), and freedom of access to information (Article 17).
- (iii) Rights concerned with development and welfare: These include the right to survival and development (Article 6(2)), right to a reasonable standard of living (Article 27), right to the highest attainable standard of health (Article 24) and right to education (Article 28)
- (iv) Rights requiring protective measures: These include measures to protect children from abuse and neglect (Article 19), economic exploitation and work that is likely to be hazardous or interfere with the child's education (Article 32), drug abuse (Article 33), sexual exploitation (Article 34), sale, trafficking and abduction (Article 34) and other forms of exploitations (Article 36).

2. RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

- Article 18, which recognizes the primary responsibility of both the parents for bringing up their children and also calls upon the State to ensure the development of institutions, facilities and services for the care of children.
- Article 24 emphasizes the responsibility of the State to diminish infant and child mortality, to develop primary health care, to combat disease and malnutrition within the framework of primary health care, to provide clean drinking water, to ensure appropriate pre-and post-natal health care for mothers and to promote health education and basic knowledge of child health and nutrition, the advantages of breast feeding, hygiene and environmental sanitation.

A. Indian Law and Policy

- 2.1 Article 21 of the Constitution, a fundamental right recognizes the right to life. Article 47, a Directive Principle, spells out the duty of the State to raise the level of nutrition and the standard of living and to improve public health. The inclusion of early childhood care and education in the Directive Principles, through the latest amendment to the Constitution is an important landmark.

- 2.2 The National Policy for Children, 1974 lays down the framework for actualizing the Constitutional provisions in that “it shall be the policy of the State to provide adequate services to children both before and after birth and through the period of growth to ensure their full physical, mental, and social development.
- 2.3 An important piece of legislation having a direct bearing on child survival is the Pre-Natal Diagnostic Techniques (Regulation and Prevention) Act (PNDT Act). Because of deep rooted social preferences for sons, neglect of the girl infant and even infanticide is prevalent in some parts of the country. Technological advances like pre-natal diagnostic techniques (amniocentesis) and genetic counseling have come in handy to reinforce the prejudice against a girl child and to resort to foeticide.
- 2.4 Combating female foeticide and infant foeticide calls for eradication of deep-rooted social attitudes. Hence media and social mobilization is of particular importance. Among the innovative advocacy efforts are the conclaves of religious leaders organized to condemn the practice of female foeticide. The Akal Takhat has issued a Hukumnama to Sikh community to stop practice of female foeticide. For the District Magistrates, it is a moral imperative as well as duty to put down this heinous practice.

B. Programme Interventions

(i) Maternal and Child Health

- 2.5 The various initiatives for maternal and child health were integrated in 1997 into a holistic approach embodied in the Reproductive and Child Health (RCH) programme, which aims at:
- Providing need-based, client centered, demand-driven, high quality and integrated RCH services;
 - Maximizing coverage by improving accessibility, especially for women, adolescents, socio-economically backward groups, tribals and slum dwellers, with a view to promoting equality;
 - Withdrawal of financial incentives to users with the objective of improving the quality of care as the incentive for the utilization of services;

- Introduction of essential Reproductive and Child Health Programmes, which include family planning, safe motherhood and child survival, and the management of reproductive tract infection (RTI) and STD services;

2.6 The initiatives for improving child health include:

- To cover all women in reproductive age group with three doses of Tetanus Toxide vaccine.
- To cover all unprotected children up to the age of 3 years with single dose of measles vaccine.
- Eliminate polio incidence and achieving polio eradication.
- Strengthen routine immunization with the aim to raise the percentage of fully immunized children to above 80 per cent.
- To support polio eradication and routine immunization by upgradation of cold chain equipment, ensuring injection safety, training of district managers and cold chain staff, and strengthening of supervision and monitoring.
- Every child under the age of five years to be given oral polio drops during NIDs/SNIDs every year on fixed days.
- Train health workers in Acute Respiratory Infection (ARI) Management.
- To detect cases of polio and effectively treat them.
- To reduce spread of HIV infection in India.
- To administer Hepatitis B to infants along with the primary doses of DPT vaccine.
- To take concrete steps for early case detection and prompt treatment of malaria, selective vector control, promotion of personal protection methods, early detection and containment of epidemic, IEC and management capacity building.
- To provide malaria treatment thorough agencies like hospitals, dispensaries and malaria clinics.

2.7 For maternal health, the strategies are:-

- To provide basic maternity services to all pregnant women.
- To prevent maternal morbidity and mortality.
- To evolve a National Programme for provision of neo-natal care at the grassroots level.
- To strengthen health interventions under RCH Programme (a) Effective maternal and child health care; (b) To increase access to contraceptive protection; (c) Safe management of unwanted pregnancies; (d) Nutrition services to vulnerable groups; (e) prevention and treatment of STD; (f) Prevention and treatment of gynecological problems; (g) Screening and treatment of cancers.
- To strengthen National Anaemia Control Programme

(ii) Integrated Child Development Services (ICDS)

2.8 Promoting a synergetic approach to health, nutritional well-being and psycho-social development is the best way of promoting holistic early child development and learning.

2.9 It aims at holistic development of children (0-6 years) and pregnant and lactating mothers from disadvantaged sections thorough:

- Laying the foundation for proper psychological, physical and social development of the child.
- Improving the nutritional and health status of children below the age of six years
- Reducing the incidence of mortality, morbidity, malnutrition and school dropouts.
- Achieving effective coordination of policy and implementation among various departments to promote child development.
- Enhancing the capability of the family and mother to look after the health, nutritional and development needs of the child, thorough community education.

2.10 **Supreme Court's Order:** In a Public Interest Litigation—Writ Petition (Civil) No.196/2001 — PUCL vs. UOI and others, The Supreme Court in its interim order dated 28.11.2002 has given the following directions with regard to the ICDS Scheme.

- Direct the State Governments/Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing center in the country shall provide as under:-
 - (a) Each child up to 6 years of age to get 300 calories and 6-10 grams of protein.
 - (b) Each adolescent girl to get 500 calories and 20-25 grams of protein.
 - (c) Each pregnant woman and each nursing mother to get 500 calories and 2-025 grams of protein.
 - (d) Each malnourished child to get 600 calories and 16-20 grams of protein.
 - (e) Have a disbursement center in every settlement.

(iii) National Nutrition Mission

2.11 In recognition of the importance of addressing malnutrition with a sense of resolve, the National Nutrition Mission is being set up under the Chairmanship of the Prime Minister to bring about holistic implementation of various schemes as well as launch new initiatives to counter malnutrition.

C. Role of District Magistrate in Child Development

(i) Health

- Monitor the functioning of primary health centers, quality and hygienic infrastructure and regularity of the workers
- Ensure registration of all pregnant women in the Primary Health centers.
- Ensure conduct of regular immunization sessions – organized into mother child care days.

- Ensure constitution of health committees and their regular meetings to determine health needs and medical care.

(ii) Child development and nutrition

- Ensure that the district prepares a comprehensive plan for integrated early child development, mobilizing convergent programmes such as ICDS, RCH, Elementary Education, in partnership with community/women's groups set up under different programmes (such as Mahila Samakhya), panchayati raj institutions.
- Ensure that there is a decentralized field based plan for training and empowerment of child care functionaries. This is critical to improve their self-esteem, motivation and team work in converging interventions on young children and women from most disadvantaged groups.
- Identify a few most crucial early child care indicators, to be monitored at all levels, from the community/AWC level upwards to DM's monthly reviews.
- Ensure that all AWCs/Panchayats/village committees (Mother's committees, or VECs can be linked with) have community charts, to track progress on these key indicators and nutritional status of younger children under 3 years.. and have regular discussions.
- Make sure that there is at least one fixed day of the month that is a Mother child care day, in every village, to ensure that comprehensive services are available on that day, in most unreached areas. It is more effective to prevent malnutrition than to treat it after it has occurred.
- Monitor regular and timely supply of food supplements to anganwadis.

3. RIGHT TO EDUCATION

It is customary to classify education into different stages: early childhood education, elementary classes {(I-VII), often referred to as primary education in international parlance} education, secondary education and higher (also called tertiary) education. The international instruments treat elementary education as a universal entitlement; and access to secondary and higher education are to be progressively made available to all.

- 3.1 As already set out, in our Constitution, free and compulsory education has come to be recognised as fundamental right (Article 21 A). The National Policy on Education, NPE 1986 (NPE; it was updated in 1992) is a landmark in Indian educational development. Based on an in-depth review of the Indian educational systems and evolved thorough a consensual process, NPE provides a comprehensive framework to guide the development of education in its entirety. Part-II of the NPE spells out the essence and role of education.
- 3.2 The NPE lays special emphasis on the removal of disparities in terms of bringing equity in access to educational opportunity by attending to the specific needs of those who have been denied equality so far. The policy postulates integration of the gender perspective in all aspects of the planning. There is a pronounced policy shift from an equalization of educational opportunity to education for women's equality.

B. The Indian Scene: Achievement and Challenge

- 3.3 At the time of Independence, India inherited a system of education, which was not only quantitatively small but also characterized by the persistence of large intra-and inter-regional as well as structural imbalances. Only 14 per cent of the population was literate and only one child out of three had been enrolled in primary school. The low levels of participation and literacy were aggravated by acute regional and gender disparities. As education is vitally linked with the totality of the development process – education being “the basic tool for the development of consciousness and reconstitution of society,” in the words of Mahatma Gandhi, the reform and restructuring of educational system was recognized as an important area of State intervention.
- 3.4 The need for a literate population and universal education for all children in the age group of 6-14 was recognized as a crucial input for nation building and was given due consideration in the Constitution as well as in successive Five Year Plans. This has resulted in a manifold increase of spatial spread of schools, their infrastructural facilities, student enrolment, increased participation of girls; however, the goal of providing basic education to all has not yet been achieved.

C. Sarva Siksha Abhiyan (SSA)

3.5 SSA builds upon the achievements of the 1990s and achieve the objective of UEE by 2010. Its specific goals are:

- All children in school, Education Guarantee Center, Alternate School, 'Back-to-School' camp by 2003;
- All children complete five years of primary schooling by 2007
- All children complete eight years of elementary schooling by 2010
- Focus on elementary education of satisfactory quality with emphasis on education for life
- Bridge all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010
- Universal retention by 2010

3.6 Education of girls is one of the principal concerns in Sarva Shiksha Abhiyan. Further, there is a focus on the inclusion and participation of children from SC/ST, minority groups, urban deprived children, disadvantaged groups, and the children with special needs, in the educational process.

D. Intervention for ensuring universal participation for Girls

- Community mobilization to elicit support for girls' education, both in terms of enrolment of girls and their retention in elementary education, particularly in day to day monitoring of progress and performance and creating a supportive environment in the school and village.
- To focus on disadvantaged sections of girls like those belonging to the Scheduled castes, scheduled tribes, minorities etc.
- Ensuring provision of infrastructure like toilets.
- Gender sensitization and training of planners, teachers and educational managers to ensure that girls' education remains an area of focus.
- To ensure girl- child friendly classrooms and text books and other teaching learning materials, and

- The provision of incentives, such as supply of free textbooks, uniforms, stationery, scholarship, attendance inability etc. should be effectively administered.

E. Intervention for promoting participation of SCs/STs.

- Various incentive schemes such as supply of free textbooks, uniforms, stationery, scholarship, attendance inability etc. should be effectively adjusted.
- Improving access by setting up appropriate schooling facilities in unserved habitations, especially for STs living in difficult terrain and forests;
- Engagement of community organizers from SC/ST communities to work towards raising the level of awareness for education among the community;
- Ensure ownership and management of schools by SC/ST communities by greater representation of SCs/STs in VECs/PTAs;
- Training programmes will need to be organized for VECs/PTAs and other Community Based Organizations among SC/ST population;
- The school calendar in tribal areas may be prepared as per the local requirement and usages;
- Suitably adapt the curriculum and make available locally relevant Teaching Learning materials to tribal students. If need be local language and dialects among the tribals may be used for teaching especially in lower class.
- Ashram schools or residential schools have to be set up if SC/ST habitations are small and scattered.

F. Hard to Reach Groups

- 3.7 Children who are designated as “hard to reach” are those who are likely to be left out despite all interventions. They are children living in very small and remote habitations where no form of schooling is available, children of migrant families, children engaged in household chores, children of sex workers, children in juvenile homes, children living in coastal areas and belonging to fishermen communities, etc.

Strategies suggested for hard to reach groups:

- Evolve a mechanism to set up seasonal schools at the site of work of migrants, such as, sugar schools, brick kiln schools etc.

- Provide identity card to children of migrant families to facilitate their entry into schools at different work sites.
- Organize bridge courses, seasonal hostels and mobile schools based on the local needs.
- Open permanent Community Based Schools, Residential Camps and Multi-grade centres for very small-unserved habitations.
- Mainstreaming of older children, especially adolescent girls through bridge courses and transition classes of different duration.
- Intense community mobilization to ensure community based monitoring of all these interventions for quality and sustainability.

G. Children with Special Needs

3.8 It is estimated that there are about 6-10 million children with special needs in India in the 6-14 age group, out of the total child population of 200 million in 2001. Out of these, only about 1 million children with disabilities are attending school. The goal of UEE cannot be achieved unless and until all children with special needs are included in the formal or informal education system. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) stipulates that free education would be provided to all the disabled children upto the age of 18.

3.9 To achieve this objective, the following approaches and interventions are suggested:

- Every child with special needs, irrespective of the kind, category and degree of disability, should be provided education in an appropriate environment. A zero rejection policy should be adopted so that no child is left out of the education system.
- All disabled children should be identified through surveys and micro planning and functional and formal assessment should be conducted.
- As far as possible, every child with special needs should be in regular schools with needed support services.
- Intensive teacher training should be undertaken to sensitize regular teachers on effective classroom management of children with special needs. This training would be recurrent at block/cluster levels.
- Wherever necessary, special schools may be strengthened to obtain their resource support, in convergence with departments and agencies working in that area.

- Architectural barriers in schools should be removed for easy access. Efforts should be taken to provide disabled-friendly facilities in school and educational institutions. Development of innovative designs for schools to provide an enabling environment for children with special needs would also be a part of the programme.
- Special emphasis must be given to education of girls with disabilities.

4. CHILD LABOUR

A. Nature and profile of the problem:

4.1 According to the 1981 Census, there are 13.60 million working children. In the 1991 Census, this came down to 11.28 million but again went up to 12.26 million in the 2001 Census. The Statewise break up and comparison between 1991 and 2001 Censuses are given in Table-II.

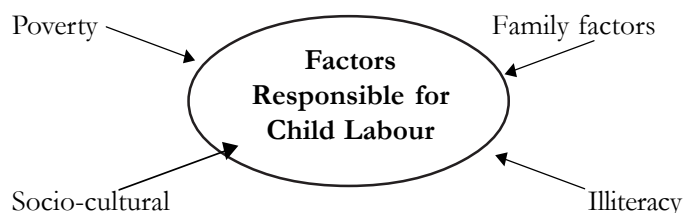
Sl.No.	States	1971	1981	1991
1.	Andhra Pradesh	1,627,492	1,951,312	1,661,940
2.	Uttar Pradesh	1,326,726	1,434,675	1,410,086
3.	Madhya Pradesh	1,112,319	1,698,597	1,352,563
4.	Maharashtra	988,357	1,557,756	1,068,418
5.	Karnataka	808,719	1,131,530	976,247
6.	Bihar	1,059,359	1,101,764	942,245
7.	Rajasthan	587,389	819,605	774,199
8.	West Bengal	511,443	605,263	711,691
9.	Tamil Nadu	713,305	975,055	578,889
10.	Gujarat	518,061	616,913	523,585
	Total (All India)	10,753,985	13,640,870	11,285,349

4.2 More than 90 per cent of children in the work force are in rural areas, in agriculture, live-stocks, forestry and fishery.

4.3 The phenomenon of child labour is a complex and multi-dimensional, with four mutually reinforcing axes: poverty, family factors, socio-

cultural factors, illiteracy and failure to universalize elementary education.

Child Labour: The Self-Enforcing Vicious Axis



4.4 Analytically, it would be expedient to classify child labour in the following clusters.

- **Child labour in the agricultural and allied sectors**
- **Child labour in the manufacturing sector**
 - **Hazardous industries**
 - **Non-hazardous industries**
- **Child labour in the services sector**
 - **Unskilled services with no elements of skill formation**
 - **Skilled services with children as apprentices**
- **Children working in households**
 - **Household enterprises**
 - **Domestic work**
- **Non-domestic, non-monetary work**
 - **Bonded labour**

B. Alternative approaches to eradication

4.5 A multi-dimensional complex problem like child labour calls for holistic efforts from many sectors, both Governmental and non-

governmental. There are two schools of thought on child labour. The first holds that school is the only place where the child should be. Accordingly, it treats every child out of school as a child labourer and advocates complete eradication of child labour. The second school suggests a progressive, sequential and legal-cum-developmental approach to the eventual eradication of child labour. While the final objective is total eradication, the intermediate objective has five elements:

- Prohibiting employment in hazardous occupations,
- Releasing children from work rehabilitating them through education, nutrition, skill training and checkup of health,
- Improving the working conditions in non-hazardous occupations,
- Simultaneously providing opportunities for learning to working children through alternatives to schooling, and
- Progressively, expanding the list of occupations where employment is prohibited.

C. Role of District Magistrates

4.6 A complex, deep rooted problem like child labour calls for sustained and holistic action directed at the child itself, the family of the child and the community in which the family is located. The elements of an effective strategy would comprise:

- (i) Sensitization and mobilization of the community, media, trade unions, youth and youth organizations like Nehru Yuva Kendras and self-help groups as they can be valuable partners. Communication and media strategy should be designed to sensitize, mobilize and motivate the stakeholders, community, opinion leaders and the public for achieving the goal of prevention of child labour. The media and communication strategy would be designed to address the following objectives:
 - Sharing and disseminating information about the programme on education for increasing public awareness,
 - Using the media as a platform for advocacy and developing media packages in support of prevention of child labour and enforcement of UEE,

- Mobilizing opinion makers, legislators and policy makers.
 - Motivating the community, NGOs, local bodies, implementing agencies and all stakeholders,
- (ii) Identification of the vulnerable families from which working children are drawn or are likely to be drawn, sensitization of such families with a view to convincing them about the importance of education in the growth and development of children, persuading them to withdraw children from work and sending them to formal schools as also targeting of such families for benefits under poverty alleviation programme, so that the economic compulsion for children to work is removed.
- (iii) Periodic surveys to identify working children and building up a database to facilitate child-specific action. There can be two complementary surveys: (a) household surveys to identify the school age population and the out-of-school children, and (b) surveys of workplaces.
- (iv) Strict enforcement of child labour laws.
- (v) Ensuring more effective functioning of urban basic services.
- (vi) Ensuring access to children of poor families to ICDS.
- (vii) Vigorous implementation of the National Child Labour Projects (NCLPs), promoting the involvement of other departments, particularly health and education, as well as convergence with other schemes. Convergence with education department would ensure a better learning environment and outcomes, access to teaching-learning material, and to formal schooling after completion of education in the NCLP school. Convergence with health would promote better health care and with welfare department would facilitate access to residential schools.
- (viii) In districts where NCLPs do not exist and the number of children in hazardous occupations is not adequate to launch a NCLP, child specific efforts should be made to rehabilitate them and put them back to school.
- (ix) Close monitoring holds the key to successful implementation.

5. CHILD PROTECTION

5.1 While enforcing the law of the land, the District Magistrate has a more complex role to play in rehabilitating these children and preventing them from being pulled into the quagmire of crime. A few suggestions are listed below:

(a) Inspection

- 1) Inspection of children's homes, observation homes and remand homes should be carried out regularly to ensure that hygienic conditions, quality of food and health of the inmates are properly maintained. A patient hearing of children and their problems would help in mainstreaming efforts.
- 2) Educational facilities and health care services for the children in remand home/observation homes etc. must be ensured, if necessary, through integration with education and health programmes.
- 3) The DM may use his good offices to encourage community participation in running and funding special activities for the children in these homes. Daily routine of the inmates may be checked to ensure that there are adequate inputs for vocational training and creativity. Interaction of these children with their more privileged peer groups should be organized as a socialization measure, with the help of local voluntary organizations and community.
- 4) During inspections, particular attention may be given to grievances against personnel and personnel managing the homes. Also the personnel who are sensitive to the requirements of the inmates must be encouraged.
- 5) Staff vacancies should be promptly addressed, so also the requirement of infrastructure like furniture, etc.
- 6) While monitoring Shishu Grihas and orphanages, emphasis should be on quality child care, qualified staff, record keeping, procedures and overall facilities for growth and development of the children.

(b) Runaway/abandoned Children

- 1) The DM should set up special cells/booths at Railway stations/bus stands and other important public places to extend help and guidance for children

separated from their families/runaway/abandoned children for their timely protection.

- 2) Ensure that every destitute child/orphan who is admitted to an orphanage or adoption agency is reported to local authorities by the concerned organization within 24 hours with full details.
- 3) Widespread publicity (poster campaigns, radio programmes) should be given with the help of voluntary organizations and community, to spread awareness on availability of Childlike services so that children in distress know where help is available.

(c) Street children

- 1) Tapping the GOI initiatives like Integrated Programme for the Street Children, the DM should encourage voluntary action towards **contact programmes**, so that all street children in his jurisdiction are covered and their progress towards withdrawal from the street life and mainstreaming monitored.
- 2) The DM could facilitate regular interaction of voluntary organizations with street children by making available suitable accommodation as a meeting place.
- 3) Counseling and health camps for these children should be regularly organized to cover health, emotional, career and financial counseling requirements. Non- formal educational facilities should be made available.
- 4) DM may organize training to sensitize officials in the police, hospitals, remand homes etc. on the special circumstances and needs of street children.
- 5) Special drives like persuading medical institutions (particularly OPDs in government-run hospitals) to reserve one day in the week when they would welcome and treat any street child in need, can be organized.
- 6) Similarly, existing municipal schools and technical training institutions might be sensitized into adopting a flexible approach and opening their doors to street children. This would involve accepting children who might not be able to provide proof of residence.

(d) Adoptions

- 1) Despite adoption procedure being streamlined by legislation in certain States, illegal adoption practices have come to light. There should be monitoring of adoption agencies and orphanages falling within the jurisdiction of the DM. It should be ensured that only such orphanages and adoption centers as recognized by the Government of India are placing children for inter country adoption. The transfers of children from one adoption agency to another should take place only with the prior permission of the authorized officials of the State Government like the District Magistrates.
- 2) The DM should ensure that no orphanage/agency not recognized by CARA indulges in Inter-country adoptions.

6. CHILD TRAFFICKING

- 6.1 Trafficking, by definition, is illegal trade in a commodity. *Trafficking in children is perhaps the most heinous form of commodification...*, Starting with slavery and human bondage characteristic of medieval times, trafficking in modern times has been comprehensively defined as -

“The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation”

This definition covers all forms of coercive herding of human beings for forced labour, sexual exploitation, bondage etc. Perhaps the most common form of trafficking is sexual exploitation of women and children.

- 6.2 Trafficking is an international phenomenon. It is estimated by international policing agencies that at a minimum of 700,000 persons are trafficked each year across international borders, most of the victims being women and children. It is believed that the actual number may be significantly higher.
- 6.3 Child prostitution in India assumes many forms. Those involved in trafficking take advantage of children from communities that are traditionally tied to prostitution. Orphaned, destitute, and single parent

children are particularly prone to falling into the prostitution trap. Sometimes, children and their parents are lured unknowingly into the trade with promises of marriage, wealth, jobs and better living condition. Among some communities such as the Rajnat of Rajasthan, the Bedia of Madhya Pradesh, and the Bachada on the Rajasthan-Madhya Pradesh border, it is socially sanctioned. For girls from certain castes, this is considered a hereditary obligation. The Jogins, Khudikar, Murloi, and basavi are very much like the devadasis, and are largely concentrated in Karnataka and Andhra Pradesh. Bijapur and Belgaum in Karnataka have long been known as source districts, especially for devadasis. Three major centers of inter-State trafficking: the *Agra-Dholpur-Jaipur belt in North India*; the *Vishakapatnam-Jeyapore belt in the east*, and the *Belgaum-Bijapur-Miraj belt in the west*, which serves as a conduit for devadasis to get to *Mumbai, Madurai and Salem*. Cross-border trafficking is sustained by the powerful underworld-police-politician nexus.

- 6.4 There are major obstacles in trying to estimate the magnitude of the problem such as social stigma, the stranglehold of criminal gangs and brothel keepers, fear of being hauled up for violation of law, and the abject existential conditions beyond redemption. There is considerable anecdotal evidence that with the spread of HIV-AIDS, the age of entry into prostitution has come down and children are being forced into trafficking.
- 6.5 Legislation is meaningless without enforcement. In the case of trafficking, effective enforcement has to be supplemented by empathy and sensitive interpretation of the law when it comes to handling the victims. This is dictated by the special circumstances of the victim. The enforcement agencies have to be sensitive to the physical and emotional plight of the victims to ensure there is no miscarriage of justice and the victim does not receive the same treatment as the accused, if not worse.
- 6.6 The menace of trafficking is so deeprooted that successful implementation of laws is impossible without a multi-pronged strategy that covers:
 - 1) The Prevention of the activity.
 - 2) Detection of the practice.
 - 3) Rescue of the victims.

- 4) Rehabilitation of the victim.
- 5) Breaking the nexus that perpetuates the evil.

6.7 Some suggested Areas for Action for District Magistrates.

(a) Prevention of the activity.

- Involvement at the village level of community/panchayat to help prevent procurement of girls and young mothers for trafficking.
- Setting up of Short Stay Homes and Family Counseling Centres in high supply areas to provide guidance to high risk groups like widows, divorced/socially ostracized girls, street children, child brides, bonded labourers, etc.
- Village schools should also be inspected and made to conform to standards of quality to keep children from dropping out.
- Involving panchayat members, particularly women, in conducting awareness programmes on child abuse and prostitution in districts prone to serving as a catchments area can help stem outflow of children. Communities must be made aware of various laws governing prostitution and abuse.
- Implementing poverty alleviation programmes in the source districts would go a long way in reducing incidence of trafficking out of economic necessity. The district administration should be on high alert whenever there are factory closures, natural calamities, famine or drought, so that young girls do not fall prey to traffickers and touts. Identification of vulnerable groups/clusters of families and improving the social security net for them can help prevent incidence.
- Setting up watchdog groups, community surveillance groups, etc. with the active involvement of the youth in each community may be considered for ensuring timely information to police. Self defence training for youth – specially girls, can be organized to boost self confidence.
- Special police officers may be designated to combat trafficking.
- Through coordination among department of tourism, border police, travel tour operators and hotel managers, entry of convicted child sexual exploiters and sex tourists can be checked.

- Contact centers can be established in major cities near railway stations and bus stands to guide girls and women about safe temporary shelter facilities so that they do not fall prey to sexual exploitation.

(a) Detection of the activity.

- Special police should be deployed to pursue traffickers at check points, borders and red light areas and to rescue child prostitutes in an efficient and humane manner.
- A mapping exercise needs to be undertaken to understand trafficking routes.

(b) Rescue of the victims.

- Making institutional, semi-and non-institutional rehabilitative services available for minor prostitutes, who cannot, or prefer not to, return to their families.
- Setting up special Courts to ensure the speedy and effective trial of traffickers and exploiters. Rescued girls should be spared the harassment and agony of running between police stations, Courts and hospitals.

(c) Rehabilitation of the victim.

- The rescued victims require sensitive handling. The police and judiciary must be sensitized to the vulnerability of these victims and the likelihood of their falling back in the trap of commercial sexual harassment, if rehabilitation is not carried out early and with empathy. Special and adequate shelters/temporary homes for these girls with facilities of food, shelter and economic skill training are required. Immediate repatriation of the victims is often not possible because of non- acceptance by the family/unwillingness of the victim due to the social stigma attached to the trade, etc. Counseling services for such children is critical for their social rehabilitation. Basic education and skill upgradation is necessary for self reliance and economic empowerment. *Various Government schemes can be tapped for this purpose.*
- The large community should be sensitized to the truths about child prostitution; especially the fact that children are often helpless victims in the hands of unscrupulous persons aids the rehabilitation process.

(d) Breaking the nexus that perpetuates the evil.

- Community action is very vital in ultimately tackling the menace of trafficking, particularly for children. Widespread awareness generation on the subject can go a long way in weeding out the practice.
- Messages against trafficking in children may be spread through Poster campaigns, Media campaigns and advertisements.
- Legal awareness amongst the vulnerable sections must be raised.

7. DISABLED CHILDREN

7.1 There is perhaps nothing more tragic in this world than the mental or physical disability of a child from causes that are prevalent. Children in themselves form the most vulnerable section of any society. However, amongst these children, differently abled children require even more protection as regards survival and rights.

7.2 Besides families and communities, District Administration has a pivotal role to play in ensuring that the persons with disabilities are given their due rights and opportunities for their development. Suggested activities are:

- 1) Ensure convergence and synergy among various developmental schemes for persons with disabilities.
- 2) Conduct surveys of persons with disabilities in districts. This will facilitate the different departments in addressing the needs of different age groups of persons with disabilities and effective delivery of services.
- 3) Ensure that all persons with disabilities have been issued a disability certificate in the standard format prescribed by the Ministry of Social Justice and Empowerment and adopted by the State Governments. For the poor disabled, this document is crucial as it gives access to many facilities.
- 4) Organize recruitment drives to ensure that persons with disabilities get a minimum of 3% jobs in government at the district level, 3% seats in government and aided educational

institutions and a minimum of 3% benefit from poverty alleviation scheme.

- 5) Motivate DRDA, District Red Cross Society, local bodies and NGOs to access fund under ADIP scheme to provide necessary aids and appliances to persons with disabilities living in your district.
- 6) Ensure that public places like Collectorate, hospitals, bus stations, schools, parks, banks, post offices, market places etc. are made barrier free.
- 7) Motivate NGOs and associations of parents of disabled persons for setting up special schools, vocational training centers and other support services for education and economic empowerment of persons with disabilities.
- 8) DM can ensure that all the disabled children are brought to the Anganwadi/Balwadi and encouraged to integrate the process of with the other children as this is the most effective way of initiating inclusion of the disabled children. The parents of the children who suffer from any form of disability could be advised and encouraged to bring the child to the Government hospital for treatment.
- 9) Educational institutions should be encouraged to follow a holistic approach of providing rehabilitative services, so that integration becomes easier. Where this is not possible, referrals to, and linkages with, rehabilitation centers should be provided to ensure access to services. Local authorities and heads of institutions should aim at providing a friendly, barrier free environment to children with disability, the provision of mobility aids and appliances as well as disabled-friendly furniture and transport need special consideration. Vocational training programmes must become part of the school curricula. At the same time, certain concessions and relaxations with respect of examinations should be considered for differently-abled children. Financial assistance should be made available to educational institutions and NGOs to promote integrated cultural and sports activities and events, which contribute significantly to confidence and all-round development.

- 10) Regular training of trainers and teachers orientation with reference to disability and the management of physically challenged children is an imperative. All educational institutions should seek the active involvement of parents.

Chapter 6

Women

1. INTRODUCTION OF THE TARGET GROUP

- 1.1 India is the 7th largest nation in the world and with a population of 1027.0 million in 2001; it is the second most populous. In India, women and men have had equal voting rights since the inception of the Republic.
- 1.2 The 1991 census counted 495.7 million females against the male population of 531.33 million constituting just less than half (48.27%) of the total population of India (1027.01 million). The female population grew at a pace of 21.76% during the decade 1991-2001, against a decadal growth rate of 21.34% of the total population.
- 1.3 The sex-ratio which was 972 females per 1000 males in 1901 has declined to 933 in 2001. There is, however, considerable inter-state variation in the sex ratio. It favours females in Kerala (1058), is exactly even in Pondicherry (1001), and at the lower end is as adverse as 821 in Delhi, 874 in Punjab, 898 in Uttar Pradesh, and 861 in Haryana. The adverse sex ratio and its decline in all age groups right from childhood through child bearing ages, has emerged as a matter of concern in India. While preference for sons, intra household gender discrimination, denial and limited access to health care can perhaps explain this trend, the bridging of gender gaps in infant mortality rates, the increase in life expectancy at birth (which is now higher for women than for men) are factors that should have led to reversal of the trend. More analysis on the subject is currently underway. In the meantime, India has framed legislation in 1994 banning the use of pre-natal diagnostic techniques for sex determination. Efforts are currently on to draw up a Master Plan of Action to tackle the problems of violence against girl children, particularly thorough infanticide, sex selection and trafficking.
- 1.4 Life expectancy of females which was 23.96 years at the beginning of the century is now 58.1 years (higher than that of males at 57.7 years).

- 1.5 Although female literacy has gone up 5 times since 1951, it still represents an area of major concern. It now stands at 39.2% only, as opposed to male literacy which is almost 64%. Within the country, wide variations exist. While Kerala has near universal literacy, female literacy in Rajasthan is only 20.8%.
- 1.6 Similarly, although girl's enrolment in school has increased considerably and consistently at all levels, the rising rates of drop-outs continue to be the major problem. Thus, while gross enrolment ratio for girls at the primary level is almost 85% (vis-à-vis over 100% for boys), even in 1993-94 over one-third (39%) of the number of girls enrolling at the primary age dropped out before completing primary level, and about 57% dropped-out before completing upper primary levels. Ultimately, only 32% of girls entering the primary stage complete schooling.
- 1.7 Women are mostly found in marginal and casual employment, and that too mostly in agriculture and the growing informal sector. Of the total 22.27% female work participation in 1991, main workers contributed 16.03% and marginal workers 6.24%. Women constitute 90% of the total marginal workers of the country. There are wide regional variations in work participation rates within the country from 4% to 34%.
- 1.8 Women's employment in the organized sector, though only 1/6th of men is now around 14.6% of the total employment. 62% of such organized sector employments of women are in the public sector. Of the total employment of women, the organized sector employment only forms 4%

2. HUMAN RIGHTS ISSUES RELATED TO THE TOPIC

- 2.1 Article 14 of the Constitution of India ensures to Women the right to equality, and Article 15(1) specifically prohibits discrimination on the basis of sex. Article 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex. These articles are all justiciable and form the basis of our legal-constitutional edifice. At the same time, the Constitution of India (Article 15(3) provides for affirmative and positive action in favour of women by empowering the State to make special provisions for them.

- 2.2 The Directive Principles of State Policy of the Constitution also impose upon the State various obligations to secure equality and eliminate discrimination. These Directive Principles contained in Part IV of the Indian Constitution enjoin upon the State inter alia to direct its policy towards securing the rights to adequate means of livelihood for both men and women equally; equal pay for equal work for both men and women; ensuring that the health and strength of workers, men and women, are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age and strength. Further, a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women.
- 2.3 Although these principles are strictly not justiciable, the Supreme Court of India, through its judicial activism, has infused dynamism into these non-justiciable provisions and issued directions to the State to implement them. Three important areas, in which the Supreme Court has of late issued directives, refer to the need for a uniform Civil Code for the entire country, the promise of compulsory education made in the Constitution but not realized and the protection of property rights of women. These have important implications for the personal laws of various minority communities in respect of marriage and property and for government's educational policy.
- 2.4 The struggle for legal equality has also been one of the major concerns of the women's movement in the country. In parental and matrimonial homes, for acquiring education and skills in profession, legal rights are critical for women. The first phase of the movement for women's equality centered around three major problems they faced: child marriage, enforced widowhood and property rights. The second movement was linked to the freedom struggle and the debate that followed the adoption of Indian Constitution by the Constituent Assembly. It focused on the Hindu Code Bill and emphasized that women were not being accepted as equal partners of men. Discrimination could only be effectively reduced, if not eliminated, by passing appropriate laws and evolving an effective machinery to implement these laws.
- 2.5 Several important legislations were passed during the early years to ensure equal rights to women, particularly Hindu women. These related to the age of marriage, monogamy, equal property rights for men and women, giving women the right to adopt a child and making

the consent of the wife compulsory for the adaption of a child by a married man (Hindu Marriage Act, 1955, Hindu Succession Act, 1956 etc. Hindu Adoption and Maintenance Act, 1956)

- 2.6 Special quotas for women in various development schemes constitutes a special feature of Indian planning since the Sixth Five Year Plan in the early eighties. We thus have 30-40% reservation for women in all our major poverty eradication programmes, including the schemes of asset endowment and wage employment.
- 2.7 The State recently used this enabling clause of the Constitution to bring about a major amendment, whereby reservation of seats for women in all institutions of local governance has become a Constitutional mandate. Under these amendments, one third of all elected seats in the Panchayats (local Government bodies in rural areas) and Municipalities will be reserved for women. Further, one-third of posts of chairpersons of these bodies will also be reserved for women. Through these provisions, a quiet revolution is in its making in terms of women's participation in decision-making. Elections under the new provisions are mandatory in all the States of the country. By a conservative estimate, at least 800,000 women in rural areas alone, have entered public office.
- 2.8 In response to the demand from various quarters including women's groups, parliamentarians and political parties a Bill providing 33.33% reservation for women in the National Parliament and State legislatures by amending the Constitution (proposed 81st amendment of the Constitution) was introduced by the Government. This was referred to the Select Committee, which has since finalized its recommendations and is currently awaiting consideration.
- 2.9 There is also a proposal under the consideration of Government, for bringing about a minimum reservation for women in public employment. This, however, is now being examined in the light of Article 16 of the Constitution, which specifically prohibits discrimination with respect to opportunity of public employment, except in case of categories of classes of disadvantaged people.
- 2.10 Women in India were granted equal political rights as men, including the right to vote (universal adult franchise) and the right to hold public office, right from the dawn of independence. Article 326 of

the Constitution guarantees political equality to women. The elections are held on the basis of universal adult franchise. Article 325 prohibits exclusion from electoral rolls on the basis of sex.

- 2.11 The Indian Government is constitutionally bound to provide equal opportunity to men and women to represent its interests at the international level. In the 50's itself, India appointed women as ambassadors (in the 50s), Ministers for External Affairs, and leaders of Indian delegations to international conferences. A discriminatory condition, whereby women members of the Indian Foreign Service had to leave the service on marriage, was also struck down as unconstitutional by the Supreme Court.
- 2.12 In India, the Citizenship Act, 1955 provides for the acquisition and termination of Indian citizenship. Under this, women have equal rights with men to acquire, change or retain their nationality. An Indian woman married to a foreigner can continue to retain her Indian citizenship even though she may have acquired the citizenship of the country of her husband by virtue of her marriage i.e. by operation of the law of that country and without any voluntary act on her part. An Indian women marrying a foreigner continues to retain her Indian citizenship till she renounces it or voluntarily acquires the citizenship of her husband's country.
- 2.13 As regards the nationality of children, in the past the Indian Citizenship Act provided that in cases of children born outside India, a child will be considered an Indian national only if his or her father was an Indian citizen at the time of his or her birth. This provision acted against the interests of Indian women marrying foreigners and living outside India and provided the right to citizenship by descent only from the father's side.
- 2.14 In the light of obligations undertaken by the Indian State by ratifying this Convention, the Citizenship Act was amended in 1992 to correct this anomaly. Under the amended provisions a child born in India or outside would acquire Indian citizenship if either of his or her parents was an Indian citizen at the time of his or her birth.
- 2.15 The Equal Remuneration Act, 1976 forbids discrimination against women at the time of recruitment or in their conditions of service subsequent to recruitment. Article 46 of the Constitution directs the

State to promote with special care the educational and economic interests of the weaker sections of the peoples. In line with these directives, special clauses in various labour laws provide for the protection and welfare of women workers in factories, mines, plantations and shops and commercial establishments.

- 2.16 By law, men and women have equal rights to all family benefits such as housing allowance, child and education allowances, travel allowance, etc., wherever they are applicable. The principle, however, is that where such a benefit is available to the family as a whole it can be claimed by either the husband or the wife. In addition, there are many benefits, which are only available for women. For working women, an additional income tax rebate has now been made available by raising the amount of “Standard Deduction”. Within government, there are a large number of special concessions and relaxations specially available for women including those related to posting of husbands and wives together at the same station, maternity benefits etc.
- 2.17 Rural women constitute nearly 80% of the female population. Although they are major contributors to the country’s agriculture based economy, the preservers of fragile eco-systems and providers of fuel, food and water within households, their role was explicitly recognized as actors (and not just as objects of welfare) for the first time in the 6th Five Year Plan in early eighties. The basic strategy since then has been to try and ensure women a fair share in rural development and agricultural programmes through quotas as well as women specific programmes.
- 2.18 The Constitution of India contemplates attainment of an entirely new social order, where all citizens are given equal opportunities and rights and no discrimination takes place on the basis of race, religion, caste, creed or sex.
- 2.19 Family relations in India have been governed traditionally by religious personal laws. The five major religious communities: Hindu, Muslim; Christian, Jews and Parsis have their separate personal laws. They are governed by their respective religious laws in matters of marriage, divorce, succession, adoption, guardianship and maintenance. Hindu personal law has been extensively reformed in order to apply the Constitutional provisions to a considerable extent. The personal laws

of other minority communities, except Parsi personal laws, have been left virtually untouched, because the GOI has adopted a policy of non-interference in the personal laws of any community unless the demand for change comes from within those communities. The Parsi marriage and Divorce Act has been amended to give equal rights to Parsi women. The demand for the change came from the Parsi community itself.

3. CONSTITUTIONAL PROVISIONS

- 3.1 The Constitution of India was ahead of its time, not only by the standards of the developing nations but also of many developed countries, in removing every discrimination against women in the legal and public domain of the Republic. While Article 14 conferred equal rights and opportunities on men and women in the political, economic and social spheres, Article 15 prohibited discrimination against any citizen on the grounds of sex and Article 15(3) empowered the State to make affirmative discrimination in favour of women and children. Article 39 enjoined upon the State to provide equal means of livelihood and equal pay for equal work and Article 42 directed the State to make provisions for ensuring just and humane conditions of work and also for maternity relief. Article 51A (e) imposed a fundamental duty on every citizen to renounce the practices derogatory to the dignity of women.

Constitutional guarantees to India's Women

3.2 Fundamental Rights

- Article 14:** “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
- Article 15(1):** “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”.
- Article 15(3):** “Nothing in this article shall prevent the State from making any special provision for women and children”.
- Article 16(2):** “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

3.3 Directive Principles of State Policy

Article 39: “The State shall, in particular, direct its policy towards securing

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

Article 42: “The State shall make provision for securing just and humane conditions of work and for maternity relief”.

3.4 The Indian Constitution was drafted around the same time as the Universal Declaration of Human Rights and was, therefore, strongly influenced by the latter. The principle of gender equality is firmly embedded in our Constitution. It provides for equality before law and equal protection of the law, prohibition of discrimination, and equality of opportunity in matters of public employment. The Indian Constitution further provides for affirmative action and for positive discrimination by empowering the State to make special provisions for women. The Constitution also contains certain provisions, called Directive Principles, which enjoin upon the State inter-alia to secure the right to adequate means of livelihood for both men and women equally, equal pay for equal work for both men and women, the health and strength of workers, for both men and women, and ensuring that the citizens are not forced by economic necessity to enter vocations unsuited to their age and strength. Further a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women.

3.5 The elimination of gender based discrimination is one of the fundamentals of the Constitutional edifice of India. In fact the Constitution empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative discriminations and deprivations which women have faced from generation. Further as explained earlier, the four basic provisions of

the Constitution viz. the Fundamental Rights relating to the provisions on equal rights and opportunities of men and women in political, economic and social spheres, the prohibition of discrimination on ground of religion, race, caste, sex etc., the provision enabling the State to take affirmative action in favour of women and the equality of opportunities in public employment for men and women are themselves justiciable claims and can be redressed thorough the writ jurisdiction of the High Courts and the Supreme Court of India.

- 3.6 The notion of affirmative action or positive discrimination in favour of women is not only an essential feature of Indian political thinking since independence, but it derives from what is essentially an enabling clause in the Constitution itself. Article 15(3) of the Constitution thus lays down that special measures in favour of women and children will not be construed as violative of the principle of equality. Having said this, the Constitution, however, prohibits in Article 16, any discrimination with respect to opportunity of public employment, except in case of categories or classes of disadvantaged people.

4. INTERNATIONAL COVENANTS TO WHICH INDIA IS A SIGNATORY

- 4.1 The most significant International Covenants to which India is a signatory are:
- i) Vienna Declaration – The Universal Declaration of Human Rights.
 - ii) Convention on Elimination of All Forms of Discrimination Against Women.
 - iii) Convention on Rights of the Child.

The Vienna Declaration for the first time recognized Women's Rights as Human Rights. It is a little known fact that an Indian lady lawyer Hansa Mehta was on the drafting Committee of the Declaration. Our Constitution coming immediately after the Declaration enshrined all those rights for women. It is also relevant to note that women in India got the right to vote without having to agitate for it, whereas in the West women had to struggle and agitate to get the right to exercise their franchise.

- 4.2 India is a signatory to CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women), having ratified it on 25.6.1993. The Convention defines discrimination against women as 'any distinction, exclusion or restriction made on the basis of sex

which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

- 4.3 The instrument of ratification of the Convention deposited by the Government of India contains the following two Declaratory Statements and one Reservation.

Article 16(1) calls for the elimination of all discrimination against women in matters relating to marriage and family relations. The Declaratory Statement in this connection reads as under :-

“With regard to Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent”

Article 16(2) calls for making the registration of marriage in an official registry compulsory. The Declaratory Statement for this Article reads as under :-

“With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered, will not invalidate the marriage, particularly in India with its variety of customs, religions and level of literacy.”

Article 29(1) of the Convention establishes compulsory arbitration or adjudication by the International Court of Justice of disputes concerning interpretation. The reservation proposed by the Government of the Republic of India reads as under :-

“With regard to Article 29(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this Article.”

- 4.4 Under Article 18 of the Convention, a State Party to the Convention has to submit a report on the legislative, judicial, administrative and other measures which it has adopted to give effect to the provisions of the Convention within a year after the entry into force of the Convention for the State Party and thereafter at least every four years. India's initial report in this regard was submitted in 1997/98. The report was compiled from the information supplied by the concerned Ministries/Departments of the Government of India as well as inputs from women's organizations and activists.
- 4.5 India's initial report was considered by the Committee on the Elimination of Discrimination Against Women in January 2000. The specific issues raised in the 'Concluding Comments of the Committee are required to be responded to by India in its next periodic report.
- 4.6 In the Concluding Comments, the Committee commended the following positive aspects of India's efforts to end the discrimination against women and to empower them:
- The recognition of fundamental rights to gender equality and non-discrimination.
 - The contribution made by the Supreme Court of India to the provision of equality to women.
 - The range of policies and programmes for women.
 - The establishment of the National Commission for Women and State Commissions for Women
 - The affirmative action of the 73rd and 74th Constitutional Amendments – reservations for women in Panchayats and urban local bodies.
 - Banning of sex determination tests.
 - Amendments to the laws on Nationality.
- 4.7 The principal areas of concern identified and the recommendations made by the Committee in its Concluding Comments are broadly the following :
- ❖ Gender empowerment should have a rights-based approach.
 - ❖ There should be allocation of sufficient and targeted resources for women's development.
 - ❖ The National Commission for Women should be entrusted with the task of developing working papers on legal reform in a time-frame.

- ❖ India should withdraw its Declarations to Articles 16(1) and 16(2) of the Convention – relating to marriage and family relations and registration of marriage respectively.
- ❖ A Uniform Civil Code should be enacted in pursuance of the directions of the Supreme Court.
- ❖ There should be compulsory registration of marriages and births.
- ❖ Make primary and secondary education compulsory.
- ❖ Introduce a sex-discrimination act applicable to non-state action and inaction.
- ❖ Strengthen law and enforcement and introduce reforms proposed by NCW and women activists in laws on rape, sexual harassment and domestic violence.
- ❖ Women be given an opportunity to make their contribution to peaceful conflict resolution.
- ❖ Undertake greater gender sensitization and human rights programmes.
- ❖ Introduce affirmative action programmes to provide life chances to Dalit women.
- ❖ Adopt a holistic approach to women throughout the life cycle with provision of matching the resources.
- ❖ Elicit support of the medical profession in enforcing professional ethics and preventing sex-selective abortions.
- ❖ Affirmative action may be taken to increase women's participation in the judiciary and lok adalats.

5. JUDICIAL INTERPRETATION MAINTENANCE

- 5.1 The judiciary has been demonstrably progressive and protective in interpreting the law relating to maintenance. In the Shah Bano case, the Supreme Court upheld the maintenance right of divorced Muslim women (AIR 1985 SC 945). Under Section 125 of Cr.P.C., any man, who deserts or divorces a wife who cannot support herself, is liable to pay a stipulated compensation. Despite the Supreme Court verdict in Shah Bano case, however, the Muslim Women (Protection on Divorce) Act was enacted in 1986. This law generated considerable controversy on the argument voiced in many quarters that this was a retrograde measure.
- 5.2 In the context of the Shah Bano Case, Justice Y. V. Chandrachud even observed that it was high time that the Government implemented

Uniform Civil Code. The pronouncement of the case also called upon the Prime Minister “to have a fresh look at Article 44” of the Constitution. The Government were also advised to ask the Law Commission to draft a comprehensive law in consultation with the Minorities Commission incorporating the “present day context of human rights for women.”

- 5.3 The, punishment for rape of a minor below 12 ‘years of age has been enhanced to the minimum of 10 years. Nonetheless, several inadequacies have been pointed out.
- Infliction of sex on a girl under 16 years of age with or without her consent is child rape. Under Section 376 of IPC, when the wife is below 12 years of age, the penalty is the same as provided for rape generally. But, where the wife is 12 or 12+ years of age, but below 15 years, it is construed as a lesser offence and the punishment is milder. In such cases, the penalty is imprisonment which may extend to 2 years or fine or both. Under Section 375 of the Indian Penal Code, in the case of child wife, if she is above 15 years of age, infliction of sex on her against her will by the husband is not construed as rape at all. There is patent contradiction between the Child Marriage Restraint Act, 1929 and the Indian Penal Code.
 - Definition of rape and molestation does not cover several kinds of perverse sexual assault of girl children. Where S.354 IPC concerning sexual assault gets applied instead of the substantive provision relating to rape on account of its technical non-applicability, the culprits could get away with lesser penalties - imprisonment for 2 years or lesser.
 - On account of absence of special provisions relating to evidence by minor girls, the environment for presentation of evidence by them tends to be hostile.
 - The child victim is invariably inadequate in understanding or explaining the trauma of sexual assault on her.
 - There are serious logistical difficulties. Due to the scattered nature of habitations in the country, especially in rural areas, and inaccessibility of police stations often there are delays in the lodging of the First Information Reports and this could have adverse impact on the prosecution. Inaccessibility of medical doctors is yet another serious problem.
- 5.4 Kirti Singh, having extensively reviewed judicial decisions concerning dispensation of criminal justice in rape cases, has found that factors

impacting on the nature of disposal of rape cases, are largely the attitude of the Courts, Court procedures, approach to the evidence of the rape victims, and investigation procedures.

- 5.5 Courts have tended to be impacted by conventional notions of morality in handling cases relating to rape – notions of honour and chastity of women rather than the physical violation of the victim involved.
- 5.6 Disposal of cases usually takes enormous time – time taken by the various Courts, the Trial Court, the High Court and Supreme Court.
- 5.7 Frequent adjournments on behalf of the accused are moved for and also granted.
- 5.8 Investigation is normally expected to be completed in 90 days. But this does not happen. Consequently the accused get entitled to bail.
- 5.9 The cross-examination could traumatize the victims.

Evidence of Rape Victims, Questions of Corroboration and Consent

- 5.10 Courts do insist on the corroboration of victim's evidence despite landmark rulings that such corroboration is not required. In the famous Mathura case, the Court held that no rape had been committed on the ground that no physical injuries were found on the victim. The victim's past history and conduct are also given much importance by the Courts, though this is not appropriate.

MATHURA RAPE CASE

Mathura is a tribal girl, about 14 to 16 years, victim of rape. She was in a police station. She was raped by the Head Constable of the Station, while under detention. She was also molested by a police constable. The Sessions Judge who tried the case acquitted the policemen, on the ground that there was no evidence that Mathura was below 16 years of age. He did not accept medical opinion in regard to her age. He rejected her statement that sex was inflicted on her without her consent. The acquittal was reversed in the High Court, which again was reversed by the Supreme Court. A public agitation followed on the demand for the rehearing of the case. The Law

Commission, on directions from Government made very meaningful recommendations based on which the law relating to rape was significantly amended. Absence of consent in custodial rape cases, it was provided could be presumed based only, on victim's statement. The gravity of custodial rape came to be accepted and established. An important change was brought about in Section 114A of the Evidence Act which now reads:

In a prosecution of rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of subsection (2) of section 376 of the Indian Penal Code, 1860 (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she States in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

“ We have observed the year 2001 as the year of women’s empowerment. Several important measures have been taken to elevate women from their present status. It is extremely encouraging that to see the ordinary and poor women actively participating in movements and campaigns, for constructive action such as the right to information, river revival programmes and rain water harvesting and watershed management schemes. Election of almost one million women to Panchayat Raj institutions and their activities in such bodies have brought about a strategic shift in many of our developmental activities at the grass roots level.”

K.R. Narayanan
From Republic Day Speech, 2002

6. SPECIAL PROGRAMMES FOR THE TARGET GROUP

- 6.1 The pre-independence planning document had addressed women's economic, civil and social rights. However, despite the provisions of the Directive Principles of State Policy, economic rights and needs were not really built into the First Five year Plans. Labour laws, valid only for the organized secondary sector, had incorporated most of the ILO Conventions before planning started. Maternity benefits were enacted in 1961, but not equal remuneration. While, both these principles were incorporated into public service rules (with a few exceptions), child care support for women was not included. Service

rules were the responsibility of the Home Ministry while labour laws were that of the Labour Ministry. Some sectors of government (eg. Railways, Defence Services, Insurance, Mining) continued discriminatory and exclusionary practices against women, because there was no comprehensive policy or law applicable to all categories of women workers. On the other hand, the growing emphasis on population control highlighted women's reproductive, rather than their productive roles, influencing 'populationist' approach to women's development needs.

- 6.2 The United Nations General Assembly adapted a Resolution on the "Declaration on Elimination of Discrimination against Women" in 1967 and requested all Member States to prepare Reports on the Status of Women in their countries. This had not been followed up for long in India. A reminder, sent especially in the context of the International Women's Year scheduled for 1975, to the Government of India in the Ministry of External Affairs from the UN Commission on the Status of Women towards the end of the decade geared them into action. Since there was no Ministry or Department of the Government dealing exclusively with matters relating to women, the letter was referred to the Department of Social Welfare. The first Minister of State in the Department of Social Welfare, Smt. Phulrenu Guha, proposed the constitution of a Commission of Enquiry to study the status of women in the country. After General Elections in 1971, the Government constituted the "Committee on the Status of Women in India" (CSWI) in September of that year.
- 6.3 The Committee submitted its Report entitled "TOWARDS EQUALITY" in December, 1974. It served as an eye opener to the Government, law makers, experts and activists in the field and the community as a whole on the low status of women on many counts and on the wide gulf between what was intended in the Constitution of India and what prevailed on ground in terms of laws, conventions and practices. Equality seemed to be a very distant goal. The Committee observed:

"The review of the disabilities and constraints on women, which stem from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution. Society has not yet succeeded in framing the required norms or institutions to enable women to fulfil the multiple roles

that they are expected to play in India today. On the other hand, the increasing incidence of practices like dowry indicates a further lowering of the status of women. They also indicate a process of regression from some of the norms developed during the Freedom Movement. We have been perturbed by the findings of the content analysis of periodicals in the regional languages, that concern for women and their problems, which received an impetus during the Freedom Movement, has suffered a decline in the last two decades. The social laws, that sought to mitigate the problems of women in their family life, have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before independence.”

- 6.4 We realize that changes in social attitudes and institutions cannot be brought about very rapidly. It is however, necessary to accelerate this process of change by deliberate and planned efforts. Responsibility for this acceleration has to be shared by the State and the community, particularly that section of the community which believes in the equality of women. We, therefore, urge that community organizations, particularly women’s organizations should mobilize public opinion and strengthen social efforts against oppressive institutions like polygamy, dowry, ostentatious expenditure on wedding and child marriage, and mount a campaign for the dissemination of information about the legal rights of women to increase their awareness. This is a joint responsibility which has to be shared by community organizations, legislators who have helped to frame these laws and the Government which is responsible for implementing them.”
- 6.5 There is no doubt that the Report of the CSWI – “TOWARDS EQUALITY” has been a landmark in the social history of India heralding a conscious change in attitudes, behaviour, law, establishment of special institutions and creating both infrastructure and environment for equality for women. The quarter century that has passed by since the report has indeed created a lot of waves of activity and awareness.
- ❑ A whole National Machinery including the National Human Rights Commission and the National Commission for Women has been established with a number of institutions to play enabling

roles to create the environment for the advancement of women and realization of gender justice.

- ❑ Several amendments to existing statutes have been made and new statutes enacted by the Parliament to incorporate gender perspectives.
- ❑ The National Policy on Education (NPE), 1986 and the National Plan of Action (NPA), 1992 have brought focus on girls' education.
- ❑ The National Literacy Mission (NLM) was launched as a "Technology and Societal Mission" with strong orientation to women's participation (May 1988). It has contributed to women's literacy and empowerment.
- ❑ The "Tenth Plan" is attempting a gender focus, with the announcement of the National Policy on Empowerment of Women.
- ❑ The Constitution has been amended to make space for women in a mandatory way in decision making in the Local Bodies.
- ❑ Several International Conventions have been ratified.
- ❑ A large number of programmes and Schemes have been incorporated in the Five-Year Plans targeting women.
- ❑ The Women's Movement has gathered strength and is relentlessly fighting to place women's issues – now understood as 'gender issues' on social, economic and political agenda of the nation. Indeed, there has been a whole perspective change in the understanding of women's lives in all their dimensions. The democratic deficit on account of exclusion of women from political life acknowledged in the reservation of seats for women in Panchayats and Municipalities has been a justification for the priority given by the Women's Movement to this issue.
- ❑ Grassroots mobilization of women into Self-Help Groups (SHGs) emerged, *interalia*, as a dynamic consequence of activities of organizations like Self-Employed Women's Association

(SEWA), Working Women's Forum (WWF), Annapurna Mahila Mandal, etc. The self-help model has received universal recognition in the country and has also been incorporated as a strategy specifically in the National Policy on Empowerment of Women.

- ❑ A continuous search for the 'missing women', not only in date and action at various levels but also in the various "Policies" of the Government and in the 'mindset' of the society, is on with different momentum in different quarters.

- 6.6 It was only between 1977 and 1980 that some serious exercises in policy review were taken up. Amongst these, the three most significant exercises were the Report of the Working Group on Employment of Women, 1977-78; Report of the Working Group on Development of Village Level Organizations of rural Women, 1977-78, Report of the Working Group on Functional Literacy for Women, (FLAW) 1977-78 and Report of the National Committees on the Role and Participation of Women in Agriculture and Rural Development, 1979-80.
- 6.7 These exercises definitely marked a watershed in conceptualizing basic problems and strategies for women's development in India. In fact, the Indian agenda even got incorporated into the United Nations and Mid — Decade Programme of Action-through the mediacy of the Non-aligned Movement at the special Conference on Women and Development (Baghdad, 1979) and India's Membership of the Commission on the Status of Women (1978-80) as well as the Preparatory Committee for the Mid-Decade, Copenhagen Conference (1980) and Programme of Action. The Secretary General of the Mid-Decade UN Conference acknowledged India's contribution to the emphasis on third world perspectives on development and the adoption of employment, health and education as a sub-scheme of the decade's agenda.
- 6.8 The conceptual approach evolved through these few years identified women's developmental needs as having multiple dimensions – cutting across economic, social and political sectors — requiring explicit examination of women's situation in various sectors (agriculture and allied fields, industry, labour and employment, power, environment, energy, science and technology as well as the social and

infra-structural sectors. Such explicit examination called for three operational strategies:-

- a. of establishing cells within various sectoral development/ planning agencies at different levels.
- b. earmarking of a share of various sectoral allocations for investment in women rather than relegate women to only women-specific programmes and women-specific agencies; and promoting rural employment and development through women's own collective organizations, at the grassroots.

- 6.9 Strengthening of voluntary organizations of women at the grassroots was advocated” for creating a proper climate for the introduction of social legislation as well as for its effective implementation and the provision of legal aid. Such grassroots organizations were also necessary “as channels for women to participate effectively in decisions that affect their lives and for promoting adequate development efforts for women at different levels”. There were definite suggestions for active promotion of such collectives by the government and linking them with institutions which could provide support in various forms.
- 6.10 The planning process for the development of women has evolved through ‘welfare’ to ‘development’ to ‘empowerment’ to ‘participation’. Despite the dynamism of the approach, the Constitutional and legal provisions for affirmative action, the institutional build up and attendant step up in investments, gender discrimination continues to be a daunting challenge.
- 6.11 The National Policy for Empowerment of Women, announced by the Government in April 2001, has laid down a number of policy prescriptions for the national, State and local governments. The policy includes creating an environment thorough positive economic and social polices. The de-jure and de-facto enjoyment of all human rights, equal access to participation and decision making of women, equal access to women to health care, quality education at all levels career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc. strengthening legal systems aimed at elimination of all forms of discrimination against women and violence against women and the girl child.

PROGRAMMES

List of Programmes designed for Women's Welfare

Ministry of Agriculture/Department of Agriculture & Cooperation

Programmes on Cooperation and Credit-Assistance to Women Cooperative.
National Watershed Development Programme for Rainfed Area (NWDPA)
Women in Agriculture For details visit <http://dare.nic.in>

Ministry of Health and Family Welfare/Department of Family Welfare

National Maternity Benefit Scheme
Post Partum programmes
Health Guide Scheme
Assistance towards expenditure on hospitalization of poor
Rural family Welfare Centres (RFWC)
Urban Family Welfare Services (UFWS)
Strengthening of Immunisation Program and Eradication of Polio.
For details visit <http://mohfw.nic.in>

Department of Elementary Education and Literacy & Department of Secondary Education and Higher Education

Mahila Samakhya Programme

Ministry of Labour

National Vocational Skill Training Programme (NVTI)
Regional Vocational Skill Training Programme (RVTI)
Improvements in Working Conditions of Child/Women Labour.
Employees Pension Scheme. For details visit <http://labour.nic.in>

Ministry of Rural Development

Training Scheme for Employment of Rural Youth (TRYSEM)
Development of Women and Child in Rural Areas (DWCRA)
Swarnajayanti Gram Swarozgar Yojana (SGSY)
Indira Awas Yojana (IAY) For details visit <http://rural.nic.in>

Human Rights Manual for District Magistrate

Ministry of Tribal Affairs

Girls Hostels For details visit <http://tribal.nic.in>

Depart, of Women & Child Development

Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers -

For details visit <http://wcd.nic.in>

SWAYAMSIDHA (IWEP) Integrated Women's Empowerment Programme —The Scheme aims at empowering women socially and economically through the establishment of Women Self Help Group, Integration and Convergence of other related schemes available with the different Departments. For details visit <http://wcd.nic.in>

Integrated Child Development Services (ICDS) Schemes —Launched on 2 October 1975 in 33 Community Development Blocks, today's represents one of the world largest programmers for early childhood development.

For details visit <http://wcd.nic.in>

Balika Samridhi Yojna (BSY)—To change negative family and community attitudes towards the girl child at birth and towards her mother, improve enrolment and retention of girl children in schools, raise the age at marriage of girls and assist the girl to undertake income generating activities.

For details visit <http://wcd.nic.in>

Swadhar – A scheme for Women in Difficult Circumstances— The Swadhar Scheme purports to address the specific vulnerability of each of group of the women in difficult circumstances through a Home-based holistic and integrated approach. For details visit <http://wcd.nic.in>

Kishori Shakti Yojana (KSY)— To improve the nutritional, health and development status of adolescent girls, promote awareness of health, hygiene, nutrition and family care, link them to opportunities for learning life skills, going back to school, help them gain a better understanding of their social environment and take initiatives to become productive members of the society.

For details visit <http://wcd.nic.in>

Department of Youth Affairs and Sports

Sports Scholarship Scheme
Nehru Yuva Kendra Sangathan (NYKS)

National Service Scheme
For details visit <http://yas.nic.in>

7. LEGAL RIGHTS

7.1 To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

7.2 Although Women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes which are directed specifically **against Women** are characterised as 'Crime Against Women'. These are broadly classified under two categories.

(1) *The Crimes Identified Under the Indian Penal Code (IPC)*

- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & Abduction for different purposes (Sec. 363 - 373 IPC)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture, both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual Harassment* (Sec. 509 IPC)
- (vii) Importation of girls (upto 21 years of age) (Sec. 366-B IPC)
(* referred in the past as 'Eve-Teasing')

(2) *The Crimes identified under the Special Laws (SLL)*

7.3 Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- (i) The Employees State Insurance Act, 1948
- (ii) The Plantation Labour Act, 1951
- (iii) The Family Courts Act, 1954
- (iv) The Special Marriage Act, 1954
- (v) The Hindu Marriage Act, 1955

- (vi) The Hindu Succession Act, 1956
- (vii) Immoral Traffic (Prevention) Act, 1956
- (viii) The Maternity Benefit Act, 1961 (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961
- (x) The Medical Termination of Pregnancy Act, 1971
- (xi) The Contract Labour (Regulation and Abolition) Act, 1976
- (xii) The Equal Remuneration Act, 1976
- (xiii) The Child Marriage Restraint (Amendment) Act, 1979
- (xiv) The Criminal Law (Amendment) Act, 1983
- (xv) The Factories (Amendment) Act, 1986
- (xvi) Indecent Representation of Women (Prohibition) Act, 1986
- (xvii) Commission of Sati (Prevention) Act, 1987

Incidence of Crimes Against Women - All India (1998-2000)

7.4 The Crime head-wise incidence of reported crimes during 1998 to 2000 alongwith percentage variation is presented below. It is observed that Crimes Against Women reported an increase of 4.1 per cent and 3.3 per cent over previous years 1999 and 1998 respectively.

Table-8.1

Sl.No.	Crime Head	Year			Percentage Variation in 2000 Over 1999
		1998	1999	2000	
(1)	(2)	(3)	(4)	(5)	(6)
1.	Rape	15,151	15,468	16,496	6.6
2.	Kidnapping & Abduction	16,351	15,962	15,023	-5.9
3.	Dowry Death	6,975	6,699	6,995	4.4
4.	Torture	41,376	43,823	45,778	4.5
5.	Molestation	30,959	32,311	32,940	1.9
6.	Sexual Harassment	8,054	8,858	11,024	24.5
7.	Importation of Girls	146	1	64	63
8.	Sati Prevention Act	0	0	0	-
9.	Immoral Traffic (P) Act	8,695	9,363	9,515	1.6
10.	Indecent Rep. of Women (P) Act	190	222	662	198.2
11.	Dowry Prohibition Act	3,578	3,064	2,876	-6.1
	Total	1,31,475	1,35,771	1,41,373	4.1

Table-8.2

Proportion of Crime Against Women (IPC) Toward Total IPC Crimes

Sl.No.	Crime Head	Total IPC Crimes	Crime Against Women (IPC cases)	Percentage to Total IPC Crimes
(1)	(2)	(3)	(4)	(5)
1.	1998	17,78,815	1,19,012	6.7
2.	1999	17,64,629	1,23,122	7.0
3.	2000	17,71,084	1,28,320	7.2

7.5 The available data indicates an increasing trend during the last three years for cases registered under IPC crimes such as ‘Rape’, ‘Torture’, ‘Molestation’ and ‘Sexual Harssment’ and under SLL crimes such as ‘Immoral Traffic (Prevention) Act’ and ‘Indecent Representation of Women (P) Act’. The cases under ‘Kidnapping & Abduction of Women & girls’and ‘Dowry Prohibition Act,’ however, decreased during last few years.

Crime Rate (States & UTs)

7.6 All India Crime rate i.e. number of crimes per lakh population for crimes against women reported to the police worked out to be 14.1. This rate of crime which does not appear alarming at first sight may be viewed with caution, as a sizable number of crimes against women go unreported due to social stigma attached to them.

7.7 Uttar Pradesh State reported highest incidence (13.4%) of these crimes followed by Madhya Pradesh (12.7%). Rajasthan, which shared 9.2 per cent of these crimes and was fifth in the order of incidence, however, reported highest crime rate at 24.0 followed by Madhya Pradesh 22.3, as compared to national rate of 14.1.

Chart - 8.1

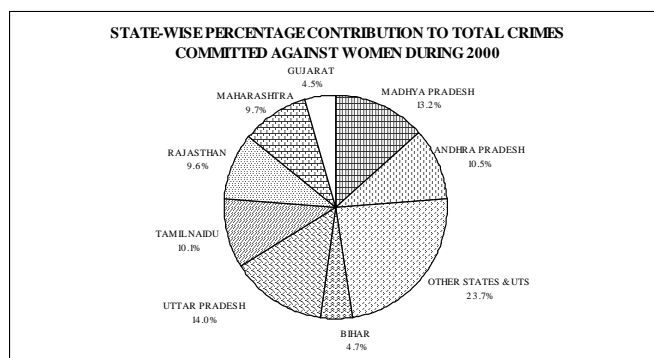
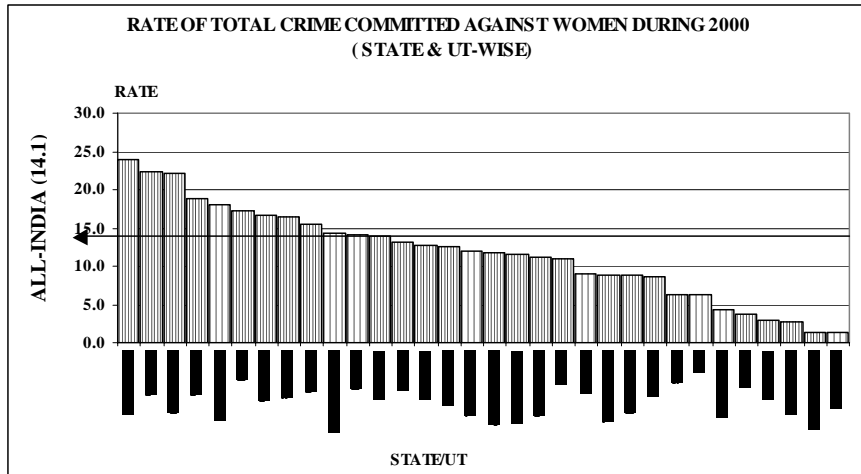


Chart - 8.2



8. ENDEMIC AREAS

➤ All over the world women prisoners form a small minority of those imprisoned. The proportion is generally around 5 percent, that is, one in twenty of all prisoners; although a feature of the past decade has been a steeper rise in the number of women in prison than the rise in the number of men.

Women in prism are entitled to the equal enjoyment and protection of all human rights in political, economic, social, cultural, civil and all other fields in the same manners their male counterports.

Women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation.

Women prisoners shall be segregated from male prisoners.

Women prisoners shall be supervised and searched by female officers and staff.

Pregnant women and nursing mothers who are in prison shall be provided with special facilities which they need for ameliorating their condition.

Whenever practical, women prisoners should be taken to outside hospitals for delivery

Domestic Violence

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Platform of Action (1995) both have acknowledged this. The United Nations Committee on CEDAW (Convention on Elimination of All Forms of Discrimination Against Women) in its general recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

Prevention of Domestic Violence Act, 2005 has since been passed by both houses of Parliament, and has received the assent of the President. The Rules under the Act have also been framed (Annexure I & II).

The phenomenon of domestic violence is widely prevalent, but has remained largely invisible in the public domain. Presently, where a woman is visited with cruelty by her husband or his relatives is an offence under section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.

With a view to providing a remedy under the civil law, which is intended to preserve the family and at the same time provide protection to victims of domestic violence, a legislation is being proposed. The main features as contained in the Bill are as follows :-

- i) it is being provided that any conduct of relative of the victim, which subjects her to habitual assault, or makes her life miserable, or injures or harms, or forces her to lead an immoral life would constitute domestic violence;
- ii) the Judicial Magistrate of the first class or the Metropolitan magistrate may take the cognizance of domestic violence and pass a protection order requiring the relative of the woman to refrain from committing an act of domestic violence, or pay monetary relief which is deemed fit in the circumstances or pass any other direction as the Magistrate may consider just;
- iii) the Magistrate may even require as an interim and urgent measure from the relative of the woman in question to execute a bond, with or without sureties, for maintaining domestic peace;

- iv) the violation by the relative of the order made by the Magistrate would constitute an offence punishable with imprisonment up to one year, or with fine, or with both;
- v) it is being proposed to set up an institution of Protection Officer to help the victims of domestic violence in making an application to the Magistrate and in availing of her other legal rights;
- vi) a provision is being made for the appointment of Protection Officers by State Governments and they shall possess such qualifications as may be prescribed by the Central Government; and
- vii) Protection Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860, and if he fails or refuses to discharge the duties as directed by the Magistrate, his act shall amount to an offence punishable with imprisonment up to one year, or with fine, or with both.

Definition of Child Marriage Restraint Act, 1929— In this Act, unless there is anything repugnant in the subject or context: -

- (a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age ;
- (b) “child marriage” means a marriage to which either of the contracting parties is a child;
- (c) “contracting party” to a marriage means either of the parties whose marriage is or is about to be thereby solemnised ; and
- (d) “minor” means a person of either sex who is under eighteen years of age.

Trafficking — The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol) that was adopted in the year 2000 and came into force in December 2003.

Trafficking and commercial sexual exploitation of women & children is a fundamental violation of the rights of women and children. The social, physical, psychological and moral consequences of commercial sexual exploitation on women and child victims are serious, life-long and even life threatening.

The Right against exploitation is a fundamental right guaranteed by the Constitution of India. Under Article 23, 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 the law.

The Immoral Traffic (Prevention) Act, 1956 (ITPA) supplemented by the Indian Penal Code (IPC) prohibits trafficking in human beings including children and lays down severe penalties.

Under Section 5 of the ITP Act procuring, inducing or taking a child or a minor for the sake of prostitution is punishable with rigorous imprisonment for a term of not less than seven years, but which may extend to life. Under Section 6 where a child is found with a person in a brothel, there is a presumption of guilt for detaining the child on the person and he shall be punishable with imprisonment. Under Section 7 where a person commits the offence of prostitution in respect of a child or minor, he shall be punishable with imprisonment for not less than seven years or for life for a term which may extend to 10 years and fine.

The Juvenile Justice Act, 2000 provides for the care, protection, treatment and rehabilitation of neglected or delinquent juveniles including girls. The enforcement of the ITPA, IPC and the Juvenile Act is the responsibility of the State Governments. This has been further amended and new Act “The Juvenile Justice (Care and Protection of Children Amendment Act 2006)” has been enacted. (*Annexure 3 and 4*)

The Ministry of Law and Justice has come up with the “Commission for Protection of Child Rights Act 2005”. The rules of same Act have also been framed. An Act provide for the Constitution of a National Commissions State. Commissions for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against Children or of violation of child rights and for matters connected therewith or incidental thereto. (*Annexure—5 and 6*). The National Commission for Protection of Children’s Rights has been Constituted with Smt. Shanta Sinha, as Chairpersons and four other members.

In *Madhu Kishwar & others v. State of Bihar & others* (1996) 5 SCC 125 the public interest petition challenged the customary law operating in the Bihar State and other parts of the country excluding tribal women from inheritance of land or property belonging to father, husband, mother and conferment of right to inheritance to the male heirs or lineal descendants on grounds of sex discrimination. The contention of the Petitioner was there is no recognition of the fact: that the tribal women toil; share with men equally the daily sweat, troubles and tribulations in agricultural operations and family management. It was alleged that even usufructuary rights conferred on a widow or an unmarried daughter become illusory due to diverse pressures brought to bear brunt at the behest of lineal descendants or their extermination. Even married or unmarried daughters are excluded from inheritance, when they are subjected to adultery by non-tribals; they are denuded of the right to enjoy the property of her father or deceased husband for life. The widow on remarriage is denied inherited property of her former husband. They elaborated further by narrating several incidents in which the women were either forced to give up their life interest or became target of violent attacks or murdered. Therefore, the discrimination based on the customary law of inheritance was challenged as being unconstitutional, unjust, unfair and illegal.

In the judgment in this case the Supreme Court of India laid down some important principles to uphold the rights of inheritance of the tribal women, basing its verdict on the broad philosophy of the Indian Constitution and said:

“The public policy and Constitutional philosophy envisaged under Articles 38, 39, 46 and 15(1) & (3) and 14 is to accord social and economic democracy to women as assured in the Preamble of the Constitution. They constitute core foundation for economic empowerment and social justice to women for stability of political democracy. In other words, they frown upon gender discrimination and aim at elimination of obstacles to enjoy social, economic, political and cultural rights on equal footing.”

Accordingly, it was held that the tribal women would succeed the estate of their parent, brother, husband, as heirs by intestate succession and inherit the property with equal share with male heir with absolute rights as per the general principles of Hindu Succession Act, 1956, as amended and interpreted by the Court and equally of the Indian Succession Act to tribal Christian.

9. SCOPE FOR DISTRICT OFFICERS

Custodial Justice for Women

- 9.1 While women have been provided all kinds of Rights under the Constitution and legal safeguards have been provided, we still find the woman marginalized, outside the mainstream, deprived of her rights.
- 9.2 The District officers are the cutting edge level, the pivot on whom hinges implementation and coordination of all programmes of Government. Therefore, listed are some issues, which, though provided for already, are observed in the breach, where the District Officers can ensure implementation and play the role of a catalyst and mobiliser. These are based on recommendations made by women's organizations, National Commission for Women, and other institutions at various fora.
- 9.3 District Officers should ensure, that Women are not arrested between sun set and sun rise and shall not be arrestee except in the presence of a women.
- 9.4 In all cases of bailable offences, bail on her bond shall be granted forthwith by the police themselves. As far as possible, in non-bailable cases also, bail should be granted unless special circumstances warrant a different course, in which case, the arrested women shall be remanded to judicial custody with utmost expedition.
- 9.5 On arrest, the police should immediately obtain from the arrestee the name of a relative or friend to whom the intimation of her arrest should be promptly given.
- 9.6 If considerations of arrestee's own safety and freedom from ensnarement by anti-social elements, demand detention in public institutions, bail shall be refused to the women in her own interest, unless she specifically States her willingness to be thus released even after being alerted to the above considerations.
- 9.7 The person of a woman shall not be searched except by a woman duly authorised by law in a manner strictly in accordance with the requirement of decency. Whether in custody or in transit, the arrestee

woman must always be guarded by a woman police or a female surrogate. While escorting, a relative may be permitted to accompany the female arrestee.

- 9.8 Whenever a woman is to be examined by the police or other investigative agency as a witness it should be done only at her residence. Nor should she be summoned to the police or investigative station unless she expresses her preference to be examined in the station.
- 9.9 No female prisoner shall be liable to any form of corporal punishment or use of handcuffs, fetters or isolation as a form of disciplining.
- 9.10 When women are examined in Court as accused or as witnesses, due courtesy and decency shall be shown. If circumstances so warrant in the interest of modesty and privacy of women, the trial may be held in camera or the women may be examined on commission through women advocates.

II. Exclusive Custody For Women

- 9.11 Separated space for female arrestees in every police lock-up and complete segregation of women prisoners in jail and other custody should be maintained.
- 9.12 Such custody shall only be in a separate police lock-up for women and, where such facility is not available, in a special home or institution designated under any law for the time being in force to receive women. At no time shall a woman arrestee be left unguarded by a woman guard or surrogate.
- 9.13 Prisoner's Councils or Bandi Sabhas should be set up for every prison to help airing prisoner's grievances and difficulties.
- 9.14 Socio-legal counselling cells should be set up in every prison for women inmates.
- 9.15 In exceptional circumstances, when a woman arrestee is taken to a police lock-up, the police should immediately give intimation to the nearest Legal Aid Committee or recognized legal services body which must render all necessary legal services at State expense.

- 9.16 Legal aid and counselling through professional bodies, assisted by para-legal and social workers, should be institutionalized for all prisons, and custodial institutions. Law schools and schools of social work should be encouraged and permitted to render socio-legal counselling service to the inmates.
- 9.17 Released Prisoner's Aid Societies should operate in every district to provide a single-window assistance towards habilitation and mainstreaming of the released women prisoners.
- 9.18 Before a female prisoner is released, her relatives shall be informed, and where no relative exists or shows up, the released prisoner shall be sent with a female escort to her destination.
- 9.19 Right to legal aid in criminal proceedings is a fundamental right. In the case of women, free legal aid shall be given from the time of arrest and Magistrate shall ensure that adequate legal services are provided.
- 9.20 Magistrate shall inform women, when first produced, of their right to legal aid at State expense and direct the provision of necessary services. They shall also explain the nature and scope of the proceedings against her and her rights in it.
- 9.21 Appropriate assistance shall be rendered to every female prisoner on release, whether during or after completion of sentence. For this purpose, a centre for assisting released prisoner shall be set up to service a cluster of prisons and custodial institutions on an area-wise basis. Even without the center, the prison authorities shall take necessary steps to arrange the rehabilitation of the released prisoner either through the family, the relief centre or a voluntary organization.
- 9.22 After-care and short-stay homes for women prisoners may be established in every District to serve those prisoners who are homeless or rejected by their families.

Children accompanying women in police custody/jail custody

- 9.23 When arresting a woman, proper arrangements for the protection and care of her children shall be the responsibility of the State. Children who need to be kept in custody jointly with their mothers

shall enjoy rights justly needed, while in custody, in terms of food, living space, health, clothing and visitation.

- 9.24 In the disposition of women to custody or otherwise the Magistrate must enquire and direct that suitable arrangements for the welfare of her children be made in a manner that protects the rights of children.
- 9.25 Expectant mothers in custody shall be shown special consideration by way of medical and nutritional care, education in child rearing and mother craft.

Women's Assistance Police Unit

- 9.26 Women's Assistance Police Unit containing cadre of men & women police with specific task of crime prevention work and assistance to women should be set up in each district.
- 9.27 .In endemic female crime areas, or wherever otherwise desirable, exclusive police stations or booths and counters within police stations, shall be set up to deal with women needing protection of, or coming in conflict with, law. Such booths and Counselling Centres shall be managed by an integrated cadre of men and women, specially trained and sensitized to deal with women, and under the aegis of an NGO.
- 9.28 Setting up of Family Counselling Centres and Short Stay Homes in high supply areas to provide counseling and guidance to single women, which is a high risk group, who are deserted, widowed, divorced, socially ostracized, to parents of missing girls, illegally adapted girls, street children, child brides, bonded labourers etc., so that they get shelter and counseling.
- 9.29 Formation of Committees for the Protection of Rights of women and children at District level, block level and Mohalla/Village/ Panchayat level with membership of the public. These committees may be vested with the function of monitoring the registration and investigation of crimes against women, expediting measures for the defence of the rights of women and children, providing assistance to women for legal-aid and/or assisting women to defend themselves against criminal proceedings.
- 9.30 Formation of Watchdog Committees, Community Surveillance Groups, Neighbourhood Policing for mobilizing all sections of society

to counter crime against girls and women. Students and youths in neighbourhood and campuses should take responsibility for safety of girl students in the campus, prevent violation of women's rights within the campus and protect and defend victims of such violation.

- 9.31 Village Saksharata Samities, Neighbourhood Development Committees, Community Development Societies, Gram Mahila Mandals, Balika Mandals, Yuvak Mandals and the Gram Panchayats may be mobilized and activated to provide support services or assistance for the care and protection of women and children.
- 9.32 The local administration in the high areas of supply and (red light) areas, where brothels are located, would be made responsible for ensuring the safety and security of victims by taking speedy and effective action on reports about trafficking and commercial sexual exploitation. Heads of Schools, of institutions and of work places would be made aware of the risks of trafficking and their services enlisted to prevent such occurrence in their institution/work place.
- 9.33 Migrant girls and women in search of employment, who have run away or are driven away from their home or those who are lost, are in the danger of falling prey to commercial sexual exploitation. Contact centres should be established in major cities near railway stations and bus stations to give guidance and information to women in need of temporary shelter about addresses of short stay homes, reception centres, shelter homes, etc.
- 9.34 Self defence training should be given as part of physical education to girl students, to enable them to develop self confidence and defend themselves from being harassed, trafficked or exploited.
- 9.35 Training and programmes of activities for Youth organizations and local bodies should include a strong component of gender sensitization and the role of gender in daily life.
- 9.36 Programmes of advocacy and information through the media, awareness generation camps, education work etc. would also sensitise citizens to the plight of women and child victims and the need to change social attitudes of stigmatizing them and their children.
- 9.37 Special modules of sensitization for probation officers, personnel manning homes, police officials, judicial officers, border police, health

personnel and NGOs towards the causes of commercial sexual exploitation and the situation of women & child victims would be prepared and used for training and orientation. Institutions like the National Institute of Social Defence and the proposed National & State Resource Centres for Women would be utilized for this purpose.

- 9.38 The Press Council of India and the broadcast media should be requested to adapt and strictly implement a code of conduct that protects the women/child victims right to anonymity and privacy, since these two factors are critical for their survival. Publishing of photographs and naming women arrestee, etc. should not be done, except with their written consent. Media should also highlight the exploited and victimized State of women & child victims, the fact that they have themselves become victims of AIDS due to contact with an infected male person and their role in the prevention of HIV infection.
- 9.39 Programmes for spreading legal literacy should be given greater assistance. Legal literacy components should be incorporated in all projects for human resource development and poverty alleviation in rural and urban areas.
- 9.40 Health cards could be issued to women and child victims ensuring free medical treatment, provision of adequate drugs and medications in Government institutions.
- 9.41 Health Care Centres could be set up, in or near red light areas, which would provide immunization, primary health care, first aid, health Tuberculosis/HIV/AIDS education, gynaecological care facilities, free contraception and counseling. The timings of these centres should be convenient to the women & child victims.
- 9.42 Unethical, illegal and uninformed medical testing of women & child victims for HIV/AIDS/STD etc., which tends to violate their rights, should not be encouraged.
- 9.43 Psychological health of the women and child victims as well as children of the women victims is endangered due to the circumstances of their exploitation. Psychological counseling services should be provided on a part time basis in the health care centres. This could be done under the Family Counselling Centres Scheme of CSWB with specially trained counselors.

- 9.44 Women victims suffering from terminal stages of AIDS would require separate shelter homes to be set up in major cities. NGOs and charitable organizations should be encouraged to set up such homes.
- 9.45 Women victims should be assisted for inclusion of their names in electoral rolls and to obtain electoral photo identify cards to help them exercise their franchise.
- 9.46 Women victims as women heading households, should be given ration cards under the Targetted Public Distribution System as a separate eligible category.
- 9.47 Since shelter is the main requirement for women victims, who wish to be reintegrated in society, they should get preferential allotment of sites and houses reserved for Economically Weaker Sections in urban and rural areas, under schemes of the Central Government like Indira Awas Yojana and schemes of the State Government as well as housing projects of local bodies and development authorities.
- 9.48 Girls and women subjected to violence should be provided well funded shelters and relief support as well as medical, psychological and other counseling services and free of cost. Legal aid, where it is needed, as well as appropriate assistance should be provided to enable them to find means of subsistence.
- 9.49 Special Short Stay homes which are set up near red light areas should allow women victims who are pregnant to stay there during pregnancy and after delivery. Existing Short Stay Homes will set apart some seats for women victims of sexual exploitation.
- 9.50 Women victims should be guided & assisted to form self help groups to take up, among other activities, savings and credit activity. Once they have gained sufficient experience and accumulated savings, they could be assisted by RMK, banks, cooperative banks etc. for micro credit for income generating activities. Durbar Mahila Samanwaya Committee is a good example to be followed.
- 9.51 Women Development Corporations, NGOs and other agencies would be encouraged to take up training cum employment/ production projects in both traditional and non-traditional trades in

red light areas and high supply areas to train women & child victims and children of victims. Assistance could be provided for purchase of assets, infrastructure, raw material supply, technical inputs & marketing tie ups. Such projects could be assisted under existing schemes of the Central & State Governments.

- 9.52 In all projects assisted by Governmental agencies, by NGOs and the private sector, women victims who are rescued should be given employment to the extent of at least 50% of the total number of full and part time staff.
- 9.53 The public and private sector should be encouraged to take part in the rehabilitation of rescued women and child victims through providing income generating training and employment/self employment opportunities for them including piece-work, sub contracting, assembly units.
- 9.54 Government and local bodies could appropriately facilitate NGOs to locate night shelters and Child Development & Care Centres in or near red light areas.
- 9.55 Women's organizations should be involved in monitoring of remand, protective and other homes.
- 9.56 Local communities, NGOs and other interested individuals could be mobilized and encouraged to be involved in identification, rescue and rehabilitation of women and child victims.
- 9.57 A consultative process should be followed in preparing plans and programmes for the rescue, rehabilitation and reintegration of women and child victims, with victims and with organizations working for their benefit.
- 9.58 In implementing the plans, programmes & projects for the welfare and development of women and child victims, the participation of elected local bodies, NGOs, Community Based Organisations, should be ensured.

Recommendations on Social Welfare Measures

- 9.59 Grants should be committed to eligible institutions for a minimum period of three years, through it may be released on an Yearly Basis. Some flexibility on heads of expenditure should be available to

institutions without having to go to the sanctioning authority, which may withdraw grant on the basis of periodical performance evaluation.

- 9.60 An evaluative profile based on correctional and rehabilitative accomplishments rather than money spent should be evolved or national application to all government aided correctional institutions. The system suitably adapted should be applied to mental health custodial institutions as well.
- 9.61 **SANSTHA SABHAS** or Inmates Councils should be set up to democratize the administration, streamline participative arrangement and to improve custodial environment in these institutions.
- 9.62 An escort corps with necessary Police Powers should be developed to assist these institutions and to operate under the jurisdiction of social welfare departments of the State. This corps will meet the escorting requirements of inmates of these institutions.
- 9.63 People's participation being an essential value in democratic, custodial justice, the committee recommended a variety of organizational and structural innovations at the State and Central levels as a necessary follow-up of the action proposed. This is desirable equally in the preventive programmes as well.
- 9.64 The main input from people and the voluntary organizations is invigilation. For that role to be effective, there must be access for recognized individuals to custodial institutions along with right to information, access to records and interview facility with willing inmates.
- 9.65 Selection of visitors to institutions must be based on past performance, commitment and willingness to devote time and effort. Women should form the dominant group among such visitors. Selection must also represent a broad mix of all relevant disciplines and professions. Setting up of such Boards of Visitors must be mandatory for all custodial institutions such as prison, Police lock-ups, Remand Homes, social Welfare institutions and mental health hospitals. The approach of the Visitors ought to be co-operative and constructive rather than adversarial.

- 9.66 The younger generation in colleges and Universities, particularly in law schools and social work schools, provide the ideal material for developing structures for invigilation and audit of custodial institutions. Socio-legal cells in such institutions can be jointly run by social work and law schools.
- 9.67 Public participation should also function as a motivating force for the functionaries of the system. The new social philosophy and scientific knowledge for custodial treatment and justice can be injected by public-spirited volunteers in appropriate doses to the officials and their subordinates. Women's groups have a special responsibility for activating change, influencing the directions and imparting the education needed for dignity and status of women in custody.
- 9.68 The mentally ill, separated/divorced women constitute a vulnerable group in society who, sans adequate protective systems, could become subjects of physical, emotional, sexual abuse and in the process suffer considerable neglect. Therefore, they must be the beneficiaries of welfare programmes designed to respond to their special needs.
- 9.69 Setting up at-least a few centres for such women who have no protective umbrella, where they can also be trained in some vocation.
- 9.70 Some existing centres for disadvantaged women should be sensitized to this problem and requested to include this group among their residents.
- 9.71 The increasing trend of crime against women can be arrested only through a package consisting inter-alia a concerted campaign with social support, legal safeguards and protection and progressive reforms in the criminal justice administration, apart from socio-economic development programmes and sensitization of all concerned on women's issues.
- 9.72 The forensic examination of rape victims be made available within 72 hours of the occurrence of the crime.
- 9.73 Strict instructions be issued to all hospitals that in rape cases the observations of doctors must be precise and as far as possible, conclusive and compatible with the facts on record. Vague and imprecise opinions often help rapists during the trial proceedings in

the Court. Whenever it is found that the report is vague and inconclusive, the possibility of a second examination should not be ruled out.

- 9.74 Examination of rape victims must always be conducted by women doctors to give greater confidence and a feeling of 'comfort' to the victims.
- 9.75 The District Officers, as a first step in all rape cases, act as a bridge between the victim and the administration and ensure that, while the Police investigated for speedy justice, the priority should be give to emotional support to the victim by providing the much needed counseling.
- 9.76 Legal awareness camps should be held in sensitive areas to apprise the women about their legal rights and the legal remedies available to them and the steps that can and ought to be taken by them, even if the police or State officials are apathetic.
- 9.77 Ugly publicity, tormenting tensions, exorbitant expenses, humiliating cross-examinations and the unbearable suspense and endless waiting, could be the reasons responsible for offenders not being scared of the law in this regard (Dowry Prohibition Act). A change in the mindset of people with economic independence of women is needed, without which neither laws, legislations, police nor jail can solve the menace.
- 9.78 Dowry, one of the main causes of atrocities on women, and laws alone are not enough to deal with them; the society has a distinct reformative role.
- 9.79 The Family Counselling Centre, Jabalpur is a rare example in which local administration, the judiciary and eminent citizens were cooperating in solving family disputes, which should serve as a model for the entire country.
- 9.80 Role-models should be encouraged in society, so that new attitudes could be fostered in a much more effective manner.
- 9.81 The deserted women should be given legal rights as well as old-age pension.

- 9.82 Employment opportunities and the availability of health facilities for tribal women in remote parts of the country were not adequate. There was also a general need to encourage traditional systems of medicines by providing facilities in the health sector.
- 9.83 There was lack of awareness amongst women and the NGOs regarding the facilities being provided by the government for minority women. Efforts to disseminate information to all sections of people must be made.
- 9.84 There are several schemes of the Government – both at the Central and State levels – run by various State agencies for the socio-economic advancement of Minority women. Information about them is not available at the ground level. It is essential that this situation should be corrected and information about such programmes/schemes, whether run by the Central Government or the State Government, should be compiled at one place made available to NGOs and disseminated widely.
- 9.85 The reason for widows getting isolated and leaving homes is their utter and cruel marginalisation from the mainstream, and the fact that many do not consider them as a target group when addressing the problems of women. Awareness programmes need to be launched so that widows know their rights.

Maternity and Child Care Services

- 9.86 The major concerns of special needs groups such as sexually exploited women and their children; children in institutions specially those awaiting adaptation; unwed mother/single parent and adolescent girls.
- 9.87 Awareness, especially on the importance of compulsory registration of marriages, emphasizing that education was an important means for women's empowerment, must be spread through all modes of channels.

Bonded Labour

I Concept and Definition

Labour implies service. Bonded labour implies service which is rendered under forced or compulsory conditions and which arise out of mortgaging oneself to another for some economic consideration. Such consideration may be loan / debt / advance or any other. A bonded labourer implies one who renders bonded service, i.e. service arising out of certain obligations flowing from economic considerations like loan / debt / advance. The bonded labour system represents essentially the relationship between a creditor and a debtor. When a debtor incurs loan / debt / advance from the creditor, he undertakes to mortgage his services or the services of any of his family members to the creditor for a specified or for an unspecified period with certain consequences, such as:

- a. Service without wages or with nominal wages (i.e. without minimum wages fixed by the appropriate government, or wages lower than the market wages for the same or similar nature of work in the locality).
- b. Denial of choice of alternative avenues of employment.
- c. Denial of the right to move freely as a citizen in any part of the territory of India.
- d. Denial of the right to sell ones labour or the product of ones labour at market value.

These consequences may exist individually or collectively. It is, however, not at all necessary that all the 4 consequences should be together in existence to prove the existence of bonded labour system. Existence of creditor-debtor relationship with one of the consequences as above is enough to determine the existence of bonded labour system.

This is the quintessential provision relating to definition of bonded labour system, as contained in Section 2 (g) of the Bonded Labour System (Abolition) Act.

In April, 1985 an explanation was added by way of amendment of Bonded Labour System (Abolition) Act that contract and migrant labourers may also be brought under the purview of the bonded labour system, if they fulfilled the ingredients of that system as defined in Section 2 (g) of the Act.

In the historic judgement delivered on 16.12.1983 on the Writ Petition No.2135 (filed by Swami Agnivesh of Bandhua Mukti Morcha in February, 1982), Justice Sri. P.N.Bhagwati, former Chief Justice of the Supreme Court has given a very broad, liberal and expansive interpretation of the definition of 'bonded labour system'. According to this interpretation, it is not necessary to prove beyond doubt the element of loan / debt / advance in the creditor-debtor relationship. Such an element can always be implied or assumed. This is on account of the fact that the creditor and the debtor represent two diametrically opposite sections of the society. Traditionally, the debtor is poor, resource less and in need of defence, whereas the creditor is rich, resourceful and dominant. Thus, their relationship is an unequal exchange relationship. If the debtor is rendering certain services to the creditor without any wage or with nominal wage, it is to be presumed that he is doing it not out of any charity but out of some economic consideration. It is on account of this that it is not necessary to prove beyond doubt the element of loan / debt / advance. The judgement of the Supreme Court dated 16.12.1983 and the interpretation of the definition of 'bonded labour system' contained in that judgement is law and has a binding effect on all concerned under Art. 141 of the Constitution of India read with Art 144.

II Constitutional and Legal Provisions

The Constitution of India guarantees to all its citizens social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity, fraternity, assuring the dignity of the individual and the unity and integrity of the nation.

It prohibits forced labour.

Article 23 of the Constitution reads as under :

- (1) Traffic in human beings and beggar 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.

There are several provisions in the Constitution, which are in consonance with the spirit of Article 23. These are article 19 (right to freedom), article 21 (protection of life and personal liberty), article 24 (prohibition of employment of children in factories, mines and other forms of hazardous work), article 38 (the State to secure a social order for the promotion of the welfare of the people).

The scope and purpose of article 23 came in for judicial interpretation by the Supreme Court of India in a judgement (AIR 1982 Supreme Court 1473) dated 18.09.2002 while disposing of the Writ Petition No.8143 of 1981. According to this interpretation, it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by Article 23 if it is forced labour i.e. service has been rendered by force or compulsion. Article 23 strikes at all forms of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service.

International covenants/agreements to which India is signatory

Government of India ratified the ILO Convention No. 29 of 1930 in 1954 and ILO Convention No.105 of 1957 in 1999. However, long before these initiatives and both before and after independence several initiatives were taken at the Central and State level for enactment of laws on the subject such as :

Legal provisions – Central and State

Central level (before independence)

1. The Abolition of Slavery Act, 1843 (Act No. V of 1843)
2. The Breach of Contract Act, 1859 (Act No. XIII of 1859)
3. The Usurious Loans Act, 1918 (Act No.10 of 1918)
4. The Children (Pledging of Labour) Act, 1933 (Act No.2 of 1933).

Provincial level (before independence)

1. The Andhra Pradesh (Andhra Area) Compulsory Labour Act, 1858 (Act No.1 of 1858).
2. The Andhra Pradesh (Telangana Area) Bhagelas Contract Act, 1853 F.
3. Madras – Compulsory Labour for irrigation works, 1858 (Act No.1 of 1858).

Provincial level (after independence)

1. Orissa Debt Bondage (Abolition) Regulation, 1948
2. Rajasthan Sagri System (Abolition) Act, 1961
3. Kerala Bonded Labour System (Abolition) Act, 1975.

While at the provincial level a number of isolated legislative efforts had been made, actuated by a host of varying considerations, the laws so enacted did not deal with the issues of identification, release and rehabilitation of bonded labourers in their entirety for the whole country. Following the Constitutional directive (Article 23) and in the wake of the obligation emanating from ratification of ILO Convention No.29 in November, 1954, the need for a national legislation had been felt long since. The process was facilitated by declaration of a State of National Emergency on 25.06.1975 and announcement of a 20 point economic programme for national reconstruction on 01.07.1975. Item No.5 of the programme read thus: 'Bonded Labour System is abolished and shall be declared illegal wherever it exists'. The developments at the Central level reflective of the political will, commitment and determination proceeded with a rapid pace, starting with a Labour Ministers' Conference on 19.07.1975 and followed by an exercise on law making, first through an Ordinance and latter converted to an Act. The Bonded Labour System (Abolition) Ordinance was promulgated by the President of India on 24.10.1975 and the Bonded Labour System (Abolition) Act was passed by both Houses of Parliament on 09.02.1976, but given retrospective effect from 24.10.1975, the day the Ordinance had been promulgated.

The Bonded Labour System (Abolition) Act has a Statement of Objects and Reason, 7 chapters and 24 sections as its substantive content. It can be broadly divided into the following :

- Definition
- Consequences which follow on the date of commencement of the Act.

- Relief to the aggrieved
- Structure of implementing authorities
- Legal and penal provisions.

These are analysed seriatim as below :

1. Definition

The Act defines advance, agreement, ascendant or descendant, bonded debt, bonded labour, bonded labourer, bonded labour system, family and nominal wages.

2. Consequences which follow on the date of commencement of the Act

The following consequences follow:

- With abolition of bonded labour system w.e.f 24.10.1975, bonded labourers stand freed and discharged from any obligation to render bonded labour.
- All customs, traditions, contracts, agreements or instruments by virtue of which a person or any member of the family dependent on such person is required to render bonded labour shall be void.
- Every obligation of a bonded labourer to repay any bonded debt, shall be deemed to have been extinguished.
- No suit or any other proceeding shall lie in any civil Court or any other authority for recovery of any bonded debt.
- Every decree or order for recovery of bonded debt not fully satisfied before commencement of the Act shall be deemed to have been fully satisfied.
- Every attachment for the recovery of bonded debt shall stand vacated.
- Any movable property of the bonded labourer, if seized and removed from his custody, shall be restored to him.
- Any property possession which was forcibly taken over by the creditor shall be restored to the possession of the person from whom seized.
- Any suit or proceeding for the enforcement of any obligation under the bonded labour system shall stand dismissed.
- Every bonded labourer who has been detained in Civil Prison shall be released from detention forthwith.

- Any property of a bonded labourer under mortgage, charge, lien or any other encumbrance, if related to public debt, shall stand freed and discharged from such mortgage.
- Freed bonded labourers shall not be evicted from the homestead land.

3. Relief to the aggrieved:

- The aggrieved person may apply to the prescribed authority for restoration of possession of property (if it is not restored within 80 days from the date of commencement of the Act).
- The prescribed authority may pass an instant order directing the creditor to restore such property to the possession of the aggrieved.
- Any order by the prescribed authority to this effect shall be deemed to be an order by a Civil Court.
- The aggrieved party may apply to have the sale of his property set aside, if the property was sold before commencement of the Act.
- If the mortgaged property is not restored to the possession of the bonded labourer or there is some delay, the bonded labourer shall be entitled to recover such profits as may be determined by the Civil Court.

4. Structure of implementing authority:

The law provides for the duties and responsibilities of the District Magistrate and every officer specified by him. They have to ensure that the provisions of the Act are properly carried out (this has been dealt at length in Chapter-VII). The law also provides for the constitution of Vigilance Committees at the district and sub-divisional level, duties and responsibilities of such Committees in the area of identification and rehabilitation of freed bonded labourers.

5. Legal and Penal Provisions:

The Act provides for punishment for compelling any person to render any bonded labour. It also provides for (a) punishment for advancement of bonded debt (b) punishment for extracting bonded labour system (c) punishment for omission or failure to restore possession of property of bonded labourers and (d) abatement. The Act provides for appointment of Executive Magistrates for trial of all such offences and also provides for vesting them with powers of a judicial magistrate, first or second class for summary trial of all offences under the Act. The law also bars the jurisdiction

of Civil Courts in respect of any matter to which the provisions of the Act are applicable.

III Judicial Interpretations

Article 32 of the Constitution of India confers on every Indian Citizen the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights. Similarly, every High Court has power under Article 226 of the Constitution within its jurisdiction to issue to any person or authority within that jurisdiction orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warrants and certiorari for the enforcement of fundamental rights.

Under the Anglo-saxon system of jurisprudence, it is only a person to whom a legal injury is caused has a locus standi to move the Court for judicial redress; no one else can do so on his behalf. This doctrine effectively blocked the concerns of the poor, deprived and disadvantaged sections of the society being brought before the Courts for judicial redress for the wrongs caused to them.

In a seminal decision, the Supreme Court reformed its procedural and jurisdictional rules relating to locus standi making it easier for social action groups to bring social action litigation on behalf of the poor. It held that any member of the public or social action group acting bonafide in a situation of denial of Constitutional or legal rights to the poor can approach the Court for judicial redress, and this can be done by addressing a letter even through a post card to a judge of the Court.

This is how the doors of the Courts were thrown open to a large new class of litigants. Through such Public Interest Litigation (PIL) not only have the rights of the poor and the deprived been vindicated and timely Constitutional and legal relief provided, but a very broad, liberal and expansive interpretation of the law has been made possible without changing the framework of the law.

Several important judgements have been pronounced at the end of such public interest litigations admitted as a Writ Petition by the Supreme Court under Article 32 of the Constitution. Clear, precise and authoritative directions have been issued by the apex Court to competent authorities responsible for the enforcement of the provisions of the Bonded Labour System (Abolition) Act, 1976. Names of the cases in which these judgements were delivered and a gist of the directions contained in them are listed as under :

1. **AIR 1984 Supreme Court 802**
P.N.Bhagwati, R.S.Pathak and Amarendranath Sen JJ
Writ Petition No.2135 of 1982
Bandhua Mukti Morcha Vs. Union of India and others
Date of judgement - 16.12.1983

Gist of important directions:

- Whenever it is shown that a labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration and he is, therefore, a bonded labourer entitled to the benefits under the law.
- Government of Haryana should without any further delay and within 6 weeks from 16.12.1983 constitute a Vigilance Committee in each sub-division of a district.
- Government of Haryana will instruct the District Magistrates of all the districts in the State to take up the work of identification of bonded labour as one of their top priority tasks.
- The State government, the Vigilance Committees and the District Magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of law.
- There is no substance in the contention of the State government that the workmen in the stone quarries and crushers might be providing forced labour, but they were not working under bonded labour system.
- The State government should draw up within 3 months from 16.12.1983 a scheme for rehabilitation of freed bonded labourers in the light of the guidelines sent by Secretary, Ministry of Labour on 02.09.1982.
- The State government should adopt a non-formal and unorthodox approach in implementation of the law which is an important instrument for ensuring human dignity.
- The Central and State governments will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen employed in the stone quarries and stone crushers and not through middlemen.

2. **AIR 1984 Supreme Court 1099**
P.N.Bhagwati and Amarendranath Sen JJ
Writ Petition (Criminal) No.1263 of 1982
Neerja Chaudhury Vs. State of Madhya Pradesh
Date of judgement - 08.05.1984

Gist of important directions:

- Rehabilitation must follow in the quick footsteps of identification and release. If not the released bonded labourers would be driven by poverty, helplessness and despair and plunge into serfdom once again.
- Social action groups operating at the grass root level should be fully involved with the task of identification and release of bonded labourers.
- The district and sub-divisional level Vigilance Committees should be reorganized and activated. Their meetings should be held at more frequent intervals than now.
- Officers who are posted at different levels to deal with the problem of bonded labour should be properly trained and sensitized, so that they may develop a sense of involvement with the misery and suffering of the poor.
- Officers, who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition, should be encouraged and their efforts commended by way of suitable public recognition.
- An intensive survey of the areas, which are traditionally prone to debt bondage, should be undertaken by the Vigilance Committees with the assistance of social action groups operating in such areas.
- The pace and progress of schemes under implementation must be evaluated. Such evaluation should be target group oriented.

3.1987 (Supplementary) Supreme Court cases 141
P.N.Bhagawati, CJ and K.N.Singh J
Santhal Pargana Antyodaya Ashram Versus State of Bihar
and Others
Writ Petition No.13450 of 1983
Date of judgement - 19.12.1986

Gist of main directions:

- All persons who have been found to be bonded (2515) by K.B.Saxena Committee should be released within 2 weeks from the date of the order.
- The Collector should issue a release certificate to each of the persons so released.
- Each of the released bonded labourers shall be paid a sum of Rs. 3000-00 by way of interim relief.
- Such payment shall be made in the following manner:
 - Rs. 500-00 simultaneously with release
 - Rs. 2500-00 within 2 weeks from the date of release.
- The released bonded labourers (2515) must be rehabilitated by the State government on a permanent basis.
- Implementation of the rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court.
- The State government will submit within 2 weeks from the date of receipt of the order a report setting out the permanent rehabilitation programme formulated by them for scrutiny and approval by the Court.
- Other recommendations in K.B.Saxena Committee report shall be implemented as far as possible within one month from the date of receipt of order of the Court.

IV (a) Identification of Bonded Labour System:

There are 2 aspects in the entire process of identification. One is the machinery and second is the methodology to be followed. The Bonded Labour System (Abolition) Act speaks of Vigilance Committees as the

machinery responsible for identification, but it has not laid down any precise methodology for identification. Sri.S.R.Shankaran (who retired as Secretary, Ministry of Rural Development, Government of India in October, 1992) had conceived one such methodology, when he was Principal Secretary, Social Welfare, Government of Andhra Pradesh in 1976-77, in a very imaginative and telling form and had circulated it to Collectors of all districts in Andhra Pradesh for their guidance.

The questionnaire referred to above comprises a few simple and leading questions to be addressed to one or a group of agricultural labourers by an officer or an investigating team of officers or a social worker, as the case may be, in the harijan basti of a village. Questions will have to be put in a simple and intelligible language in the most informal and unorthodox fashion so that the answers which are received provide some clue to the existence of the bonded labour system.

In its true sense and ultimate analysis, it is the discovery of a non-being, an exile of civilization who tends to withdraw from the scene at the very sight of officials approaching him, thinking that they are agents of the landlord or moneylender or quarry contractor who have come to extract something out of him. Considerable time and effort will be needed to take him into confidence, to assure and reassure him that the whole exercise is meant for his wellbeing only. As these persons perceive naturally the identity of interests between them and the investigator, the artificial barriers of region, origin and language will disappear, they will open up like sluice gates and will come forward to answer the questions with freedom and spontaneity.

Past experience, however, has shown that a very formal, stereotyped and routinised approach has been adopted for identification of bonded labour system. The task of identification has been left mostly to the lower echelons of bureaucracy (Tahasildar, Naib-Tahasildar, Revenue Supervisor, Revenue Inspector etc.). There are examples, which go to show that these functionaries put the landlord / moneylender (the bonded labour keeper) on a high rostrum, the landless agricultural labourers (bonded labourers) on the floor and put a lot of inconvenient questions to the latter. It is quite unlikely that such questions would evoke any meaningful response.

Despite the limitations and odd practices as above, it is possible to overcome them with patience and resilience backed by a humane and sensitive handling of the situation. Household surveys or establishment-wise surveys can be conducted in a planned and coordinated manner. A few stages in the process of conducting such a survey are: -

- design of a simple questionnaire
- orientation and sensitization of team members on the methodology of the survey through a workshop
- collection, compilation and analysis of data and drawing of conclusions.

Simultaneously, and by an order of immediate priority, pockets in different parts of India which are dry, drought prone and poverty stricken and which are also prone to migration, could be identified and surveys undertaken on a selective basis by the Vigilance Committees of those districts / sub-divisions in collaboration with a team of good NGOs and student volunteers.

The services of special rapporteurs of the National Human Rights Commission (NHRC) as well as those of the Socio-legal Investigating Commissioners, appointed by the Supreme Court (both past and present), should also be made use of in carrying out surveys on a larger scale.

IV (b) Release of bonded labourers from bondage:

It has been observed that hitherto a very formal, rigid and legalistic approach has been followed while releasing bonded labourers from the fetters of bondage. Every case of release of bonded labourers is tried by a formal process of trial by the Executive Magistrate appointed by the State government and vested with the powers of a Judicial Magistrate under section 21 of the Bonded Labour System (Abolition) Act. Such trial and recording of evidence in course of the trial under the Indian Evidence Act, 1872 is an endless process which can only be to the detriment of the bonded labourer. Such a process would be totally futile and, as the apex Court had observed in its judgement dated 16.12.1983 while allowing the writ petition No.2135 of 1982 (*Bandhua Mukti Morcha Vs Union of India & Others*). 'A bonded labourer can never stand up to the rigidity and tyranny of the legal process due to his / her poverty, ignorance, illiteracy, social and economic backwardness'. The only way out of this impasse would be adoption of a summary trial immediately on receipt of a report from the concerned agencies, so that identification and release could be simultaneous. This could also be the only practical solution to the problem of securing faster release.

There have been instances where a stand has been taken by the bureaucracy that a person may not be released from debt bondage and

rehabilitated until and unless the bonded labour keeper has been convicted. This is contrary to the spirit of the judgement of the Supreme Court in *Santhal Pargana Antyodaya Asram Vs State of Bihar* (1987 supplementary) Supreme Court cases 141, where the apex Court had clearly observed 'implementation of rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court'. Any resistance from a bonded labour keeper to the release of the bonded labourer must, therefore, be struck down as ultra virus of the provisions of the Constitution and the law and should not be allowed to stand on the way of release.

IV(c) Rehabilitation of freed bonded labourers:

Rehabilitation of freed bonded labourers is an extremely complex and difficult task. Past experience has show that freedom from bondage would be meaningful only when the uncertainty and insecurity associated with that freedom have been removed thorough productive and income generating schemes. Such schemes are not easily implementable for freed bonded labourers who are steeped in a world of pervasive ignorance, illiteracy, lack of skill and confidence arising out of years of servitude. This is what late Sri K.V. Raghunath Reddy, the then Labour Minister had clearly stated while introducing the Bonded Labour System (Abolition) Bill on 27.01.1976 in Parliament:

'He will not have inputs for production or any supply of credit. He will neither have any professional skill that would enable him to pursue an independent livelihood..... Even where installed in a profitable activity, he will have no income during the period of gestation. The bonded labourer, who is used to a world of domination and servitude, will not obviously be aware of his right. At times he may not even like to undergo the strenuous process of economic rehabilitation and may even prefer reversion to thralldom'.

Rehabilitation has two distinct components such as: (a) psychological rehabilitation (b) physical and economic rehabilitation. The two are closely interrelated. Physical and economic rehabilitation may in turn bring about psychological rehabilitation. There may at the same time be cases where due to a sense of mental depression arising out of years of bondage, no physical and economic rehabilitation will be possible without first bringing about psychological rehabilitation.

Psychological rehabilitation

The freed bonded labourer needs to be assured and reassured that he is first a human being, a free citizen, is entitled to earn a decent livelihood as any other human being and citizen and that, in time of need, he need not have to fall back upon the usurious money lenders, as alternative agencies are available to meet his need in a non-intrusive manner.

This is an extremely difficult and delicate task and has to be attended to with a lot of imagination and diligence. The provisions of the law, the role of Vigilance Committees, the various need based and development oriented poverty alleviation and rural employment programmes will have to be brought home to the freed bonded labourers. Demonstration of all pilot development schemes which are beneficial to the freed bonded labourers will have to be organized. In all programmes and activities meant for the poor and the deprived, the freed bonded labourers should be the focal point of attention. Special orientation programmes need to be organized for police, magistracy and development functionaries, so that traditional mindsets are replaced by positive attitudes and approaches which bring them closer to the target groups, which enable them to exercise the best possible option and discretion for the latter, who are often unable to exercise them and make them feel for the latter with a wave of empathy and sensitivity.

Physical and economic rehabilitation:

In order to be meaningful, physical and economic rehabilitation will have to be multi-dimensional. It should start with payment of subsistence allowance (lump sum) and proceed to allotment of house site and agricultural land, land development (thorough provision of irrigation, integrated watershed planning, management and development), provision of low cost dwelling units, provision of all inputs and back up services under agriculture (including horticulture) animal husbandry, dairy, poultry, piggery, fodder cultivation, facilitating easy access to credit for meeting ceremonial, consumption and development needs, training for acquiring new skills, refining, sharpening and upgrading existing skills, promoting traditional arts and crafts, provision of stable and durable avenues of productive employment, payment of need-based minimum wages, collection and processing of minor forest produce and procurement of the same at remunerative prices, ensuring health and medical care (including immunization of pregnant mothers and children in 0-3 age group), ensuring supply of essential commodities at controlled prices in an uninterrupted manner, providing free basic education to all children

of school going age of freed bonded labourers, protection of civil rights, etc.

After recognizing the limitations of various ongoing schemes and keeping in view the special needs of freed bonded labourers, the Planning Commission approved in May, 1978 the idea of having a centrally Sponsored Scheme. The contours of that scheme have undergone a sea change. The original per capita subsidy of Rs.4,000/- has been enhanced to Rs.20,000/- w.e.f. 1.5.2000, powers for scrutiny and approval of project proposals have been delegated to the State governments and funds are being released in one single installment as against four, as was provided in the beginning. Besides, funds are now available for conducting household and establishment-wise surveys, for awareness generation as also for imparting orientation and training to functionaries at various levels and for monitoring and evaluation of the pace and progress of implementation of rehabilitation programmes. A grant-in-aid schemes for NGOs has also been introduced by the Ministry of Labour since 1986-87.

V: Statistics and Present status of identification, release and rehabilitation of bonded labourers

Inclusion of elimination of bonded labour system as one of the items in the old 20 Point Programme announced to the nation on 01.07.1975, enactment of a central law w.e.f. 24.10.1975 and introduction of a Centrally Sponsored Scheme for rehabilitation of freed bonded labourers in May, 1978 are historic developments, marked by a sense of urgency and seriousness of concern to put an end to the social scourge. These were followed by a series of other important developments, such as

- ❖ Organization of a national survey jointly conducted by the Gandhi Peace Foundation and National Labour Institute for estimation of the number of bonded labourers (1978-79),
- ❖ Inclusion of rehabilitation of freed bonded labourers as an item in the new 20 Point Economic Programme announced to the nation on 14.01.1982, holding a national seminar on identification, release and rehabilitation of bounded labourers in February 83.
- ❖ Amendment of Section 2(g) of Bonded Labour System (Abolition) Act, 1976 in April, 1985 to add an explanation to bring contract and migrant labour within the purview of bonded labour system

- ❖ Opening a cell in Lal Bahadur Shastri National Academy of Administration in 1986-87 for taking up documentation exclusively on bonded labour with involvement of members of Indian Administrative Service, the future administrators of the country,
- ❖ Deputing senior officials of the Ministry of Labour to different parts of the country for an on the spot review of the pace of implementation of programmes of rehabilitation of freed bonded labourers,
- ❖ Involvement of the Programme Evaluation Organisation (PEA) of the Planning Commission and Centre for Rural Development, Indian Institute of Public Administration (IIPA) for content, process and impact evaluation of the programmes of rehabilitation of freed bonded labourers,
- ❖ The latest involvement of the National Human Rights Commission with the work of identification, release and rehabilitation of bonded labourers w.e.f 11.11.97 at the behest of the Supreme Court and pronouncement of a good number of landmark judgements by the apex Court setting the tone and pace of work relating to elimination of forced / bonded labour are some of the notable developments.

While the Central Government enacts the law, formulates the schemes, provide the budget and issues guidelines, the actual responsibility for implementation rests on the shoulders of the State governments (28) and Union Territories (7). The incidence of bonded labour system has been reported primarily from Andhra Pradesh, Bihar, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh. These States had taken timely initiatives, though on a varying scale, for identification, release and rehabilitation of bonded labourers. States like Haryana and Gujarat had taken a stand right from the beginning that there are no bonded labourers in those States. Government of Maharashtra had adopted a similar stand from the beginning. A welcome change in the stand of the Government of Haryana and Gujarat was brought about in the wake of directions from the apex Court and High Court while a similar change in the stand of Government of Maharashtra was facilitated largely on account of outstanding work done by two Thane based NGOs called Sramajeebi Sangathan and Samarthan.

There are a number of innovative features emanating from the experience of some of these States. In Andhra Pradesh, for the first time a set of imaginative guidelines were issued in 1975-76 for identification of bonded labour system and they continue to be relevant even today. An

integrated and community approach was adopted for rehabilitation of freed bonded labourers. Efforts were made to pool resources from a number of sources and integrate them imaginatively and skilfully for a purposeful rehabilitation of freed bonded labourers. Under the scheme of Community Poultry Complexes, sincere efforts were made to bring a group of beneficiaries (mostly belonging to SC, ST and other backward classes) to a common point, provide orientation and training to them in the art of rearing birds, feeding them, giving them medicines and injections, marketing of eggs so that they may become mini animal husbandry men, eventually assume ownership of the sheds in the Poultry Complex (one beneficiary one shed) and become economically self-sufficient.

The scheme of economic rehabilitation of the rural poor in Orissa in 1980s represented a similar model of integration. The scheme envisaged rehabilitation of 5,00,000 beneficiaries from amongst the rural poor who have no income yielding asset of any kind. Under the land based component of ERRP, a compact patch of land (10 acres and above) was selected, beneficiaries (landless and assetless rural poor) were brought to a common point where the said patch of land was located, land @ 1.5 to 2 acres per person was allotted, land development and reclamation of wasteland was taken up with complete back up services provided by the State Agriculture department and irrigation facilities were provided either by sinking dug wells or by installing a lift irrigation point with provision for energisation and laying of pipeline. As the bonded labourers are at the bottom layer of poverty, clear instructions were issued to all Collectors to accord the highest priority for identification and rehabilitation of bonded labourers under ERRP. 'Administration to villages' was a novel experiment in 1980s in Rajasthan which brought the District Administration closer to the people at the grass root level and which provided an outlet for ventilation and redressal of grievances of such people and which also ensured peoples participation in the process of development. The experiment of Tribal Project Authority in Dehradun, Uttar Pradesh (now Uttaranchal) with 54 project workers drawn mostly from the community of SC and ST provided a fillip to implementation of schemes for rehabilitation of freed bonded labourers. These project workers acted as the 'friend, philosopher and guide' of the freed bonded labourers and provided a prop for their psychological rehabilitation. The experiment of rehabilitation of freed bonded labourers under the Land Colonization Scheme implemented thorough a cooperative society in Kerala and the scheme of rehabilitation of freed bonded labourers through agricultural estates in Bangalore in Karnataka were innovative experiments which in addition to bringing a number of beneficiaries to a common point for rehabilitation promoted social integration

and integration of a number of departments and agencies and made their functionaries to work with one voice, one energy and one conscience.

These silver linings notwithstanding, there are areas of continuing concern which need to be clearly noted. As on 31.03.2006 2,80,411 bonded labourers have been identified and released, 2,51,569 bonded labourers have been rehabilitated and 28,842 are left to be rehabilitated. In view of the long waiting period, it is not known as to how many out of 28,842 persons left to be rehabilitated are actually available on the ground for rehabilitation.

Besides, it is reported that of the 2,51,569 bonded labourers rehabilitated, whereabouts of about 20,000 persons are yet to be traced. Either they have left their hearth and home and migrated to other parts of the country or are dead. It is necessary that an accurate and authentic account of all bonded labourers – identified, released and rehabilitated is available. This is also a statutory requirement (Rule 7 of Bonded Labour System (Abolition) Rules). Equally important and urgent is to have an accurate and authentic picture of the number of Vigilance Committees constituted at the district and sub-divisional level reconstituted wherever such reconstitution was due and the number of committees functioning. As of date, no such picture is available. This has attracted the adverse attention of the Supreme Court and clear and repeated directions have been issued to all State Governments / Union Territories by the apex Court from time to time.

A long interregnum continues to persist between the date of identification and date of release on the one hand, and date of release and date of rehabilitation on the other. Such long interregnum results in relapse of many freed bonded labourers to bondage. This is a highly undesirable phenomenon which has also attracted adverse attention of the Supreme Court and repeated directions have been issued to all State Governments / Union Territories by the apex Court to ensure simultaneity in all the 3 operations.

There is a mindset that with the enactment of the law, the bonded labour system has been abolished lock stock and barrel, and there is no possibility of recurrence of the system. Labouring under this mindset, many State Governments assume, without even setting up Vigilance Committees, that there are no bonded labourers in their States. They have not taken any initiative to conduct fresh surveys for identification of the bonded labour system and have not made any budget provision for rehabilitation of released bonded labourers. In such a situation, if bonded labourers are identified in the destination State(s) and repatriated to the originating State, they would

find it extremely difficult, without proper rehabilitation, to eke out a decent livelihood. Such mindsets have contributed to defeat the very objective of the law as well as the national policy and programme.

The mindsets notwithstanding, the apex Court and the National Human Rights Commission have played a clear, firm and decisive role in (a) issuing positive directions to State governments for strict compliance (b) appointment of Socio-legal Investigating Commissioners to conduct spot enquiries for unearthing the problem (c) deputing special rapporteurs (by the NHRC) to have a periodic dialogue and discussion with the State Governments and District Administration for finding a practical solution to the problem (d) Constitution of a task force by the NHRC for in-depth discussion of the various aspects of the multi-dimensional problem and to formulate concrete programmes of action (both preventive and corrective) and (e) Chairperson, NHRC has written to the Chief Ministers of defaulting States impressing on them the urgency and seriousness of concern with which the problem deserves to be viewed.

VI: Role of District Magistrates in implementation of Constitutional and legal provisions as also the Centrally Sponsored Scheme on rehabilitation of freed bonded labourers:

There are essentially two roles envisaged for the District Magistrates (DM). One is envisaged under the statute, and other outside the statute. While the first is largely corrective, the second is essentially preventive. The law provides for certain duties and responsibilities of the District Magistrate and every officer specified by him. These are:

Statutory duties and responsibilities of the D. M.:

- The D.M., as far as possible should try to promote the welfare of the freed bonded labourer by securing and protecting his economic interests, so that he may not be have any occasion or reason to contract any bonded debt.
- The DM should enquire whether the bonded labour system is being enforced and if any person is found to be enforcing the system the DM shall take such action as may be necessary to eradicate the enforcement of such forced labour.
- The DM as Chairman of Vigilance Committee at the district level is to preside over its meetings and to conduct its proceedings.

This function should ordinarily not be delegated to anyone else. Proposals for constitution and reconstitution of Vigilance Committees should originate from the DM.

- He should organize field visits for the members of the Committee to conduct field investigations in an objective and dispassionate manner as would help identification of bonded labour system.
- The DM has to provide for the economic and social rehabilitation of the freed bonded labourers. The various components of that responsibility would be:
 - Identification of preferences, felt needs and interests of the potential beneficiaries thorough survey;
 - Formulation of schemes-land based, non-land based, art / craft / skill based for rehabilitation.
 - Approval of the schemes by the State level Screening Committee.
 - Implementation of the schemes in a time-bound, cost effective and result oriented manner.
 - Close monitoring, supervision and coordination of the schemes under implementation.
 - Process and impact, ongoing and summative evaluation of the schemes.
 - Submission of Utilisation Certificates in support of expenditure under the centrally sponsored scheme.
- The D.M. has to ensure proper coordination of the functions of rural banks and cooperative societies with a view to canalizing adequate credit for the freed bonded labourers.
- The DM has to organize periodic surveys – which could be both household-wise and establishment-wise to satisfy himself, if there is any offence arising out of prevalence of bonded labour system of which cognizance ought to be taken under the Act. He has to exercise vigilance on the number of offences of which cognizance has been taken under the Act.
- The DM has to provide legal defence to defend any suit instituted against a freed bonded labourer.

- The DM has to ensure that all records and registers which are required to be maintained under Rule 7 of Bonded Labour System (Abolition) Rules are maintained at the district level.

Non-statutory responsibilities:

- Being the Magistrate of the district, the DM may oversee the process of disposal of all cases instituted under the Act and being tried by the Executive Magistrate appointed by the State Government under Section 21 of the Act. He should ensure that all year old pending cases are disposed off through a summary trial.
- Similarly he should ensure that (a) all freed bonded labourers are issued a release certificate (b) all freed bonded labourers who are awaiting rehabilitation for many years are permanently and effectively rehabilitated without further delay (c) all cases of relapse to bondage are identified and the identified persons are rehabilitated afresh without delay.
- Training is an important input for human resource development. It imparts knowledge, information and skills. It removes cynicism and skepticism. It carries strength and conviction that a socially relevant programme (like elimination of bonded labour system) is possible, feasible and achievable. The DM has to organize such training for the police, magistracy, officers of revenue, community development and other departments whose involvement with programmes for identification, release and rehabilitation of bonded labourers is crucial for its success. Such training has to be communicative and participative and conducted in an unorthodox fashion. For this the software has to be designed with imagination and sensitivity.

Preventing occurrence and recurrence of debt bondage:

Landless agricultural labourers, share croppers, persons below poverty line level, who are landless and assetless turn to money lenders and other middlemen for loan / debt / advance, partly for biological survival and partly for ceremonial and other needs. In the process they get indebted and bonded to their creditors due to their inability to repay the loan which gets compounded due to usurious rates of interest. Such contingencies will have to be handled with a lot of imagination and circumspection. Occurrence and

recurrence of debt bondage will have to be prevented and the same can be prevented through adoption of the following strategies:

- Access to micro-credit.
- Implementation of land reforms.
- Access to avenues of full, freely chosen and productive employment.
- Enforcement of the law on minimum wage and strengthening the public distribution system.
- Access to skill training.
- Strengthening and activating the labour law enforcement machinery.
- Strengthening and activating the grievance ventilation and redressal machinery.
- Strengthening and activating Vigilance Committees.

The DM, as the head of the District Administration, is responsible for maintenance of law and order and public order on the one hand and promoting all round development of the district including special development of the weaker sections, women and children on the other. He is the Chairman of District Rural Development Agency (DRDA), Chairman of Integrated Tribal Development Agency (ITDA), Chairman of Modified Area Development Agents (MADA), Chairman of District Development Committee (DDC), Chairman of Lead Bank Coordination Committee and Chairman of numerous other Committees associated with development of women and children, SC & ST, OBCs, minorities. Through his intimate familiarization with the geography and topography of the district as also with the working and living conditions of the people, he can identify the pockets in the district which are dry, drought prone and prone to migration and bondage and can through special development schemes preempt recurrence of bonded labour system in those pockets. Being the captain of the team in a situation where all functionaries look upto him for leadership and guidance he can pool resources from a variety of sources and integrate them imaginatively and skilfully for putting an end to landlessness, assetlessness, indebtedness and bondage.

VII. Conclusion:

The existence and continuance of bonded labour system is a crime and outrage against humanity. It is a negation of inalienable human rights. It is

a negation of all the values and principles reflected in the ILO Constitution and Constitution of India, Philadelphia Declaration (1944) and Declaration on the Fundamental Principles and Rights at Work (1998). It is anathema to civilized human conscience and cannot be tolerated in any manner, in any form and in any part of the territory of a country.

India is a sovereign democratic republic with a free press, a Parliament and an independent judiciary. It has clear constitutional and legal provisions relating to elimination of bonded labour system. The Supreme Court of India has taken cognizance of the issue on more than one occasion, has given a broad, liberal and expansive interpretation of the definition, has issued a number of directions to the Central and State Governments on the subject and has now entrusted the responsibility for overseeing the extent of compliance with its directions to the National Human Rights Commission. The latter is now directly monitoring the pace and progress of implementation of these directions and will be reporting to the apex Court.

These are positive developments. The magnitude of the problem, however, remains very large. The problem of debt bondage which is a hangover from ancient and medieval India got accentuated on account of the faulty land tenurial policy introduced by the Colonial rulers (1757-1947) and has now acquired myriad forms in the wake of globalization of the economy. Even though a number of positive steps have been taken, a lot more remains to be done by way of planned, coordinated, concerted and convergent efforts. This cannot be the task of one Ministry or Department or Agency; it has to be the concern of the whole nation. Besides, in view of the onerous magnitude and complexity of the problem, State government and District Administrations cannot single handedly do justice to it. They would do better by enlisting the involvement and support of voluntary agencies and social action groups which are non-political or apolitical, which are grass root level oriented, which have flexibility of structure and operations and which have the clarity of perception and depth of social commitment to complement and supplement the efforts of government. It is only through such an alliance between government and NGOs on the one hand and introduction of structural reforms in land, labour and capital on the other that it would be possible to strike at the roots of the problem. It is necessary and desirable that this problem be approached thorough non-formal or unconventional strategies at all stages and with recognition of the importance of human dignity, decency, security, equality and freedom. Presence of a kind, compassionate, considerate and caring civil society with all sections being naturally imbued with a firm determination to put an end to the social scourge would make all the difference.

MIGRANT WORKERS

I. Introduction

Freedom of movement in any part of the territory of India and freedom to pursue any avocation of ones choice is a fundamental right guaranteed by Article 19 of the Constitution of India. Migration is a social and economic phenomenon through which human beings move from one part to another in pursuit of certain cherished objects like avenues of better employment, better wages, better working and living conditions and better quality of life. Such movement being a normal and natural process, there is nothing wrong or objectionable in migration per se. Migration becomes objectionable only when (a) the element of freedom in movement is replaced by coercion (b) all the normal hopes and expectations associated with migration are belied and the migrant workers are subjected to exploitation culminating in a lot of misery and suffering and deprivation of the irreducible barest minimum to which every worker as a human being and a citizen is entitled. It becomes objectionable when human greed, rapacity and aggressively selfish and acquisitive instincts overtake the finer aspects of human character such as kindness, compassion and commiseration and when human beings are driven to a situation characterized by the denial of human dignity, decency, justice, equity, security. Such denial becomes all the more a matter of grave anxiety and concern when the persons affected come from the lowest strata of the society and are in need of social protection most.

It is not difficult to identify certain parts of India, which are associated with distress migration on account of harsh geography and topography such as dry and arid landscape, low productivity and acute scarcity conditions. These are:

- **Eastern Uttar Pradesh** (Banda, Balia, Basti, Deoria, Ajamgarh, Gorakhpur)
- **Bihar** (Palamau, Gadwa, Singhbhum and Santhal Parganas region)
- **Madhya Pradesh** (Satna, Rewa, Sidhi, Sahadol, Guna, Jhabua)
- **Chattisgarh** (Durg, Rajnandgaon, Raigarh, Bilaspur, Raipur)
- **Maharashtra** (Marathwada region)

- **Gujrat** (Panchmahal, Kutch, Dang, Valsad, Sabarkantha, Banaskantha)
- **Karnataka** (Raichur, Bidar, Gulbarga and Bijapur)
- **Andhra Pradesh** (Adilabad, Hyderabad, Karimnagar, Khammam, Medak, Mahaboobnagar, Nalgonda, Nizamabad, Warangal which constitute the Telangana region and Anantapur, Chittoor, Cuddapah, Kurnool and Nellore which constitute the Rayalseema region)
- **Orissa** (Kalahandi, Balangir, Nawapara, Koraput, Malkangiri, Naurangpur, Rayagada, Keonjhar, Mayurbhang)
- **Rajasthan** (Jodhpur, Jalore, Sikar, Jaisalmer, Barmer, Jhunjhunu, Bikaner and Banswada)

II. Definition

Migration could be voluntary or it could be induced by recruiting agents. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 recognises migration for the purpose of statutory protection only in a situation where a minimum number of five persons are recruited by a recruiting agent to move from one part of the territory of India to another for employment. It does not recognize cases of voluntary migration or even migration involving less than five persons. Migration is always with the consent of the migrant worker; if not, it would amount to forced / indentured labour. It is quite possible that in a situation of colossal ignorance and illiteracy as also dire need for biological survival such a consent may often be taken for granted, but recruitment of persons without their consent would be an exercise in human trafficking punishable by law. Bulk of the migration in actual practice takes place under economic compulsions and for economic considerations (on receipt of loan / debt / advance from the recruiting agents) and has all the nuances of debt bondage as migrant workers cannot of their own accord leave the worksite at the destination point until and unless they have repaid the loan / debt / advance (taken from the recruiting agents). Migrant workers working under such

bonded or slave-like conditions at the destination point are seldom identified as bonded labourers or released from captivity of the middlemen who have recruited them. The only correct solution to this mind-boggling issue is to create conditions both through political will as through enforcement of legal provisions which would ensure just, fair and human treatment for the migrant workers on the one hand and decent income and livelihood on the other.

III. Legal Provisions

The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act (Act No.30 of 1979) was passed by Lok Sabha on 09.05.1979 and by Rajya Sabha on 21.05.1979 and received the assent of the President on 11.06.1979. The Central Rules were framed by the Ministry of Labour in September, 1980 and the Provisions of the Act came into force w.e.f 02.10. 1980.

The Act which is intended to regulate the employment of inter-state migrant workmen and to provide for their conditions of service is the outcome of the recommendations of a Compact Committee constituted in the year 1977 under the Chairmanship of Sri D.Bandopadhyay, the then Joint Secretary in the Ministry of Labour. The Committee came to the conclusion that, although there are legislations like Payment of Wages Act, Minimum Wages Act, Workmens' Compensation Act, Contract Labour (Regulation and Abolition) Act etc., the provisions of which are also applicable to inter-state migrant workmen, in view of the peculiarity of conditions, of recruitment and employment and working in an unfamiliar setting these provisions of the laws may not fully protect and safeguard the interests of the migrant workers. The Committee had, therefore, recommended enactment of a separate legislation to regulate the terms and conditions of their recruitment and to provide for conditions of service and welfare measures at the worksite to which they were drafted. The law enacted on the basis of the report of the Compact Committee (submitted in January, 1978) incorporated most of the recommendations of the committee.

IV. The Role of a District Magistrate

In operationalisation of all this – both corrective and preventive strategies — the District Magistrate has to play a key role. Being the Chairman of the DRDA (District Rural Development Agency), he has to internally and continuously review the pace and progress of programmes for generation of rural employment and assess their effectiveness in terms of absorption of

the surplus rural manpower. He has to introduce qualitative changes and improvements in all programmes meant for employment promotion and skill formation in rural areas, so that they are area specific, cost effective, time bound and result oriented. Areas which are prone to migration (being dry and arid prospects of agriculture are bleak and alternative avenues are not readily available) should deserve his special attention in terms of (a) intensification of public works (b) enforcement of minimum wage and (c) linkage with public distribution system. The situation in such areas would also require to be closely monitored, so that there is no leakage and wastage of resources and optimal utilization of the latter is ensured thorough close supervision and coordination. With launching of National Rural Employment Guarantee Scheme at Anantpur in AP in Feb 06 and coverage of 200 districts by the responsibility of Collector and D.M. of a district covered by the scheme in ensuring that all BPL families in a district get 100 days of minimum employment in his/her district has been onerous.

If, despite all planned, coordinated and concerted efforts, migration is an inescapable phenomenon, a lot of corrective measures would be needed to protect and safeguard the interests of migrant workers who have been driven to a desperate situation which is not entirely of their making. Some of these specific corrective measures are :

- (a) The District Magistrate of the originating States should ensure that all workers who are being recruited through recruiting agents / placement agencies are properly accounted for thorough a foolproof system of licensing
- (b) Since the registration and licensing functions are being carried out by officers of Labour Department of the State, the District Magistrate needs to maintain a vigil over these operations so that no loopholes are left. The District Magistrate should bring gaps and omissions in the process to the notice of Labour Secretary and Labour Commissioner of the State for prompt corrective action.
- (c) Similarly, the D.M. of a destination district (to which migrant workmen go for work) has to ensure that Principal employers of estts in that district who employ migrant workers obtain a registration certificate under 1SMW(ROE&COE) Act, 1979.
- (d) The District Magistrate of the originating State should maintain a close and constant liaison with his counterpart

in the destination State to protect and safeguard the interests of migrant workers. He should have a complete command over information relating to the number and names of workmen, place of work, duration of employment, working conditions, names of principal employers, contractors / subcontractors. As and when complaints of maltreatment of these workmen and their family members (in brick kilns the recruitment and movement is done by taking the family as one unit) reach him, he should depute a trustworthy officer for prompt investigation at the worksite and for providing such relief as necessary in consultation with his counterpart.

- (e) All complaints relating to non-payment of wages, delayed payment, non-payment of workmen's compensation should receive the urgent personal attention of District Magistrates of both the originating and recipient State for their expeditious settlement and disbursement.
- (f) If there are factories (as powerlooms in Surat in Gujarat), which have sprung up in an unplanned and unregulated manner, and which are carrying on their activities in a clandestine manner and yet have employed a large number of migrant workmen, the District Magistrate of the destination State would have a special responsibility in discharge of statutory accountability of such enterprises. He has to establish close liaison and coordination with the Chief Inspector of Factories of the State, bring to the latter's notice cases of all such unregistered enterprises (if they are registrable) and ensure that they are amenable to the same discipline of law as others.
- (g) 'United we stand and divided we fall'. Such an aphorism could not have been more relevant than in the case of migrant workers. District administration would be doing yeomen's service in protecting and safeguarding the interests of migrant workers, if it could promote and encourage formation of association in shape of self-help groups, thrifts and credit groups etc., among them. Adult literacy programmes should also be launched to make migrant workers literate and numerate, more aware, agile, alert and united through literacy. District administration should

promote and encourage formation of neoliterate's groups among them.

- (h) The plight and predicament of women migrant workers who are employed in brick kilns and stone quarries along with their husbands and children should warrant the urgent personal attention of the District Magistrate as with the movement of women and children from one habitat to another and their deployment along with men is likely to result in a colossal wastage of human resources if not checked in time.

Scheduled Castes and Scheduled Tribes

1. Introduction

This Chapter is arranged in six sections. After the introduction of the Chapter, the second section deals with the main features of the international covenants and the Indian Constitution; the third section delineates the context of this Chapter, that is, the status of Scheduled Castes and Scheduled Tribes as well as the denotified and nomadic tribes; the fourth section outlines the major human rights issues and the corresponding laws, rules and regulations; and the fifth section sets out the role and, to some extent, the specific responsibilities of the District Magistrates in relation to the human rights of the Scheduled Castes and Scheduled Tribes against the overall background set out in the earlier sections. The last section contains the concluding observations.

It may be mentioned that the term Dalit is being increasingly used to denote the Scheduled Castes and, sometimes, the Scheduled Tribes as well. Though the original meaning of the word Dalit encompasses all the oppressed people, it has, over a period of time, become almost synonymous with the Constitutional category of Scheduled Castes, signifying an assertive expression of untouchable heritage and a rejection of oppression. However, in this Chapter, the terms Scheduled Castes and Scheduled Tribes have been adopted in conformity with the terminology adopted in the Constitution of India.

2. Concepts, Covenants and the Constitution

A compendium of human rights has evolved, over time, emerging from a liberal humanist formulation at the time of the Universal Declaration of Human Rights 1948 to a comprehensive framework, reflecting the rise of democratic consciousness of people all over the world. The Universal Declaration of Human Rights adopted about half a century ago, was followed by two separate Covenants, namely, the International Covenant on Civil and Political Rights 1966 with entry into force on 23 March 1976; and the International Covenant on Economic, Social and Cultural Rights 1966 with entry into force on 3 January 1976, which were generally ratified by India in

March 1979. The Universal Declaration of Human Rights along with the Covenants lays down universal standards, among others, in relation to freedom, equality, dignity, nondiscrimination, right to life and liberty, education, employment and remuneration, development, social security, equality before law, equal access to public service; and participation in social, political and cultural aspects of society. A Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly in 1979 and ratified by India in June 1993. The International Convention on the Elimination of All Forms and Racial Discrimination (CERD) was ratified by India, thereby agreeing to principles of dignity and equality of all human beings irrespective of race and descent. India is also a signatory to Convention 107 of the International Labour organization concerning indigenous, tribal and semi-tribal people which places on the Government the primary responsibility for developing coordinated and systematic action for the protection of the tribal population and their progressive integration into the life of their respective communities fostering individual dignity. A comprehensive concept of human rights thus forms part of a global compact and a large number of instruments of human rights have been evolved within the United Nations system and ratified and reaffirmed by India.

Human rights are indivisible and interdependent. The Universal Declaration recognizes freedom from fear and freedom from want as two sides of the same coin. People cannot advance their economic, social and cultural rights without the political space and civil freedom to do so. Article 11.2 of the International Covenant on Economic, Social and Cultural Rights recognizes the fundamental right of everyone to be free from hunger. It was recognized at the World Conference on Human Rights held at Vienna that the existence of widespread extreme poverty inhibits full and effective enjoyment of human rights and therefore its immediate alleviation and eventual elimination must remain a high priority for the international community. The World Conference on Human Rights also affirmed that extreme poverty and *social exclusion* constitute a violation of human dignity and urgent steps are necessary to promote the rights of the poorest.

The emphasis in the Universal Declaration of Human Rights as well as the pronouncements at the various conferences of the United Nations has been on the *obligation of the member States* to promote and protect the human rights. The Vienna Declaration and Programme of Action adopted in June 1993 at the World Conference on Human Rights, reaffirmed the solemn commitment of all States to fulfil their obligations to promote universal respect

for and observance and protection of all human rights. More specifically, it has been declared that the protection and promotion of human rights is the *first responsibility of the Governments. In turn, this obligation and responsibility devolves on the agencies of the State.*

The Indian Constitution, as set out in its Preamble, is a testament to secure to all its citizens Justice, social, economic and political, Liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity, assuring the dignity of the individual and integrity of the nation. The founding fathers of the Constitution were fully aware of the iniquitous forces embedded in the social systems, economic institutions and political organizations in India in relation to the weaker and vulnerable sections of the society and, therefore, considered it necessary to provide for specific corrective measures and mandates in the Constitution in their favour. The safeguards for the members of the Scheduled Castes relate to the removal of the disabilities as well as positive measures to enable them to acquire a dignified position in the national life. The major concern about the members of the Scheduled Tribes has been that of protecting and preserving their command over resources and the best in their tradition.

The Constitution incorporates a number of commands for the elimination of the inequities and inequalities prevalent in the Indian society and for promoting equality and social justice. Article 14 of the Constitution guarantees equality before law and equal protection of laws. Article 15 prohibits discrimination on the grounds of religion, caste, sex or place of birth as well as disabilities in regard to access to public places and also specifically provides that nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 16 provides for equality of opportunity in the matter of public employment with specific provision for reservation of appointments or posts in respect of any backward class of citizens. Article 17 abolished untouchability forbidding its practice in any form and making the enforcement of any disability arising out of untouchability a punishable offence. Article 21A (recently added) lays down that the State shall provide free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibited traffic in human beings and forced labour. Article 24 bars the employment of children below fourteen years in any factory or mine or hazardous occupations.

An important part of the Constitution and of great significance to the poor is the Directive Principles of State Policy which are *fundamental* in the

governance of the country. Article 38 of the Constitution envisages a social order in which justice, social, economic and political shall inform all institutions of national life and requires the State to endeavour to minimize inequalities in income, status and opportunities. Article 39 visualizes, among others, the right to adequate means of livelihood; the equitable control and ownership of the material resources of the community and that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment. It also envisages equal pay for equal work for men and women as well as opportunities for children to develop in a healthy manner and without exploitation. Article 41 stipulates that the State shall within the limits of its economic capacity and development make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Article 43 calls upon the State to endeavour to secure a living wage to all the workers. *Article 46 mandates the State to promote with special care the educational and economic interests of the weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes and protect them from injustice and all forms of exploitation.* The Indian Constitution thus provides for a comprehensive framework for the socio-economic advancement of the Scheduled Castes and the Scheduled Tribes in order to achieve the objective of a just and humane society.

The Constitutional perspective combines both the positive notion of rights guaranteed through the State and law as well as the notion of natural rights and includes horizontal rights applicable to all citizens and vertical rights to enhance the life chances of vulnerable groups, such as Scheduled Castes and Scheduled Tribes. The fundamental rights set out in Part III of the Constitution contain not merely a corpus of limitation on the power of the State, guaranteeing State free spaces for the pursuit of individual and collective life, *but also as an onslaught on the entrenched intransigent attitudes and behaviour in society and culture.* Through Article 17 (outlawing of untouchability) and Article 23 (proscription of many forms of serfdom and traffic in human beings) the Constitution directly addresses and confronts the oppressive formations in civil society and mandates State action in this respect to secure basic human rights. *The Indian Constitution is unique in that it designates violation of these human rights of Scheduled castes and Scheduled Tribes as offences created by the Constitution itself and casts a Constitutional duty on Parliament to enact legislations, regardless of federal distribution of legislative powers provided in the Constitution.*

Special provisions were also incorporated in the Fifth Schedule and the Sixth Schedule of the Constitution for the Scheduled Tribes. While the

Sixth Schedule contains provisions as to the administration of tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram, the Fifth Schedule sets out provisions as to the administration and control of Scheduled Areas and Scheduled Tribes in other States.

It may be added that the division of rights and principles into Part III and Part IV of the Constitution has been substantially, though not wholly, erased over time by adjudication. The Supreme Court through its corpus of active jurisprudence has enunciated many judicially created fundamental rights such as the right to dignity; right to livelihood, right to compensation and rehabilitation for injuries caused by State agents or agencies, right to speedy trial, right to health; and right to gender equality.

More recently Part IX and Part IXA of the Constitution based on the Seventy-third and the Seventy-fourth amendments of 1992 have, among other things, provided for the reservation of seats as well as reservation of the posts of Chairpersons in the Panchayats at all levels and the urban local bodies in favour of the Scheduled Castes and Scheduled Tribes. Following the provisions in the Seventy third amendment, the Provisions of the Panchayats (Extension to the Scheduled Areas) Act was also enacted by Parliament in December, 1996.

The Protection of Human Rights Act, 1993 defines human rights as the rights relating to life, liberty, equality and dignity of individual guaranteed by the Constitution or embodied in the international covenants and enforceable by Courts in India. The expression human rights thus denotes and describes a wide range of rights, some of them enunciated. International declarations and Covenants, some directly and specifically guaranteed in the Constitution of the country, some others incorporated in the laws, rules and regulations made by the Central and State Governments in accordance with the Constitution; some laid down by Courts through the elaboration of legal and Constitutional provisions and some that yet exist only at the level of a democratic value system.

3. Scheduled Castes and Scheduled Tribes

The concept of universal human rights makes no exception or compromises in its appeal to an indivisible humanity bound together by a universal code of human rights. *At the same time, it has to be recognized that while human rights are indeed universal and indivisible, in unequal and hierarchical societies as in India, equal treatment and protection are not available to all human rights nor are all*

human rights violations given equal attention. This is especially true of weaker and vulnerable sections of society such, as Scheduled Castes and Scheduled Tribes and hence the need for a proper understanding of the context in which human rights are available, safeguarded infringed or violated in relation to these sections of the people. Defining prominent features of human rights issues in relation to Scheduled Castes and Scheduled Tribes is difficult in as much as these do not often fall in the same categories as the kinds of human rights categories more commonly addressed in normal human rights discourse.

Even at the beginning of the twenty first century, the Scheduled Castes who constitute a substantial section of the Indian population suffer from varying degrees of denial of dignity, decency, equality, security and freedom. The Scheduled Castes represent a constitutionally declared collective of castes, communities or groups, their defining characteristic being the suffering from the traditional practice of untouchability. The Scheduled Castes are subjected to the inhuman practice of untouchability, which is the most extreme form of the denial of human dignity and social oppression. *The discrimination against the Scheduled Castes is not merely the kind of treatment suffered by the poor in general but the unique kind of discrimination in the form of untouchability, and this is the primary basis for regarding them as a distinct grouping, even among the poor within India.*

In terms of the provisions in Article 341 of the Constitution, the Scheduled Castes have been specified separately in relation to each of the States and Union Territories. The population of Scheduled Castes in India according to the 1991 Census is 13.82 crores which is about 16.48 per cent of the total population of the country. Eight States, namely Uttar Pradesh, West Bengal, Bihar, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, Rajasthan and Karnataka account for more than 75 per cent of the total Scheduled Caste population of the nation. On the basis of the trend in decadal growth rates, the population of the Scheduled Castes is likely to be around 17.9 crores, representing 17.5 per cent of the population in 2001. The Scheduled Castes live mostly in rural areas, with only about 14 per cent of them living in urban agglomerations. The habitations of the Scheduled Castes are scattered all over the country, generally in parts of villages or small villages. The proportion of poor among the Scheduled Castes and the Scheduled Tribes is higher than in the case of the rest of the society, indicating poor resource base and denial of access. Almost three fourths of the bonded labourers in the country are from Scheduled Castes and Scheduled Tribes. The observations of the Working Group on the Development of the Scheduled Castes (1980-85) are worth recalling.

“Notwithstanding this extremely adverse situation, the Scheduled Castes contribute significantly to the sustenance and growth of the production systems of the country and the nation’s economy. The largest single group among the agricultural labourers in the country are the Scheduled Castes. Footwear and other leather products are mostly contributed by the Scheduled Castes. A variety of handicraft and handloom products are made by the Scheduled Castes. They have a considerable share in the fishing activity of the country. Moreover they are the people who keep the country clean. The Scheduled Castes constitute, in the main, the bedrock on which the society and economy rest. Rarely has any section of the society contributed so much for so long in return for so little. Indian society owes to the Scheduled Castes a heavy moral and material debt yet to be discharged.”

The Scheduled Tribes were identified on the basis of certain well defined criteria, including the traditional domain of a definite geographical area, distinctive culture including shyness of contact, occupational traits, such as preagricultural modes of cultivation and general lack of development. The list of Scheduled Tribes was notified by the President of India in accordance with the provisions of Article 342 of the Constitution. About 350 tribal communities, besides a number of subgroups have been scheduled in India, whose population is 6.8 crores according to 1991 census comprising 8.08 per cent of the population. Six States – Bihar, Gujarat, Madhya Pradesh, Maharashtra, Orissa and Rajasthan – account for about 75 per cent of the total tribal population. On the basis of decadal growth rate, the population of Scheduled tribes is estimated at about 8.8 crores in 2001 representing 8.6 per cent of the total population. Special provisions have been incorporated in the Fifth and the Sixth Schedules of the Constitution for the administration of the tribal areas.

For the tribal population, there has always been a close traditional association with a territory or a tribal domain, with the tribal community enjoying a collective command over the natural resources, mostly in hilly or forest regions. They are often self-governing and guided by their own customs and tradition. Many of them have their own languages. Their size may vary from just a few hundreds to a million and more, located at different stages – hunters and gatherers, pastorals, shifting cultivators and settled agriculture. While bulk of the tribals live in tribal majority tracts, a substantial population is dispersed. The tribal economy revolves largely around land and land based resources; but land is more than a source of livelihood for the Scheduled Tribes. A large number of tribal families dwell in the forests or live close to the forests and their economy is closely interlinked with the forest resources. The tribal tracts are often rich in minerals and natural resources.

The Scheduled Castes and the Scheduled Tribes are at the bottom rungs of the society – in assets, social status, education, health or even in living conditions. The welfare and development of the members of the Scheduled Castes and Scheduled Tribes should be viewed at not merely in terms of material needs but equally or even more so in relation to non-material needs, such as the right to live with freedom, human dignity and self-respect. The people belonging to Scheduled Castes and Scheduled Tribes, are indeed the labouring classes, on whose strength, sweat and toil the nation survives. But almost all of them suffered and continue to suffer from varying degrees of unfreedom denial of human dignity and human rights. Throughout the whole of rural India, Scheduled Caste habitations are, even today, usually segregated, mostly on the outskirts of a village. The Scheduled Caste families in many villages are in permissive possession of housesites or homesteads with constant threats of eviction by the landowners or even the State. In the urban areas, the problem is of living space itself, with just token space in unhygienic conditions and perpetual insecurity. The low levels of literacy of the Scheduled Castes and Scheduled Tribes are a particularly potent indicator of the denial of access to education in the past, leaving its mark on the present and future social situation. They have little land and lose their land and even when title over a small piece of land has been conferred, they have, often, been prevented from occupying the land and cultivating it.

The social category, generally known as the Denotified and Nomadic Tribes (DNTs), covers a large number of communities spread over different States, such as Pardhis, Sansis, Kheria Sabars, Lodhas, Bedias, etc. The estimate of their population in the country varies from 2 crores to 6 crores. Many of them were notified as Criminal Tribes under the Criminal Tribes Act 1871 and were “denotified” when the Act was repealed in 1952 after Independence. It was rightly considered, to quote the words of Jawaharlal Nehru “The monstrous provisions of the Criminal Tribes Act constitute a negation of civil liberty. No tribe [can] be classed as criminal as such and the whole principle [is] out of consonance with all civilized principles”. Most of these communities now figure in the list of Backward Classes or sometimes, even the list of Scheduled Castes and Scheduled Tribes in relation to specific States. But the schemes for economic upliftment do not seem to have benefited them. The rate of literacy among them is very low, malnutrition more frequent and provisions for education and health care almost negligible, since many of them have remained nomadic. Bereft of their earlier occupations, with very little assets, they are even today suspected of being desperate criminals by the administration and by public, subjected to atrocities by the State agencies and the society. Very often the Habitual offenders Act which was enacted in 1959 is invoked against them.

4. Human Rights Issues, Instruments and Laws

Right to Human Dignity and Equality

The defining characteristic for Scheduled Castes is *untouchability* which is the denial of human dignity in its most extreme form. It is a socially and economically exploitative practice, constituting a gross derogation of the very existence as a human being. But the fact remains that notwithstanding the Constitutional and legal provisions as well as some sociopolitical and administrative efforts, untouchability is still prevalent on a large scale, particularly in rural India, barring perhaps some of the north eastern parts of the country. Even the spread of education has not been able to reduce the scourge of untouchability. On the basis of untouchability, in tens of thousands of villages which comprise nearly 80 per cent of the population of the country, almost every village is segregated into a Scheduled Caste locality and the non-Scheduled Caste locality. The continued prevalence of this evil and inhuman practice of untouchability constitutes the denial of *basic human dignity and equality*. It is worth recalling in this context the words of Babasaheb Ambedkar, expressed many years ago, on the 25 December 1927, at the Conference of the Scheduled Caste people for asserting their right to take water from the Chowdwar tank in Mahad in Maharashtra.

“It is not as if drinking the water of Chowdwar lake will make us immortal. We have survived well enough all these days without drinking it. We are going to the tank to assert that *we too are human beings like other*. It must be clear that this meeting has been called to set up *norms of equality*”.

The abolition of untouchability is a key Constitutional provision for securing basic human dignity to Scheduled Castes. Article 17 of the Constitution declared its abolition and criminalized its practice in any form whatsoever. Following the stipulation in Article 17 of the Constitution, the Untouchability (offences) Act was enacted in the year 1955. As this law was found to be inadequate, this was replaced by the comprehensive Protection of Civil Rights Act 1955 comprehensively amended in 1976 (19.11.76), a quarter of a century after the Constitution. The Protection of Civil Rights Rules were formulated in 1977. The Act defines Civil Rights as any right accruing to a person by reason of the abolition of untouchability under Article 17 of the Constitution. The Act aims to punish the preaching and practice of untouchability and the enforcement of any disability arising from untouchability. Untouchability was made a cognizable and non-compoundable offence and a minimum punishment was stipulated for enforcing religious disabilities, social disabilities,

refusal to sell goods or render services as well as other offences such as insult, molestation, obstruction, boycott, unlawful compulsory labour, to do scavenging or sweeping or removing carcass or job of similar nature on the ground of untouchability. The Act also provides for cancellation or suspension of licences of convicted persons under Section 6, as well as suspension of grants of land or money to a place of public worship or educational institution or hostel guilty of an offence. Section 10A empowers the Government to impose collective fines. Section 15A of the Act places a duty on the State Government to ensure that rights accruing from the abolition of untouchability are made available to and are availed of by the persons subjected to any disability arising out of untouchability including legal aid, setting up of special Courts, supervision of prosecution, periodic surveys, identification of untouchability prone areas and steps for removal of untouchability in such areas.

A special law – the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was enacted in the year 1989 (which came into effect from 30 January 1990), necessitated by the continuing predicament and plight of the Scheduled Castes. The Statement of Objects and Reasons of the Act summed up the position of Scheduled Castes and Scheduled Tribes as follows.

“Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. They are denied a number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.... Because of the awareness created among the Scheduled Castes and Scheduled Tribes, through spread of education etc, they are trying to assert their rights and this is not being taken very kindly by others. Occupation and the cultivation of even the government allotted land by the Scheduled Castes and the Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Under the circumstances, the existing laws like the Protection of Civil Rights Act 1955 and the normal provisions of Indian Penal Code have been found to be inadequate to check these crimes. A special legislation to check and deter crimes against them by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary”.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 created, for the first time, a whole new range of offences termed as “atrocities” and provided for stiff sanctions. The underlying spirit of the Act and Rules (which were framed in 1995) is that the Scheduled Castes and Scheduled Tribes by their very location in the oppressive social system are

extraordinarily vulnerable and that their human rights should be protected by law and its implementing agencies from the onslaught by others against them. The Act cast a statutory duty on Government to take concrete steps to prevent atrocities and ensure the feeling of security among the Scheduled groups. As pointed out by the distinguished jurist Upendra Baxi, the bulk of these offences were directed against the *patterns of behaviour* which shatter the self image of the members of the Scheduled communities and related forms of public humiliation. First, there are the modes of destroying *self esteem* such as forced feeding of obnoxious matter, forcible public parades after stripping the victims, throwing obnoxious objects in the living spaces; forcing people to leave the places of residence; denying them traditional access to places of public resort and all other related forms of public humiliation. Under the Act, all these constitute atrocities. Second, atrocities have a clear *economic* dimension. The Act therefore criminalizes *beggar*, bonded labour, wrongful occupation, possession, cultivation, transfer and dispossession of land belonging to or notified as such to the Scheduled groups.

Gender based aggression forms the third group of offences. Assaulting the women of Scheduled groups with an intent to outrage or dishonour their modesty is an offence. So is their sexual exploitation by those in a dominant position. *Deliberate abuse of legal and administrative processes* constitutes the fourth class of atrocities. This includes false, malicious and vexatious legal proceeding and even laying a false information before a public servant (which includes the police). Fifth, in a far-reaching addition to the Indian Penal Code, the Act prescribes that any offence carrying a sentence of ten years or more if carried out against the person or property of the member of Scheduled Caste or Tribe on the ground of her belonging to these communities will attract a life sentence. Sixth, the use of force or intimidation of any member of the Scheduled Caste or Tribes affecting the decision not to vote or vote for a particular candidate in a manner other than that provided by law is an atrocity. This provision restores the *democratic honour* of the Scheduled Caste and Tribes. Public servants are liable to punishment for atrocities and those who, including the police, who default in their statutory duties stand exposed to a substantial prison term. The Special Courts are empowered to presume abetment if the fact of rendering financial assistance to the perpetrators of such offence is proved. Also, if atrocities are committed in pursuance of conspiracy, Chapter 2 of the Act provides even for externment of anyone likely to commit an atrocity under the Scheduled and Tribal areas specified under Article 244 of the Constitution. The Act also provides for the appointment of special public prosecutors. The Act also provides for severe penalties – atrocities carry a minimum jail sentence of six months and a maximum of five years. The Act

provides for expeditious trial and disposal of cases pertaining to ST Communities through the agency of special Courts, denial of anticipatory bail, penalty for neglect of duties by public servant, as well as a duty to take concrete steps for preventive action against atrocities and restore the feeling of security among the Scheduled Castes and Scheduled Tribes. The Act is not only a penal policy measure; it envisages effective measures for the prevention of atrocities and for assistance in various ways to the victims of atrocities.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules were issued by Government of India in 1995. The Rules are exhaustive and provide for precautionary and preventive measures, supervision and spot inspection by District Magistrate, setting up of Scheduled Castes and Scheduled Tribes Protection Cell, Relief and Rehabilitation of victims, State Level and District Level Vigilance and Monitoring Committees. Rule 3 specifically provides for the identification of *atrocities prone areas* by the State Government and order to the District Magistrate, Superintendent of Police or any other officer to visit the area and review law and order situation, cancelling arms licences of non-Scheduled Caste and Scheduled Castes and Scheduled Tribes, constitution of High power State level Committee, District and divisional level Committees, setting up of Vigilance and monitoring Committees, setting up of awareness centers and organizing workshops to educate Scheduled Castes and Scheduled Tribes about their rights and protection, encouraging Non Governmental Organizations for establishing and maintaining awareness centers and deploying special police force in the identified area. Rule 6 provides for spot inspection by District Magistrate and others. Rule 7 requires that the offences shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. Rule 8 envisages the setting up of the Scheduled Castes and Scheduled Tribes Protection Cell by the State Government. The Rules make provisions for travelling allowance, maintenance expenses, etc. to the victims or the dependents. Rule 12 lays down specific measures to be taken by the district administration, including mandatory visit by the District Magistrate and the Superintendent of Police, registration and investigation of the offence as well as relief and rehabilitation. Rules 16 and 17 provide for the setting up of State level Vigilance and Monitoring Committee and a District Level Vigilance and Monitoring Committee with the District Magistrate as the Chairman. The scales of relief for victims of atrocities have also been set out in detail in the Annexure to the Rules.

As reported in Crime in India 2000 (National Crime Records Bureau, Ministry of Home Affairs, Government of India June 2002) the total number of crimes against Scheduled Castes was 25,638 in 1998; 25,093 in 1999 and

25,455 in 2000. The number of offences under Protection of Civil Rights Act in regard to Scheduled Castes was 724 in 1998; 678 in 1999 and 672 in 2000. The offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were 7,443, 7,301 and 7,386 respectively. The total number of crimes against Scheduled Tribes was 4276 in 1998; 4450 in 1999; 4190 in 2000. The number of offences under the Protection of Civil Rights Act in relation to Scheduled Tribes was 50 in 1998, 45 in 1999 and 31 in 2000. The offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was 709, 574 and 502 respectively. It is obvious that these numbers represent only the tip of the iceberg, as it is well known that a large number go unreported or unregistered. The rates of conviction by Courts are also very low.

The dehumanizing practice of *manual scavenging* is yet another blot on the Indian society and an affront to human dignity of the Scheduled Castes and the Scheduled Tribes. It is also interlinked to untouchability. Almost all those engaged in this occupation of manual scavenging – there are about 7 lakhs of them in the country – are from the Scheduled Castes and Scheduled Tribes. The continuance of manual scavenging constitutes a gross violation of human rights and worth of the human person that flies in the face of the Constitutional guarantee of a life with dignity for every human being in the country.

A scheme known as National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents was launched in 1991-1992. A special programme of scholarships for education of the children of those engaged in unclean occupations was also taken up. However, it was only four decades after the commencement of the Constitution that a statutory prohibition of manual scavenging was attempted through the enactment of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act in 1993. It took another four years to bring the Act into force in six States in 1997. Even now, some of the States are yet to adopt the law. The Statement of Objects and Reasons of this legislation is worth noting.

“Whereas fraternity assuring the dignity of the individual has been enshrined in the Preamble to the Constitution, and whereas the *dehumanizing practice* of manual scavenging of human excreta still continues in many parts of the country.....and whereas it is necessary to enact a uniform legislation for the whole of India for abolishing manual scavenging by declaring employment of manual scavengers for removal of human excreta an offence and thereby ban further proliferation of dry latrines in the country”.

Section 3 of the Act prohibits employment of manual scavengers as well as construction or maintenance of a dry latrine from a date to be notified by State Government. Under Section 5, the State Government is required to appoint a District Magistrate or a Sub divisional Magistrate as the Executive Authority for the purpose of the Act. The Act provides for various powers and functions of the Executive Authority and penalties for contravention of the Act.

A National Commission for Safai Karmacharis was also set up in August 1994 under the National Commission for Safai Karmacharis Act, 1993 to monitor and oversee the programmes. A National Safai Karmachari Finance Corporation was set up in 1997. The Tenth Five Year Plan aims at total eradication of manual scavenging by Mission Mode approach by 2007. In some of the States like Andhra Pradesh, a Mission for eradicating manual scavenging and rehabilitation of Safai Karmacharis has been initiated, with specific time frame for demolition of community dry latrines and conversion of private dry latrines.

Right to Livelihood and Equality – Land

There were certain parts of India where, historically, the so called untouchable communities were prohibited from owning any landed property. A unique feature of the Indian rural situation is thus the close interrelationship between the caste hierarchy and the agrarian structure. While the large landowners invariably belonged to the so-called upper castes, the cultivators belonged to the middle castes and the agricultural workers largely to the Scheduled Castes, Scheduled Tribes and other extremely backward communities. *The picture of the landless labourer continues to remain the dominant motif of Scheduled Castes even today.* Their social position is inescapably bound up with their condition as a predominantly landless people working on the land of others. Land control is the basis of the agrarian hierarchy and often the caste hierarchy and, therefore, any scheme of development which fails to address the issue of land control is unlikely to produce any systemic transformation. It has been pointed out by perceptive observers that the small number of success stories of Scheduled Caste families often reveal the acquisition of a plot of land as the crucial asset which builds the base for advancement. Small resources like a home site of ones own and even a very small part of productive land can operate as a powerful tool of liberation of the Scheduled Castes from total and arbitrary dependence on the dominant.

Soon after Independence and during 1960s and 70s, there was widespread support to land reforms on grounds of both equity and efficiency.

The first phase of land reforms after Independence consisted of the abolition of intermediaries and this brought about 20 million peasants, many of them belonging to the Scheduled Castes and Scheduled Tribes, in direct relationship with the State. Under the land ceiling laws enacted by various States, about 53.79 lakh acres of land have been distributed by the end of 2001 to 55.84 lakh beneficiaries; of these beneficiaries 36 per cent were from the Scheduled Castes and 15 per cent from the Scheduled Tribes to whom about 18 lakh acres and 7.8 lakh acres were assigned. In addition, in a number of States efforts were made to allot lands at the disposal of the Government to the Scheduled Castes and the Scheduled Tribes on a preferential basis. The tenancy reforms also resulted in the conferment of ownership rights for about 124.22 lakh cultivators in respect of 156.30 lakh acres of land and the tenants belonging to the Scheduled Castes and Scheduled Tribes benefited from this measure. Programmes such as Operation Barga in West Bengal resulted in the recording of sharecroppers and ensuring a fair share of produce to them.

Since a majority of the poor Scheduled Castes and Scheduled Tribes live in rural areas, the issue of *land* is of fundamental importance to them. The distribution or redistribution of the land in favour of the poor frees them from exploitation, strengthens labour and credit markets, provides a source of sustenance and confers economic and social status. In short, it serves to empower the poor within the rural structure. The protection, preservation and enlargement of the control and command over land is thus one of the crucial issues in relation to the Scheduled Castes and the Scheduled Tribes in rural areas. It is land that is at the center of poverty, parasitism, exploitation, misery and iniquitous relationship and to the rural poor, ownership of land denotes enhanced social status and equality means equality in the ownership of land, endowing them with self-respect, self-confidence and a sense of equality. *The longing for a piece of land on the part of the rural poor is well known.*

There are a number of States where there is a legal prohibition on the transfer of lands belonging to members of the Scheduled Castes and Tribes to others. More specifically, for the Fifth Schedule areas, there are Regulations for protecting the lands of the Scheduled Tribes under the Fifth Schedule of the Constitution, prohibiting the transfer of land to non-tribals. The Sixth Schedule envisages a large measure of autonomy for the tribal areas, providing for the setting up of Autonomous District Councils which will exercise control and administration over land. The Panchayats (Extension to the Scheduled Areas) Act 1996, along with the conformity legislations of the States vests the Gram Sabhas in these areas with the power to prevent

alienation of land and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe.

Right to Livelihood- Labour

The most marginalized groups of poor in rural areas, the Scheduled Castes, consist of *unorganized labourers* located precariously on the brink of subsistence, depending on uncertain employment and wages. The largest segment of unorganized labour is engaged in agriculture and related activities. Out of about 369 million workers in the unorganized sector in 1999-2000, about 237 million were engaged in agriculture sector alone and nearly half of them belong to Scheduled Castes and Scheduled Tribes. Employment opportunities for members of agricultural labour households outside local agricultural sector are negligible. Social problems for them emanate from their low status in the rural hierarchy and economic problems arise due to inadequacy of employment opportunities, low income and inadequate diversification.

One of the laws which is of great significance to the unorganized labour is Minimum Wages Act 1948. The Act empowers both Central and State Governments to fix minimum wages for agriculture and other Scheduled employments and revise them periodically. So far about 1200 Schedule employments in the State sphere and 40 employments in the Central sphere have been brought within the preview of the Act. Minimum wages can be fixed either by the Committee method or direct notification method. They are required, to be reviewed and revised once in five years. Clams can be filed with the competent authority for adjudication u/s 20 of the Act in the event of nonpayment or short payment. Advisory Boards have been given the power to assist the appropriate govt (Central and State) in the matter of fixation, review and revision of minimum wages. The object of the Minimum Wages Act is to ensure that market forces and the laws of demand and supply are not allowed to depress wages of workmen in employments where the workers are poor, vulnerable, unorganized and without bargaining power. The Act helps unorganized workers in scheduled employments and if properly enforced, ensuring minimum wages can offer great potential for income transfers in favour of the poor. Experience shows that the nonpayment of minimum wages is widespread due to the absence of a proper mechanism for enforcement and the rates of minimum wages are not regularly revised within the specified period.

Right to Freedom and Liberty

Slavery converging with landlessness and Scheduled Castes was deep rooted in Indian society. Slavery in its acute form declined in most regions in India and with the enactment of Anti-Slavery Act in 1843 and Sections 370 and 371 of the Indian Penal Code 1860, it stood abolished and became punishable. But hereditary or long-term servitude institutionalized as *bondage* continued to be the condition of large proportion of agricultural labour, a majority of them Scheduled Castes and Scheduled Tribes.

It is possible that some of the orthodox forms of agrestic bondage have undergone changes over a period of time, but they have not been eliminated altogether. There are also large number of bonded labourers in brick kilns, stone quarries, limestone mines, match factories, carpet weaving, irrigation works and a variety of other occupations. *Nearly 75 per cent of the bonded labourers belong to Scheduled Castes and Tribes.*

Article 23 of the Constitution prohibits *begar* and other similar forms of forced labour and declares it a punishable offence. It was only in 1975 that the Bonded Labour System (Abolition) Ordinance was promulgated on 24 October 1975 followed by the Bonded Labour System (Abolition) Act 1976. The Bill was passed by both houses of Parliament on 9.2.76 but given retrospective effect from 24.10.75, the date when Bonded Labour System (Abolition) Ordinance had been promulgated. The Preamble to the Act mentions that the Act is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the *weaker sections of the people*. The Act abolishes bonded labour system and frees every bonded labourer, discharging the bonded labourer from any obligation to render any bonded labour. The liability to repay any bonded debt is also extinguished. While authorizing the State Government to confer powers on District Magistrates, the Act also specifically and directly lays down in Section 12 that it shall be the duty of every District Magistrate to enquire and take action to eradicate bonded labour. Vigilance Committees with the District magistrate as chairman at the district level and SDM as chairman at the sub-divisional level duly vested with powers have also been provided for. The cases under the Act can be tried by Executive Magistrates. It may be noted in this context that some States like Tamilnadu have brought out a detailed Manual on the identification, release and rehabilitation of Bonded Labour.

It is also necessary to note that the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 apply if the bonded

labourer happens to belong to the Scheduled Castes or Tribes, as most of them are. Section 3 (vi) of this Act lays down “whoever compels or entices a member of the Scheduled Caste or a Scheduled Tribe to do begar or other similar forms of forced or bonded labour shall be punishable with imprisonment for a term which shall not be less than six months but may extend to five years and with fine.”

Rights of Children

While estimates of the number of working children vary, a dependable estimate of that number can be arrived at if elimination of working children and primary education are taken together and it is considered that the children currently not attending school are working in some form or another. In 1991, there were as many as 72.9 million out of school children. *It is the poorest and the most disadvantaged sectors of the society i.e. the Scheduled Castes and the Scheduled Tribes that supply the vast majority of working children.* Eleven States, that is U.P., Bihar, Rajasthan, Gujarat, Maharashtra, Madhya Pradesh, Andhra Pradesh, Karnataka, Tamil Nadu, Orissa, West Bengal, account for more than 90 per cent of working children. The largest number of working children are in agriculture and agriculture related activities. There is also a wealth of documentation of child labour in the diamond industry of Surat in Gujarat State, Carpet industry of Mirzapur, Bhadohi and Varanasi belt and glass units of Firozabad in Uttar Pradesh, match factories of Sivakasi in Tamilnadu, gemstone polishing units of Jaipur in Rajasthan, Slate industry of Markapur in Andhra Pradesh, etc. Children in domestic servitude may well be the most vulnerable and exploited children of all, as well as the most difficult to protect.

Right to Equal Access

An important measure which has its origin in pre-independence days but pursued with greater vigour in independent India is the reservation in appointments in public services and in higher educational institutions in favour of the Scheduled Castes and Scheduled Tribes. Some of the States have legislations providing for such reservations, while in many States this has been done by executive orders. It may be seen that in the case of the Scheduled Castes, there is still a significant shortfall in Group A and Group B posts. The position in regard to the Scheduled Tribes shows shortfalls in all categories. While this reflects the picture in respect of the posts under the Central Government, the position is similar in regard to the posts under the State Governments as well as the Central and the State public sector undertakings.

The reservation in admission to higher educational institutions, such as engineering and medical colleges, has served to improve the opportunities of the Scheduled Castes and Scheduled Tribes to pursue professional careers. *The issue of reservation has to be viewed one of equal access and equitable sharing in the public administration and emerging opportunities.*

Right to Development

Initially, the approach to the *development* of the Scheduled Castes and the Scheduled Tribes took the form of a few limited schemes of ameliorative nature by the Centre and the States. In the various States, in the first quarter of Independence, schemes for the Scheduled Castes and Scheduled Tribes consisted largely of programmes of education, housing, distribution of government waste land/Gair Mazrua land and opening of hostels for the students. Over the successive Five Year Plans, particularly from the beginning of the Fifth Five Year Plan (1974-79), the approach to the development of the Scheduled Castes and the Scheduled Tribes underwent a basic change with the emphasis shifting to ensuring of adequate flow of benefits from all the sectors of development in favour of the Scheduled Castes and the Scheduled Tribes. A systematic institutionalized effort in planning for the development of the Scheduled Castes was initiated late in the year 1978 in the nature of Special Component Plan (SCP) for Scheduled Castes. The Special Component Plan (SCP) was designed to channelise the Plan outlays and benefits in all the sectors to the Scheduled Castes, at least in proportion to their population in order to secure their integrated development. It is intended to be a plan for the development of the Scheduled Castes in relation to their resource endowments and their needs in all the areas of social and economic activity including agriculture, animal husbandry, poultry, fisheries, education including scholarships, hostels, and midday meals, provision of drinking water, electrification of Scheduled Caste localities, development of sericulture, minor irrigation including construction and energisation of irrigation wells, programmes for specially vulnerable groups, housing and house sites, link roads, self employment schemes, social forestry, allotment of land as well as schemes for development of lands and allotment of shops and stalls in public places. The Special Component Plan is an important and integral part of the planning process intended to secure the rapid socio-economic development of the Scheduled Castes. In the year 1980, the Special Central Assistance (SCA) was also introduced as an additive to the Special Component Plan. Thus, the strategy for the development of the Scheduled Castes is anchored on the Special Component Plan formulated and implemented by the Centre as well as the States supported by the central scheme of Special Central Assistance.

It was also in the seventies that the State Governments created specific institutional mechanisms for providing assistance for economic development of the Scheduled Castes. The Governments in the States with substantial Scheduled Caste population have set up the Scheduled Caste Development Corporations (SCDC) to enable the members of the Scheduled Castes to take up viable income generating activities. In the year 1979, the Government of India also introduced the centrally sponsored scheme of assistance to the State Governments for investing in the share capital of their corporations. The National Scheduled Caste Finance and Development Corporation (NSFDC) was established in 1989 to provide support to the economic development programmes for the Scheduled Castes. A National Safai Karamcharis Finance and Development Corporation was also set up in January 1997 to facilitate all round socio economic development of Safai Karamcharis and their dependents and to extend financial assistance for the establishment of income generating viable projects.

In respect of the Scheduled Tribes, the basic principles that should guide the approach to the development of the Scheduled Tribes were clearly set out by the Prime Minister Pandit Jawaharlal Nehru in the form of five principles known as 'Tribal Panchsheel' which was later endorsed by the Renuka Ray team (1959), Dhebar Commission (1961) and the Shilu Ao Committee (1969). The Panchsheel laid down specifically that:

- the tribal people should develop along the lines of their own genius and we should avoid imposing anything on them but rather try to encourage in every way their own traditional arts and culture.
- tribal rights in lands and forests should be respected.
- we should try to train and build up a team of their own people to do administration and development.
- we should not overadminister these areas or overwhelm them with multiplicity of schemes; we should rather work through and not in rivalry to their own social and cultural institutions.
- we should judge the results not by statistics or the amount of money spent but by the quality of human character that is evolved.

The tribal situation in the country was gone into indepth before the concept of Tribal Sub Plan was evolved in the year 1974-75. The Tribal Sub Plan (TSP) strategy took note of the fact that a clearer approach to the tribal problems was necessary in terms of their geographic and demographic

concentration, if faster development was to take place. Accordingly, the tribal areas of the country were classified into three broad categories – first, the States and Union Territories having a majority of Scheduled Tribes population; second, the States and Union Territories having a substantial tribal population with major tribal population concentrated in particular administrative units such as Blocks and Tehsils; and thirdly, the States and Union Territories having dispersed tribal population. In the light of this approach, it was considered that tribal majority States like Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Lakshadweep may not need a Tribal Sub Plan as the entire Plan of these States was meant for the Scheduled Tribe population. For the second category of States and Union Territories, the Tribal Sub Plan strategy was adopted after delineating areas of tribal concentration. A similar approach was adopted in the case of States and Union Territories having dispersed tribal population by focusing special attention on the pockets of tribal concentration keeping in view the nature of their dispersal. In order to effectively administer the programmes, the Tribal Sub Plan strategy adopted the Integrated Tribal Development Projects (ITDP) for tribal areas with substantial tribal population, the Modified Tribal Development Approach (MADA) as well as clusters for pockets of tribal concentration and special projects for Primitive Tribal Groups (PTG) along with administrative, financial and functional integration and equally all necessary measures to eliminate exploitative relationships. The Special Central Assistance supplements the Tribal Sub Plan.

A number of States have set up Tribal Marketing Corporations for securing a fair price for the minor forest produce and the agricultural products procured and sold by the tribals. The Government of India also set up the Tribal Cooperative Marketing Development Federation (TRIFED) in 1987 as the apex coordinating body for the State Tribal Marketing Corporations in order to ensure remunerative prices for minor forest produce and agricultural items produced or collected by tribals and to protect them against exploitation by private trades and middlemen. A National Scheduled Tribe Finance and Development Corporation has also been set up to support the Scheduled Tribe Finance and Development Corporations in the States.

The Government of India had also issued guidelines in 1975 in regard to excise policy in the tribal areas emphasizing the banning of commercial vending of the liquor in the tribal areas, while permitting the tribals to brew their own liquor for consumption at home and for religious and social occasions.

The tribal communities particularly those who live within forests or in close proximity to them are victims of unimaginative application of forest laws and loss of traditional rights in forest produce, apart from being confronted with the problem of displacement. The National Forest Policy 1988 reiterated the symbiotic relationship between the tribals and forests and stressed the need for associating the tribal people closely in the protection, regeneration and the development of forests as well as providing gainful employment to the people living in and around the forests. The policy also provided for the full protection of the traditional rights and concessions enjoyed by the tribals. In the year 1991, a series of policy instructions were issued by the Government of India to ensure harmony and to avoid conflict between the local tribal community and the forests, including regularization of occupations by landless poor and the tribal people, conversion of forest villages into revenue villages and joint forest management.

The Tenth Five Year Plan (1997-2002) envisages the continuance of the process of empowering the socially disadvantaged groups through a three-pronged strategy – *social empowerment* through removal of all the still existing inequalities, disparities and other persisting problems besides providing easy access to minimum services; *economic empowerment* through employment cum income generating activities with ultimate objective of making them economically independent and self-reliant; *social justice* through elimination of all types of discrimination with the strength of constitutional commitments, legislative support, affirmative action, awareness generation, conscientisation of target groups and change in the mindset of people through renewed commitment to a National Charter for Social Justice based on the principle of social harmony with social and gender justice and necessary legal measures.

Right to Education

Article 46 of the Constitution directs the State to promote with special care the *educational* and economic interests of the Scheduled Castes and Scheduled Tribes. Article 21 A of the Constitution has laid down the fundamental right to education for children in the age group of six to fourteen years.

The National Policy on Education 1986 placed special emphasis on the removal of disparities and equalization of educational opportunities. The Policy laid down that the central focus in the educational development of the Scheduled Castes is their equalization with the non-Scheduled Caste population at all levels and states of education in all areas and in all the four dimensions

– rural male, rural female, urban male and urban female. The Programme of Action (POA) 1992 accorded priority to the opening of primary and upper primary schools to meet the needs of Scheduled Caste habitations and hamlets, provision of nonformal distance education, adequate incentives; coverage of the Scheduled Castes localities and tribal areas under the Operation Black Board and the programme of Universalization of Elementary Education. While there has been an increase in the percentage of literacy among the Scheduled Castes and Scheduled Tribes, the levels are still perilously low and there is a need for intensive efforts to achieve a reasonably high rate of literacy as also to remove the disparity in the levels of literacy in relation to the general population.

One of the earliest efforts of the State in regard to the development of Scheduled Castes and Tribes has been in the field of education. The schemes taken up include scholarships for prematric studies and post matric studies, free supply of school uniforms, stationery and text books, opening of hostels for the Scheduled Caste and the Scheduled Tribe students, establishment of residential schools as well as the setting up of Ashram Schools for the tribal students. The Post Matric Scholarship Scheme is particularly noteworthy, because of its open ended nature making all the eligible Scheduled Caste and Scheduled Tribe students entitled to scholarship at all levels of post matric education. The scheme has contributed significantly to the access and retention of Scheduled Caste and the Scheduled Tribe students in higher education.

Right to Life and Liberty

It has to be said that, barring some exceptions, the role of the police in relation to human rights is widely perceived as being negative and as an institution, it turns out to be no respecter of human rights, more particularly in relation to the poor and downtrodden *Scheduled Castes and Scheduled Tribes*.

Nothing tarnishes the image of the police more than the brutality directed against the persons in their custody. Deaths in police lockup and encounters occur frequently. The facts that the majority of the victims are from weaker sections of the society such as Scheduled Castes and Scheduled Tribes and these deaths are the outcome of third degree methods and flagrant violation of human rights of citizens are causing concern.

Rights of Women

Almost all the women from Scheduled Castes and Scheduled Tribes are women workers. Taking women workers as a whole, they have an

overwhelming presence only in unorganized sector – nearly 85 per cent of women work in primary sector – and women’s share in organized sector employment is only about 17 percent and mostly in lower rungs in hierarchy. Even though the Constitution lays down equal remuneration to men and women as part of the Directive Principles and the Equal Remuneration Act was enacted in 1976, it is well known that in a majority of instances women are being paid much lower remuneration than men for the same work.

The position of women belonging to Scheduled Castes and Scheduled Tribes is all the more deplorable compared to their male counterparts, struggling, as they do, for basic survival and vulnerable as they are to various forms of sexual abuse. They are “thrice alienated” on the basis of class, caste and gender. Although sexual violence is a problem from which women in general suffer, in the case of women from Scheduled Castes and Scheduled Tribes, it is far more intense and widespread as, due to the lower social attitude towards women from these communities and their economic dependence, they become victims of the sexual violence on a larger scale. The so called unclean occupations are performed mostly by women from the Scheduled Caste and Scheduled Tribe communities.

Another social evil is that of dedicating girl children to local deities and letting them get sexually exploited as they grow up. This practice, which is a part of the wider Devadasi system, is widely prevalent in parts of the country, known by local names such as Jogin, Jogati, Basavi, Mathamma in Andhra Pradesh, Maharashtra and Karnataka. Most of the people subjected to such exploitation are from Scheduled Castes and Scheduled Tribes. Some of the States, such as Andhra Pradesh, have passed enactments prohibiting such practices and for punishment for those who abet such practices.

5. Roles and Responsibility of the District Magistrates

The Indian Constitution has been based on the values of equality, human dignity and justice and incorporates most of the human rights embodied in the international covenants. The laws and policy prescriptions emanating from the Constitution provide form and content to these mandates. In countries such as India, the State has an overarching presence and there are areas of legal and administrative action where the State *alone* is called upon to act in public interest. Illustrations of this nature are the Protection of Civil Rights Act or the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or the Bonded Labour System (Abolition) Act, apart from the general laws. The State Governments and in a number of specific cases,

the District Magistrates have been conferred with special and well defined powers and functions under such laws and rules to exercise them in public interest. Keeping in view, the situation in which the Scheduled Castes and Scheduled Tribes are located in the society and the range of human rights issues that arise in their context, the District Magistrate, as the legally empowered authority under the general laws as well as different specific statutes and as the Head of the district administration, has the duty and responsibility, not merely to prevent the violation or infringement of human rights of the Scheduled Castes and Tribes but to uphold promote, protect and preserve human dignity, decency, equality and freedom as well. The role and the responsibility of the District Magistrates in respect of the human rights of the members of the Scheduled Castes and the Scheduled Tribes are thus wide ranging.

Untouchability and Atrocities

One of the inhuman forms of indignity and violation of human rights is the practice of untouchability. The different overt and covert manifestations of untouchability include denial of access to public places, places of worship, shops, fields, road and pathways, land and water, refusal of services, denial of seats in public transport, abuses in the name of caste and a variety of other acts of discrimination. The Scheduled Caste often depends on the mercy of the so called upper castes even to take drinking water from public water supply sources for their use. A common practice in hotels in rural areas is that they have to eat and drink from separate vessels in which they must wash themselves. In some schools, the children belonging to the Scheduled Caste are made to sit on the floor or at the back of the classroom. The practice of social boycott is a virulent form of untouchability, because of the economic vulnerability and dependence, social boycott operates as a devastatingly effective means for the dominant community to starve the Scheduled Castes into submission.

Many District Magistrates assume or tend to believe that untouchability does not exist or that it is a thing of the past. On the other hand, the district Magistrate should be acutely conscious of the widespread and varied, open and covert, forms of untouchability in the district and make full use of the entire district machinery to put down this practice firmly and effectively. It is the duty of the District Magistrate to strive towards its eradication as mandated under Article 17 of the Constitution and as provided for in the Protection of Civil Rights Act 1955.

The barbaric acts of atrocities is another crucial area which constitutes a gross violation of the right to life with dignity and equality of the Scheduled

Castes. As mentioned in the preceding section, a special legislation, the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was enacted in 1989 to supplement the existing laws. The District Magistrate has been accorded specific powers, duties, functions and responsibilities under this statute. It is unfortunate that Governmental agencies, especially the magistracy and police authorities who are directly charged with the implementation of this Act do not have a proper understanding of the spirit and contents of the Act and Rules. It is seen that the police are unwilling to acknowledge that an atrocity has occurred or simply refuse to register a case or bring about a compromise on the terms dictated by the dominant people. Quite often, only trivial sections of the Act are invoked irrespective of the gravity of the crime.

The District Magistrate must ensure the proper and effective implementation of this Act in all its aspects and in the spirit in which it has been enacted. A prompt visit to the places of occurrence along with the Superintendent of police as mandated in the statute should be ensured. This will not only provide for proper action in specific cases but also generate a climate of confidence and adherence to human rights. The District Level Vigilance and Monitoring Committee with the District Magistrate as the Chairman should be active and a close monitoring and review should be undertaken. The supervision of the investigation and prosecution as well as the review of the performance of the Special Public Prosecutors as provided for in Rule 4 should be regular and probing. Immediate steps should be taken for providing relief and rehabilitation to the victims as set out in detail in the Annexure to the Rules.

During the periodical elections to the local bodies, legislative assemblies or Parliament, the dominant sections intimidate and frighten the Scheduled Castes and Scheduled Tribes from voting according to their free will. This has been specifically brought within the definition of Atrocities under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As District Magistrates as well as returning officers, it is their duty to ensure that the voting rights of these sections of people are fully safeguarded.

Yet another specific form of denial of human rights is the prevention of the Scheduled Caste and scheduled Tribe persons from availing of the elective positions in Panchayat institutions or to function as elected members or Sarpanches or heads of Panchayat bodies. There are some Panchayats in some of the States where even nominations have not been allowed to be filed for the posts reserved for the Scheduled Castes. Firm and effective

action has to be taken in all such cases under the normal criminal laws as well as the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The right of the Scheduled Castes and the Scheduled Tribes to participate in the Panchayati Raj and other democratic institutions should be fully protected.

The Protection of Civil Rights Act 1955 as well as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 and Rules 1995 have to be read together and acted upon. These laws are powerful tools available to the District Magistrates to safeguard the human dignity and human rights of these Constitutional categories.

Atrocities are a symptom of a deeper malady in the society and, therefore, simultaneously, efforts are needed to strengthen the overall socio economic position of the Scheduled Castes and the Scheduled Tribes through educational and economic development.

Manual Scavenging

The dehumanizing practice of manual scavenging continues in most parts of the country, particularly in urban and semi-urban areas. As pointed out earlier, the District Magistrates are the Executive Authorities for this purpose under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993. Action should be taken by the District Magistrates to get the dry latrines demolished in a time bound manner. While doing so, it is necessary to see that this does not result in retrenchment and loss of livelihood to any one. As a large number of those engaged in this work are actually employed by the Municipalities or other local authorities, they should be reallocated to dignified work in the same organization. In respect of those who are private workers, suitable alternative means of livelihood should be worked out and implemented, utilizing various schemes which are available. The children of the Safai Karmacharis should be enrolled into the schools and hostels.

Land – Land Reforms and Land Distribution

The District Magistrates who are also District Collectors or Deputy Commissioners incharge of land administration enjoy enormous powers and functions in regard to land administration and hold a special responsibility in this respect. There are still large extents of lands available for allotment to the Scheduled Castes and Scheduled Tribes – whether it is Government wasteland/ Gair Mazrua lands; lands declared surplus under land ceiling laws; Gram

Sabha lands; Bhoodan lands; or temple lands. In some States like Madhya Pradesh, a part of the grazing (Charnoi) land has been released for assignment to the landless poor Scheduled Castes and Scheduled Tribes. In most of the States, there are rules for preferential allotment of land to them as they constitute the largest group of agricultural labour. The land ceiling laws in many States also provide for an overriding preference in the allotment of ceiling surplus land in favour of Scheduled Castes and Scheduled Tribes. The effective implementation of land reforms and the allotment of land at the disposal of Government and ensuring uninterrupted possession of such lands can secure a substantial improvement in the conditions of living of the rural Scheduled Castes and Scheduled Tribes.

There is also scope for purchase of private lands and allotting them to landless Scheduled Castes and the Scheduled Tribe families under the Land Purchase Schemes introduced in many States. Selection and allotment of good cultivable land and supporting the land allotment with irrigation and other inputs would enable the landless to become independent cultivators.

There are also a number of instances where the Scheduled Castes and Schedule Tribes who have acquired land through land reform laws or other legal means are harassed on this account. Many of them have lost their land due to acts of violence and intimidation by dominant communities who take forcible possession of land that legally belong to Scheduled Castes and Scheduled Tribes. Physical attacks by dominant sections and denial of employment are also not uncommon. Where they are sharecroppers, there are severe problems faced by them in enjoying the fruits of their own labour.

Hence, apart from formal allotment of land and issue of documents such as title deeds, it should be ensured that the allottees are placed in effective possession of the land. In case of any obstruction or threat by the dominant sections, necessary protection by police should be given to the allottee. As many of the atrocities against Scheduled Castes and Scheduled Tribes have their source in their struggle to obtain land, action should be taken in such cases under the provisions of Section 3 (iv) and 3 (v) the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

Land – Land Alienation and Restoration

Unfortunately, land alienation has been going on unchecked and restoration process remains feeble, thwarted by the propertied sections either through force or manipulation of law. Even the Survey and settlement of

lands by Government agencies has caused large scale loss of tribal land due to unimaginative and sometimes motivated steps by the local persons. There are many States where the lands of both Scheduled Castes and Scheduled Tribes are protected from alienation by law. In certain States, lands had been reserved exclusively for the Scheduled Castes. In the States where tribal areas have been notified under the Fifth Schedule, there are specific Land Transfer Regulations relating to tribal lands promulgated under the schedule. In many States, the District Magistrates have been designated as Agents to Government in relation to the Scheduled Areas. It will be the responsibility of the District Magistrates to ensure the effective implementation of the Land Transfer Regulations and enactments to protect as well as restore the lands of the members of the Scheduled Castes and the Scheduled Tribes.

Land – Irrigation and Inputs

The lands of the Scheduled Castes and the Scheduled Tribes and even the lands allotted to them are usually of low quality and bereft of irrigation facilities. Steps should be taken to provide irrigation facilities under various minor irrigation schemes.

Land – Living Space

The poor Scheduled Caste and Scheduled Tribe people struggle for securing house sites. In many villages, they have been in *permissive* possession of housesites and homesteads with a constant threat of eviction. The allotment of a house site will go a long way to release them from the grip of the dominant rich. In urban areas, the problem is even more difficult. The term slum clearance or encroachment removal is often an euphemism for uprooting powerless migrants from their homes and shifting them to low value sites, usually at the periphery, leading to their virtual economic extinction. Most of them belong to the weaker sections, particularly Scheduled Castes and Scheduled Tribes. The District Magistrates should take care to safeguard the interests of these vulnerable people in adequate measure.

6. Conclusion

The District Magistrate has a leadership role in the district as the head of the district administration. A professional, competent and sensitive District magistrate can ensure justice, human rights and human dignity for all sections of the society but in particular, members of SC and ST. The least that can be done is to prevent injustice to the Scheduled Castes and the Scheduled Tribes

– indeed all the poor in the society – in the various arenas of administration such as public offices, including police stations where they are often humiliated. It should be ensured that the law enforcing machinery itself respects the right giving legislation adequately and with earnestness. In all issues that concern the Scheduled Castes and Scheduled tribes, sensitization and motivation, providing proper guidelines, high level review and monitoring, a simple redressal mechanism, close supervision, regular flow of information and more than anything else, accessibility to these disadvantaged groups will serve to secure positive results.

The overall national and state policies are, no doubt, not amenable to changes at the district level. But they have to be creatively and imaginatively applied in actual implementation. Public servants such as District Magistrates to whom powers and functions are delegated in public interest have an area of relative autonomy and exercise considerable independence and freedom within the overall power structure. It is also open to the District Magistrates to suggest changes and seek modifications in laws and state policy in the interests of the weaker sections. Indeed, many policy changes have taken place on the basis of suggestions based on the experience of field level officials.

The District Magistrates themselves should accept imbibe and internalize the values of human rights, equality, non discrimination, human dignity, justice and democratic practices and consider themselves as part of the mechanism for protection of human rights. The urge to respect human rights should largely come from within District Magistrates, representing the State, should uphold and enhance human rights of the Scheduled Castes and the Scheduled Tribes; ensure there is no violation or infringement and take immediate remedial that measures as any such derogation takes place.

As a general rule and practice, the District Magistrates must make efforts to visit and stay in the Scheduled Caste and Scheduled Tribe localities, thus reaching out to them and interacting with them to enable them to overcome their economic and social disabilities and to address their basic needs. They should win their trust, confidence, and respect.

Finally, it should be kept in mind that the social and economic situation of the Scheduled Castes and the Scheduled Tribes varies from State to State and often, even within a State. The Constitution has made special provisions for the administration of the fifth Scheduled and the Sixth Schedule areas in view of their distinct features. It is also to be noted that while the Constitution and Central laws prevail all over the country, there are, in addition, many

State specific laws, regulations and rules which vary from State to State. In respect of development programmes also, there are nationwide schemes as well as State specific and local programmes. It is therefore necessary for the District Magistrates to act with a proper contextual understanding and analysis of the specific situation in each district.

Human Rights of Minorities

International Context

Treaties, Charters and Covenants

The world community today faces not only the question of how to ensure democratic majority rule but also the growing problem of guaranteeing respect for the rights of various under privileged minority groups. Although the existence of 'Minorities' is an ancient phenomenon, it has taken its present form only during Nineteenth and Twentieth Centuries, particularly with the formation of 'League of Nations' after the World Wars. Thereafter, various international treaties, charters and covenants have come into existence as a response to the problems of different minorities (religious, linguistic, cultural and ethnic), establishing clearly that problems of the Minorities constitute one of the most burning issues on the international human rights agenda. Most of the countries, including India, are the signatories to most of the charters and covenants. In Europe, the question of ethnic minorities arose because of their importance in politics during the nineteenth century, and the rise of nationalism based upon the idea of a uniform lifestyle of the majority brought the life of the minorities into the mainstream. Such an idea was opposed by minority groups, particularly those living in the border areas in different countries. The treaties signed between different European countries were intended to address the immediate problems of the countries in which they were made, but then they formed the basis for a positive understanding and response in future to the problems of minorities in general. Thereafter, the development of modern human rights philosophy has occurred in such a way that it passed over from the ideas of a simple majority rule and political rights for all to taking into consideration the interest of those who are distinct in some respects from the majority. Also, being in minority they find it difficult for themselves to make the bodies of power consider their special position and interest.

2. After League of Nations, the United Nations vigorously pursued the task of dealing with the problems of minorities. The specific action taken by U.N. in this regard came first in the form of charter and covenants and

then in the form of declaration and convention. The most important amongst these are:

- i. Universal Declaration of Human Rights 1948
- ii. Convention on the Prevention and Punishment of the Crime of Genocide 1948
- iii. International Convention on the Elimination of all forms of Racial Discrimination, 1965
- iv. International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights 1966.
- v. Declaration on the Elimination of all forms of Intolerance and Discrimination based on Religion or Belief, 1991
- vi. Declaration on the Rights of Persons belonging to National or Ethnic, Religion and Linguistic Minorities 1992

3. It is not possible here to deal with the contents of all those documents, except to quote Article 27 of the 'International Covenant of Civil and Political Rights of 1966', which reads as follows:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or use their own language”.

Capotozti, Francesco, Special U.N. Rapporteur in his report on the implementation of Article 27 of the International Covenant on the civil and political rights formulated the definition of the minority according to which *“a minority is a group numerically inferior to the rest of the population, in a non-dominant position, consisting of nationals of the state, possessing distinct ethnic, religious or linguistic characteristics and showing a sense of solidarity aimed at preserving these characteristics”*.

4. The U.N. General Assembly adopted the 'Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities' on 18th December 1992 and reaffirmed a number of its concerns relating to the rights of Minorities. A full text of the Declaration is given in Appendix-I. A perusal of the text clearly reveals that certain rights of Minorities are universally accepted and it is incumbent on the States to protect the existence of the ethnic, cultural, religious and linguistic identity of the minorities under their respective territories and encourage conditions for the promotion of

that identity. Moreover, the State is required to adopt appropriate legislative and other measures to achieve those ends. The U.N. Declaration spells out the following rights of all categories of Minorities in all parts of the World to be exercised individually as well as in community with other members of their group, without any discrimination: -

- i. Right to enjoy their own culture;
- ii. Right to profess and practise their own religion;
- iii. Right to use their own language;
- iv. Right to effectively participate in cultural, religious, social, economic and public life;
- v. Right to effectively participate in taking decisions concerning themselves;
- vi. Right to establish and maintain their own associations;
- vii. Right to establish and maintain free and peaceful contacts with other Minorities within their country; and
- viii. Right to establish and maintain free and peaceful contacts with similar Minorities in other countries.

The Declaration also directs all the States of the World to take special measures for the Minorities to achieve the following objectives:

- i. To protect the existence and ethnic, cultural, religious and linguistic identity of the Minorities and to encourage conditions for the promotion of that identity;
- ii. To ensure that the Minorities fully and effectively exercise all their human rights and fundamental freedoms without any discrimination and in full measure of equality before law;
- iii. To create favourable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs;
- iv. To let them have adequate opportunities to learn their mother tongue and have instructions in it;
- v. To encourage knowledge of their history, traditions, languages and cultures;
- vi. To assure them adequate opportunities to gain knowledge of the society as a whole;
- vii. To enable them to fully participate in the economic progress and development of their country.

It is, thus, absolutely clear that the rights of minorities are an internationally accepted social norm. The UN Declaration is, therefore, intended to extend these rights to the minorities world-wide.

Human Rights & Minority Rights

The distinction and relation between human rights and minority rights is very important, particularly in the context where a large section of people have been expressing doubts regarding the validity of minority rights as distinct from the human right. It is, therefore, important to understand minority rights in its proper perspective. The historical context in which the concept of human rights emerged in the western countries over a long period made it more 'individualistic' in nature than collective. The scope of human rights internationally is determined by the UN Declaration of 1948, which envisages respect for human rights of all without distinction on the basis of race, language or religion. Thus, even when the concept encompasses all human beings, there has been a general feeling that in the Universal Declaration of Human Rights, the protection of minorities has been more or less integrated into the wider concept of human rights. It is only in some of the latter major instruments of international law that a new system of human rights has been introduced and the rights of minorities recognized. The best example of these instruments is the Article 27 of the UN Covenant on Civil and Political Rights (1966). The other important international instruments have been listed earlier in this chapter. Article 3 of the Declaration of 1992 clearly specifies that persons belonging to minorities may exercise their rights individually as well as in community with other members of their group without any discrimination. Thus individual and collective rights have been accepted simultaneously. This fact, of individual as well as collective rights as a special category has been accepted in the '*Manual on Human Rights Reporting of UN*', which says: -

“... human rights are formulated in a way that makes the individual human being the main beneficiary.... Some human rights combine individual and collective aspects. For instance, freedom to manifest religion or belief can be exercised either individually or in a community with others.... But there are also rights which by their very nature and their subject are rights of large collectiveness. Cases in point are the rights of minorities, comprising considerable number of persons with common ethnic, religious or linguistic ties, as well as people's rights. The latter includes the right to self-determination, the right to development, the right to peace and security, and the right to a healthy environment.”

The 1992 Declaration not only recognizes both individual and collective rights; it also directs (Article 4) the member states almost protecting the human rights and fundamental freedom of the minorities. So, as it stands today, ‘minority rights’ are enjoying a special status along-with the human rights in general.

Minorities – Indian context

There are five religious groups in India, which have been given the official status of National Minorities, namely the Muslims, Christians, Sikhs, Buddhists and Parsis. According to the Census of India, 1991, the percentage and population of minorities in the country is as follows:

Name of the Minorities	Percentage	Number
Muslims	12.12	101,596,057
Christians	2.34	19,640,284
Sikhs	1.94	16,259,749
Buddhists	0.76	6,387,500
Parsis	—	76,383

Thus, in total, the majority community comprises 82 per cent of the total population of the country, as per 1991 Census. There are certain other religious minority groups, which do not enjoy the official status of National Minority, but are still recognized by certain State Governments as minority at the State level. Jains are one such example, which have been recognized by the State of Madhya Pradesh as a minority, while Digambar Jains are recognized as a minority by the State Govt. of Karnataka.

The recognition of above five minorities as national minorities has been done through a notification issued by the Ministry of Social Justice & Empowerment, Government of India, under the provisions of the National Commission for Minorities Act, 1982, while recognition of State level minorities has been done by the State Governments under their respective statutes.

Provisions in the Constitution

The Constitution of India provides special safeguards for minorities. These are general rights established in articles 14, 15, 16, 19, 20, 21, 22, 23, 24,

25, 26, 27, and 28, which are applicable to all citizens including the minorities. Besides, the Constitution guarantees special rights to the minorities under article 29 and 30. A detailed discussion on these articles is attempted in subsequent paragraphs.

There are also special provisions made for the linguistic minorities in the following articles of the Constitution of India:

Article 350A: - Facilities for education in the mother tongue at primary stage.

Article 350B: - Provision for a special officer of linguistic minorities.

The Provision in the Constitution that have a bearing on Minorities and their rights can, in no way, be regarded as ‘special rights’; rather they are in the form of specific provisions/safeguards for the protections of the rights of the Minorities which are even otherwise available to them as citizens of the country. Provision for the protection of these rights has been considered imperative by the framers of the Constitution in the context of the ‘Democratic Polity’ of the country, which we adopted for ourselves after Independence. Each provision related to Minorities in the Constitution was debated at length in the Constituent Assembly, and our experience of over 50 years has clearly shown how right was their ‘vision’ of the situation that they envisaged in this regard.

A brief review of the Constitutional provisions that are related to Minorities needs to be undertaken here to appreciate the nature and scope of the rights of Minorities in the country. At the outset, an extremely significant excerpt from Babasaheb B.R. Ambedkar’s speeches and writings is given, which gives the background of the basic understanding of the framers of our Constitution in this regard.

“The British system of government imposes no obligation upon the Majority to include in its Cabinet the representation of Minorities. If applied to India, the consequences will be obvious. It would make the Majority a governing class and the Minority a subject race. It would mean that the Majority will be free to run the administration according to its own ideas of what is good for the Minorities. Such a State of affairs could not be called democracy. It will have to be called imperialism”.

In fact the concept of ‘secularism’ has been the guiding factor behind various provision in the Constitution. Although the word ‘secular’ was inserted

in the Constitution through an amendment much latter, but the concept has been the deciding factor for determining the nature, scope and implications of the principles of religious tolerance enshrined in the Constitution. The concept of 'secularism' in the minds of the framers of our Constitution is somewhat different from the Western concept. Secularism is not negation of any religion. It is neither anti-religious nor irreligious. It implies positive respect for all religious, inter-religious understanding, complete neutrality of the State in all matters of religion with no support for any particular religion but equal respect to all religions. No disrespect or abhorrence to any religion, no discrimination between various individuals or communities on the ground of their religion and various provisions for this purpose have been incorporated in our Constitution at different places.

The Constitutional provisions regarding Minorities essentially revolve round the twin concept of Democracy and Secularism. All religions in the country have, therefore, enjoyed some Constitutional and legal status and all persons and communities have absolutely the same individual and collective rights. The two concepts can, in no way, be misused to establish hegemony of any particular faith in the Nation's affairs. It has, therefore, been an endeavour in the Constitution to make the Minorities an equal partner with the Majority in the task of Nation-building.

The architect of the Constitution, therefore, envisaged certain sensitive provisions to enable the minorities to enjoy freedom, effective political participation and protection of law and well-being. The provisions are intended to ensure protection of religious, cultural, linguistic and other rights of the minorities and providing widest scope to the minorities for their development and participation in political, economic, social and cultural spheres.

The Constitution gave its citizens equal right and protection of religious freedom through articles 5, 14, 15, 16 and 25 to 30. In the following paragraphs a brief analysis is attempted about the Articles in the Constitution as they have implications of minority rights and human rights of minorities in India.

Right to Equality, Equality of Opportunity and Non-discrimination

The concept of 'Equality' and 'Equality of opportunity' as enshrined in Article 15 & 16 of the Constitution is not only intended to end the discrimination on the basis of religion, race, caste etc., but also gives a scope for 'positive discrimination', i.e. making of special provision for advantages of certain socially and educationally backward classes of citizens.

If we look at the background history of the present provision in the Constitution regarding minorities in the context of the debates in the 'Constituent Assembly', the genesis lies in the 1909 Minto Morley Reforms during the British days which introduced the system of communal electorate for Indian Muslims. The principle of separate electorate for Muslims aroused similar demand from other minority group and consequently the Government of India Acts 1919 and 1935 had separate electorate for Muslims, Sikhs, and Christians, etc. The Advisory committee on the Fundamental Rights of Minorities set up by the 'Constituent Assembly' opposed the communal reservation and agreed to reservation only for backward classes and not for religious or linguistic minorities. The Constitution, however contains a programme for social reconstruction of Indian society based on the concept of individual nationalism and secularism. Thus, an individual entitled to equal access and equal opportunity to compete for valuable resources and opportunities in society irrespective of his religion or caste. The religion or caste can, however, be taken into account by the State for the purpose of achieving substantial equality. The policy of compensatory discrimination under Article 15 & 16 of the Constitution is, therefore, intended not to protect separate identity or integrity or religions or communal group but to reduce social inequalities and historic backwardness.

Right to Religious Freedom

Impartiality of the State towards all religions is secured by Articles 25 & 26 of the Constitution. Article 25 guarantees right to freedom of conscience and the right to profess, practise and propagate religion, subject to certain specified conditions. Article 25 is thus an article of faith in the Constitution as it amounts to recognition of the principle that real face of the democracy is the ability of even an insignificant minority to find its identity under the country's Constitution.

The right guaranteed under article 25 and 26 is not absolute, rather is must be reconciled into the sovereign power of the State to ensure peace, security and orderly living. Under Article 25 (i) a person has two-fold freedom i.e. (i) freedom of conscience and (ii) freedom to profess, practise and propagate one's religion. The freedom of conscience is an absolute inner freedom of the citizen to mould his own relation into God in whatever manner he likes and to declare freely and openly one's faith and belief; to propagate means to spread and publicize his religious view for the edification of others. The word 'propagate' involves exposition, without any element of coercion. Propagation is thus concerned with right to communicate belief to

another person or to expound the tenets of one's religion but does not include right to forcible conversion. This rules out all conversion by fraud, misrepresentation, coercion, intimidation or even influence. In fact, a good number of princely States in the pre-independence period enacted laws for protection against conversion activities and in many cases these laws required individual converts to register their conversion with specified Govt. agencies by filing an application or affidavit. Such agencies were also legally empowered to ascertain if conversion in any case was bonafide and wilful. Major anti-conversion laws during the pre-independence period were the Raigarh State Conversion Act 1936, the Patna freedom of Religion Act 1942, the Sarguja State Apostasy Act 1945, Udaipur State Anti Conversion Act 1946 etc.

After independence attempts were made, to enact a legislation aimed at checking conversion and in 1979 one such major attempt was made for official curbs on inter religious conversion, but the Freedom of Religion Bill introduced for this purpose fell. However, during 1967-68, two Indian States Orissa and Madhya Pradesh enacted local laws entitled Orissa Freedom of Religion Act, 1967 and Madhya Pradesh Dharam Swatantra Adhinyam 1968. Arunachal Pradesh latter enacted similar legislation act. All these State laws have more or less identical provisions and prohibit conversion by force, allurement, inducement and fraud. Contravention of the act is a cognizable offence punishable with imprisonment, fine or both. Those who convert a person by performing/participating in necessary 'ceremony' are required to send an intimation of conversion to the District Magistrate of the locality and failure to do so is also a cognisable offence.

The right to freedom of religion guaranteed under Article 25 of the Constitution is subject to certain restrictions as well. It is subject to public order, morality and health. Similarly, under clause (2) of Article 25, the State is also empowered to make laws for social welfare and reforms. As such, social evils cannot be allowed to be protected in the name of religion. Similarly, the regulatory powers of the State under this Article also means that the secular activities associated with the religious practices can also be regulated by State laws.

The right to practise religion and the power of the State to regulate any secular activity associated with religious practices and its power to restrict religious procedure in the interest of public order, morality and health has been interpreted in different judgements of the Courts. Courts have been taking a view that the rites and ceremonies of the religion, which were considered as essential in accordance with the tenets of that religion, should

not be interfered by the State. Certain judgements in this regard have distinguished the 'essential' elements of religion from other non-essential aspects. Although they remained conscious of the difficulties in determining essentiality of religious practices by secular authorities, Courts, while maintaining the distinction between 'essential' and non-essential, have taken many decisions, e.g. (i) validity of the law prohibiting cow-slaughter was upheld on the ground that sacrifice of a cow was not an obligatory act enjoyed by the Muslim religion (ii) holding Friday prayers on public street was held to be a bad practice and State found competent to prohibit the use of road or any public place for praying (iii) banning use of loud speaker for prayers in a busy and crowded locality was held valid being detrimental to public health. Similarly, in a recent case, the right of Hindus to take out a procession for immersion was found valid as constituting an essential part of their religion. The right to religious freedom guaranteed under Article 25 indicates the positive aspects of religious freedom. The Courts are expected to play a significant and important role in providing objective interpretations of the relevant provisions, in order that such a freedom is not unnecessarily restricted or restrained. Minorities are always alert and conscious that no uncalled for interference is made in regard to matters divine. If no favour is to be shown to them, no discrimination is to be made either.

The rights guaranteed under Article 26 are individual rights; whereas the right guaranteed under Article 26 are the rights of an organised body. According to clause (a) of Article 26, a religious denomination has right to establish and maintain institutions for religious and charitable purpose. The words 'establish' and 'administer' need to be read together, as only those institutions which are established by the religious denominations can be maintained by them. Under Article 26 (b), a religious denomination or organisation is free to manage its own affairs in the matters of religion and State cannot interfere in exercise of its rights, unless they run counter to public order, health or morality. Here again the secular activities connected with the religious institutions can be regulated by State laws. Thus, the places of worship cannot be used for hiding criminals or for carrying on anti-national activities; similarly, they cannot be used for political activities. Under clause (c) & (d) of Article 26, a religious denomination has right to acquire and own property and administer such properties in accordance with the law. Regarding administration of such religious properties the particular principle is that the State can make laws to regulate the administration of property of religious endowment, but such laws cannot take away the right of administration altogether.

Cultural and Educational Rights of Minorities

Article 29 & 30 of the Constitution deals with the cultural and educational rights of the Minorities. Article 29, protects interests of the Minorities regarding their 'language, script and culture' Article 30 gives the Minorities the right to establish and administer educational institutions. Article 30 in fact can be regarded as Magna Carta of the basic fundamental right of the Minorities through which they can preserve their identities as religious or linguistic communities. Article 29, though not exclusively for the Minorities, includes in its purview the Minorities. Article 29 deals with the right to conserve the distinctiveness of language, script and culture of any section of citizens residing in the territory of India. The legalistic part of the right of Article 29 is common to Article 30, but still it is the Article 30, which gives the right to establish and administer educational institutions of their choice exclusively to all the religious or linguistic Minorities. Sometimes, it is said that the right given to Minorities in Article 30 (i) is restricted to the establishment and administration of institutions of their choice in order to conserve their 'language, script or culture' only, but this is not true. This innocuous view is a result of the mixing of the contents of the Article 29, which should not happen as the two Articles are different in four respects.

- a) Article 29 (1) grants fundamental right to all sections of the citizens of our country, which include the majority also, whereas Article 30 (1) grants such a right to religious and linguistic minorities only.
- b) Article 29 deals with language, script or culture, while Article 30 (1) deals with Minorities based on religion or language alone.
- c) Article 29 (1) is concerned with the right to conserve language, script or culture, while Article 30 (1) deals with right of Minorities to establish and administer educational institutions according to their choice.
- d) Article 29 relates to conservation of language, script or culture which can be undertaken through any means without unnecessarily establishing institutions. Similarly, institutions established under Article 30 (1) may not be for the purpose of conserving language, script or culture.

Thus Article 29 (1) and Article 30 (1) overlap but the former cannot limit the width of the latter. The scope of Article 30 is restricted to linguistic or religious Minorities, and no other section of the citizen has such a right. However, since Article 30 (1) gives the right to linguistic Minorities irrespective

of their religion, it is not possible to exclude secular education from Article 30.

Ever since the Constitution came into existence, Article 30 has been subject to too much debate amongst sections of the society and also in the Supreme Court. The following aspects of Article 30 needs to be discussed in detail:

- ***The right to establish:*** The simple meaning of ‘to establish’ is to bring into existence; a detailed discussion on the meaning of this expression has taken place in a well known case which came before the Supreme Court of India in October 96 (S. Azeez Basha vs Union of India, AIR 1968 SC 662-676). Since the AMU, Aligarh was established in 1920 through a Central Legislative Act, the Supreme Court took a view that University came into existence through this Act and, therefore, Muslims as a Minority could not have the right to administer it. It felt that ‘establishment and administration’ must be read conjunctively and so, in real sense, it gives the right to Minorities to administer educational institutions, provided it has been established by it. Thus the right to establish means to bring an institution into being by a Minority community and it does not matter whether a single philanthropic individual funds the institution or the community at large contributes the funds

- ***The right to administer:*** Administration means management of affairs of the institutions. Thus, management must be free of control, so that the founders could mould the institution as they think fit and in accordance with their ideas of how the interests of community in general and the institution in particular will be best served. No part of its management can be taken away and vested in another body. This explanation to the expression ‘administer’ has been given in case of State of Kerala vs Very Rev. Mother Provincial (AIR 1970 SC 2079). In the same case the word of caution to the Minorities has been given in the areas in which Universities or Government can intervene for advancement of maintenance of standard of education. Thus prescribed syllabus of the Universities needs to be followed by Minority institutions with the freedom that they may teach special subjects, which the institution may like. To some extent, State can also regulate the condition of employment of teachers and health and hygiene of students. On the basis of various Supreme Court judgements, the rights covered under Article 30 can be summarized as follows:

- a) To choose its management or governing body.
 - b) To choose its teachers
 - c) Not to be compelled to refuse admission to students
 - d) To use its properties & assets for the benefit of the institutions.
 - e) To select its own medium of instructions; hence a legislation which would penalize the institution by dis-affiliation from the University which uses a language as the medium of instruction other than the one prescribed by it, offends Article 30 (I).
- ***Of their choice:*** The Minorities both religious and linguistic are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education. General secular education is, therefore, covered under the phrase 'of their choice' and **Minorities have right to establish such institution.**
 - ***The right to compensation of property:*** Clause 1 (A) of Article 30 was inserted through Constitutional amendment in 1978 with a purpose to provide protection to the properties of Minority educational institutions. Thus no individual or educational institution belonging to the majority community shall have a justiciable fundamental right to compensation in case of compulsory acquisition of its property by the State, while in case of educational institutions belonging to the Minority Community the compensation is justiciable and part of the fundamental right.
 - ***Granting aid for recognition:*** under Article 30 (2) the State is under obligation to make equality of treatment in granting aid to education institutions, but minority institutions are to be treated differently while giving financial assistance. They are entitled to get financial assistance, the same way as the institutions of the majority community. The receipt of the State aid does not impair their rights in Article 30 (1) as the State can lay down reasonable conditions for obtaining grant-in-aid for its proper utilisation. But the State has no power to compel minority institutions to give up their right under Article 30 (I). Recognition is thus a fundamental right of the minorities and in fact is a necessity as without recognition no educational institution established or to be established by a minority Community can fulfil the real object guaranteed under Article 30 (1).

The minority organisations/institutions complain about the infringement of their rights guaranteed under Article 30 of the Constitution. In large number of cases, the minority institutions are not distinguished, as permission for opening the institution/granting recognition/affiliation is denied. The existing minority educational institutions also complain about denial of freedom to them to administer their institutions freely. Undue interference from the Education Department officials with scant regard for the rights of the minority institutions is reported. In case of large number of States, the educational code of the State has no provision for the manner in which the minority educational institutions are required to be treated. There are very few States like Tamil Nadu, where a separate educational code for minority institutions exists. In a number of cases of educational codes of the States, the provisions run contrary to the Constitutional guarantees/rights given to the minorities.

The Ministry of Human Resource Development, Department of Education, Government of India, formulated and notified vide letter No.F.7-51/89-PM(DIII) dated 5.10.98, the Policy Norms and Principles for recognition of minority managed educational institutions and for regulating other matters related to the educational rights of minorities guaranteed under Article 29 and 30 of the Constitution. A text of these policy guidelines are enclosed, at Appendix-2. These policy norms are important and needs to be taken into account by civil administration, while dealing with the matters related to the minority managed educational institutions established and administered under Article 30 of the Constitution.

In a recent judgement, the 11 Judges Constitutional Bench of the Supreme Court of India clarified the following issues that were earlier formulated on the basis of various Court judgements:

- (i) Linguistic and religious minorities are covered by the expression 'minorities' and since reorganization of the States in India has been on linguistic lines for the purpose of determining the minority, the unit will be States and not whole of India.
- (ii) In regard to the use of the word 'of their choice' under Article 30(i), even the professional educational institutions would be covered.
- (iii) Admission to unaided minority educational institutions viz. schools, where scope for merit based selection is practically nil, cannot be regulated by the State or country

(except for providing the qualifications and minimum conditions of eligibility in the interest of academic standard).

- (iv) In case, aid is received or taken by a minority educational institution, it would be governed by Article 29(2) and would then not be able to refuse admission on the grounds of religion, race, caste, language or any of them.
- (v) A minority institution may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent and selection of students in professional and higher educational colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration.
- (vi) In case of unaided minority educational institutions, regulatory measures of control should be minimal. Thus, while conditions of recognition and affiliation would apply, in matters of day-to-day administration like appointment of staff and control over them, the management should have freedom, without any external control. However, rational procedure for selection and for taking disciplinary action has to be evolved by the management itself.
- (vii) In case of minority educational institutions, where aid is provided by the State, regulation can be framed governing service conditions for teaching and other staff, without interfering with overall administrative control of management.
- (viii) The right to establish and administer educational institutions is guaranteed under the Constitution to all citizens under Article 19 (g) and 26 and to minorities specifically under Article 30.

Safeguard of Minority Rights – Institutional Arrangement

The Government of India has provided a number of instruments to look into the implementation of minority rights and to safeguard the same.

The need for this institutional arrangement was explained in the Resolution issued by Government of India in 1978, while constituting the Minorities Commission.

The Resolution issued by the Govt. of India while constituting the Minorities Commission in 1978 (copy at Appendix 3) through an Executive order reads: “Despite the safeguards provided in the Constitution and the law in force, there persists amongst minorities a feeling of inequality and discrimination. In order to preserve secular tradition and to promote national integration, the Govt. of India attaches the highest importance to the enforcement of the safeguards provided for minorities and is of the firm view that effective institutional arrangements are urgently required for effective enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and in Government policies and administrative schemes enunciated from time to time”. The text of the Resolution determines the basic framework of the status of Constitutional rights of the Minorities in the country. It amounts to recognizing that minorities are increasingly feeling insecure and isolated with regard to their religion, personal safety and protection of their property. Studies on the status of various minorities show that there is an ample evidence to justify the feeling amongst the minority communities. The scope of the present reading forbids an attempt to give details about their status, particularly about their economic and educational status, their representation in services particularly in police, military and para-military forces.

The National Commission for Minorities

In an attempt to make suitable institutional arrangements for the protection of the Constitutional and civil rights of the Minorities, the Government of India notified a Government Resolution to set up a Minorities Commission. The Resolution also said that all the Central Government Ministries and Departments will furnish to the Commission all information, documents and assistance required by the Commission. The Resolution also expected the State Governments to do the same. The Commission was expected to submit its Annual Report to the President of India detailing its activities and recommendations. The Annual Reports of the Commission were required to be laid before each House of Parliament with Action Taken Memorandum, also explaining the reasons for non-acceptance of a recommendation, if any.

Later, the Commission was given statutory status through the passage of the National Commission for Minorities Act, 1992. This Act more or less retained

the provision of the 1978 Government of India Resolution. The Act empowered the Commission to exercise “all powers of a Civil Court trying a suit”, while discharging its statutory functions namely, (i) evaluating progress of development of minorities under the Union and the States (ii) monitoring working of the safeguards for minorities provided in the Constitution and State Laws and (iii) looking into specific complaints regarding deprivation of rights and safeguards of the minorities. The word ‘minorities’ has been defined in clause-C of Section 2 of the National Commission for Minorities Act, 1992, and it says that ‘Minority’ for the purpose of this Act means, ‘a community notified as such by the Central Government’. The Central Government, therefore, officially notified 5 communities as minorities in terms of provision of this Act.

The National Commission for Minorities is essentially a human rights organization overseeing the enforcement of the human rights of a particular section of the people, i.e. religious minorities. This fact has also been recognized under the Protection of Human Rights Act 1993, wherein the Chairman of National Commission for Minorities has been declared as ex-officio Member of the National Human Rights Commission. The importance of the Commission and its essential nature has been recognized by the Supreme Court of India in one of its recent judgements Viz. *Misbah Alam Shaikh Vs State of Maharashtra* (AIR 1997 SC1409), wherein Justice K Ramaswamy and Justice G.T.Nanavati held.

“By operation of Section 3 read with Section 9, it is the duty of the Central Government to constitute a National Commission, and it shall be the duty and the responsibility of the National Commission for Minorities to ensure compliance with the principles and programmes enumerated in Section 9 of the Act, protecting the interests of the Minorities for their development and working of the safeguards provided to them in the Constitution and the laws enacted by Parliament as well as the State Legislatures. The object thereby is to integrate them in the National mainstream in the united and integrated Bharat, providing facilities and opportunities to improve their economic and social status and empowerment.”

The NCM Act 1992 (Appendix 4) can be perused. Section 9 of this Act specifies the functioning of the Commission. The functions are comprehensive and are related not only to the protection of the Constitutional rights of the persons belonging to minorities but also the development of minorities including conduct of studies and research on the issues relating to their socio-economic development.

State Minorities Commission

The idea of a Minorities Commission first originated in the State of Uttar Pradesh, when a one-man Minorities Commission was established in Lucknow in 1960. Later in 1974, the Commission was expanded to include a Chairman and nine Members. Similarly, Govt. of Bihar set up a Multi-Member Minorities Commission in 1971. Now a good number of State Governments in India have established State Minorities Commissions e.g. Andhra Pradesh, Bihar, Delhi, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal. The Government of Assam and Gujarat have established Development Board for this purpose and they have the status of a registered Society.

National Minorities Finance & Development Corporation (NMFDC)

The second instrument in the Central Government, which came into existence on the recommendation of the National Commission for Minorities and which needs a special mention is National Minorities Finance & Development Corporation (NMFDC). It was established on 30.9.1994 with the following objectives.

- (i) To promote economic and developmental activities for the benefit of 'backward sections' amongst the minorities, preference being given to occupational groups and women';
- (ii) To assist, subject to such income and/or economic criteria as may be prescribed by the Government of India from time to time, individuals or groups of individuals belonging to the minorities by way of loans and advances, for economically and financially viable schemes and projects;
- (iii) To promote self-employment and other ventures for the benefit of minorities;
- (iv) To grant loans and advances at such rates of interest as may be determined from time to time in accordance with the guidelines or schemes prescribed;
- (v) To extend loans and advances to the eligible members belonging to the minorities for pursuing general/professional /technical education or training at graduate and higher levels;

- (vi) To assist the State-level organisations dealing with the development of the Minorities by way of providing financial assistance or equity contribution and in obtaining commercial funding or by way of refinancing;
- (vii) To work as an apex institution for coordinating and monitoring the work of the Corporation/Boards/other bodies set up by the State Governments/Union Territory Administrations for, or given the responsibility of assisting the minorities for their economic development; and
- (viii) To help in furthering the Government policies and programmes for the development of minorities.

15-Point Programme for Minorities.

Besides these two instruments, there is also a special programme known as the 'Prime Minister's 15-Point programme for Minorities', which is in existence since 1983. On 11th May 1982, the then Prime Minister, Smt. Indira Gandhi had addressed a letter to the Home Minister, containing certain suggestions for immediate action by way of measures to prevent the recurrence of communal violence and improve the economic conditions of minorities. This was communicated to all the Ministries of the Central Government and to State Governments, and are known as '15-Point Programme for Minorities Welfare' since then.

A full text of the programme may be seen at Appendix 5. The range of points covered under the programme relates to almost all important minority rights discussed pre-page. All the District level officers are expected to regularly monitor the progress on implementation of the Prime Minister's 15-Point programme and ensure that regular reports on each point are sent to the State Government where it need to be consolidated for sending it to the Ministry of Home Affairs, Ministry of Social Justice & Empowerment.

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Human Rights of Disabled and Physically Challenged

This Chapter attempts to discuss human rights of those persons with disabilities who, temporarily or permanently, experience physical, intellectual or psychological impairment of varying degrees. Most often, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities.

Definition of Disability

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, while defining disability in Section 2(t) stipulates, “person with disability means a person suffering from not less than forty per cent of any disability as certified by a medical authority.”

The disabilities that have been listed in Section 2 include blindness, low vision, hearing impairment, locomotor disability/cerebral palsy, mental retardation, mental illness and persons cured of leprosy. In addition, autism and multiple disabilities have been covered under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Authorities to give Disability Certificate: As per rule 4.1 of the Implementing Rules of the Disabilities Act, 1995, “A Disability Certificate shall be issued by a Medical Board duly constituted by the Central and the State Government.”

Composition of the Medical Board: Rule 4.2 of the Implementing Rule lays down that, “The State Government may constitute a Medical Board consisting of atleast three members out of which atleast one shall be a specialist in the particular field for assessing Locomotor/Visual including low vision/hearing and speech disability, mental retardation and leprosy cured, as the case may be.”

Types of Disability Certificate: The Rule 5(1) of the Implementing Rules of Persons with Disabilities Act, 1995 provides that, “The Medical Board

shall, after due examination, give a Permanent Disability Certificate in cases of such permanent disabilities where there are no chances of variation in the degree of disability.” The Medical Board shall indicate the period of validity in the certificate, in case where there is any chance of variation in the degree of disability 5(2).

Relevance of a Disability Certificate: Rule 6 of the Implementing Rules of the Disabilities Act, 1995 clearly states that, “The Certificate issued by the Medical Board under Rule 5 shall make a person eligible to apply for facilities, concessions and benefits admissible under the schemes of the Government or Non-Governmental organizations, subject to such conditions as the Central or the State Government may impose.”

Human Rights Issues

A cursory analysis of the case law available and the reports of national and international organizations indicate that, worldwide, persons with disabilities are subjected to certain common forms of discrimination. The most common ones are the following: -

- ❖ Denial of equality of opportunities in earning livelihood.
- ❖ Denial of just and fair conditions of work.
- ❖ Denial of equal access to the programmes of education.
- ❖ Denial of access to public transport, built infrastructure and information systems.
- ❖ Denial of participation in family, social, cultural, and political life.
- ❖ Emotional, sexual and physical harassment.
- ❖ Denial of right in the family property and to own property

The above stated forms of violations can be identified as violations of economic, social, cultural, civil and political rights of persons with disabilities. Disability tends to be couched within a medical model, identifying people with disabilities as ill, different from their non-disabled peers and in need of care. Because the emphasis is on the medical needs of persons with disabilities, there is a corresponding neglect of their wider social needs. This has resulted in their severe isolation.

In the UN Standard Rules on the Equalization of Opportunities for Persons With Disabilities, 1993, ‘disability’ summarizes a large number of

different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, but a distinction has been made between disability and handicap meaning “handicap is the loss or limitation of opportunities to take part in the life of the community on an equal level with others”. The purpose of the term handicap is to emphasize the focus on the shortcomings in the environment and in many organized structures of society.

A coherent programme of “equality of opportunity” entails tackling deep-rooted social attitudes to disability. Besides that, equality entitles each person to equal membership in society. This calls for critical reorientation of all the structures and processes which have important implications in the lives of all citizens including those with disabilities. “In essence, the human rights perspective on disability means viewing people as subjects and not as objects. It entails moving away from perceiving the disabled as problems towards viewing them as holders of rights. Importantly, it means locating problems outside the individual and addressing the manner in which various economic, social, cultural and political processes accommodate the difference of ability.” (Quinn and Degener, 2002).

The Constitution

Disability: A State Subject

The Constitution of India is premised on the human rights values which recognize that all persons are born free and equal in rights and dignity. The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution, stand testimony to the commitment of the State to its people. These provisions envisage a very positive role for the State towards its vulnerable citizens. As per Entry 9 in the List 11 of Schedule 7 of the Constitution, the subject of ‘Relief to the Disabled and Unemployable’ is the responsibility of the State Governments. Despite the Constitutional mandate, most of the State Governments have neither introduced any law nor have introduced the State Policy on Disability so far. Some schemes have been introduced to provide scholarships, pensions, assistive devices, braille books, out of turn houses etc. But, their impact has been insignificant perhaps due to inadequacies in the scheme.

Article 41: This Article 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.” These provisions, to a

certain extent, reflect the traditional values of Indian culture that accord great importance to organized response by the State towards its disadvantaged and vulnerable members.

Article 15: Article 15 of the Constitution enjoins that, “no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

- (a) access to shops, public restaurants, hotels and places of public entertainment; or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public”.

The public facilities mentioned in this Article are designed on an assumption that all people can walk, see, hear, and can use hands, but may be discriminated on other grounds as mentioned in the list of prohibited heads of discrimination in this Article. It is recognized that people are handicapped not so much due to their disabilities as they are on account of environmental barriers and, therefore, it is necessary to create barrier-free facilities for persons with disabilities under Section 44 of the Disabilities Act 1995. It, therefore, enjoins on the establishments in the transport sector to adopt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to PWDs. Section 45 calls for installation of auditory signals at intersections for the blind, curb cuts to be replaced with gentle slopes for wheel chair mobility, engravings on zebra crossing, railway platform etc for the safety of the blind and for persons with a low vision. Section 46 provides for ramps in public buildings, hospitals and schools, braille symbols and auditory signals in the elevators, etc. However, precious little has been done by the governments to translate these provisions into reality, so much so, that even necessary amendments in the light of the Disabilities Act have not been carried out in building bye-laws, fabrication standards for buses, rail coaches, vessels etc. As a result, barriers for equal participation in the mainstream systems and processes continue to persist.

Javed Abidi filed a Civil Writ petition bearing No 812 of 2001 Vs Union of India & Ors before the High Court of Delhi. He was aggrieved on the removal of temporary wooden ramps from the Red Fort, Qutub Minar, Humayan’s Tomb, Jantar Mantar and other similar monuments of historic importance. These ramps were fabricated and fixed by the Ministry of Social Justice and Empowerment and Archaeological Survey of India during the

visit of Mr. Stephen Hawkins, the renowned physicist (Wheelchair User), who wanted to see these monuments. After his visit the Archaeological Survey of India decided to remove these ramps. Abidi filed the case seeking justice in accordance with Section 46 of the Disabilities Act, 1995, which mandates ramps in public places for wheelchair access. The petitioner urged the Court for directing the respondent not to remove the wooden ramps and instead to erect permanent ramps ensuring barrier-free access to persons with disabilities. Mahesh Sharma and Shivani Gupta Vs Ministry of Railways 2000 was a complaint case before the Chief Commissioner for Persons with Disabilities. Complainants were aggrieved on account of barriers to access trains and related facilities such as railway stations, waiting rooms and toilets. The relief was sought as per Section 44 of the Disabilities Act, 1995. The Chief Commissioner recommended Ministry of Railways to evolve a long-term plan with short and medium term objectives for making railway stations, rail coaches and other facilities accessible for wheelchair users and for persons with other types of disabilities. In pursuance of the recommendations, Ministry of Railways drew up a plan with a modest budget for:

- making ramps at the major railway stations at 155 locations in the first phase.
- The Railways also decided to convert 20-proto-type Guard-cum-sleeper coaches with wider doorways and modified toilets to permit direct access by wheelchair.
- For New Delhi, Hazarat Nizamudin and old Delhi railway stations, the respondent set aside a sum of Rupees 33.42 lakhs for providing ramps, accessible waiting rooms, accessible toilets, accessible parking space etc.

Article 16: This Article guarantees that “no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

The silence of the Constitution regarding discrimination in employment on grounds of physical or sensory disability should not have caused exclusion of persons with disabilities in matters of employment and appointment to any public office; as most people with disabilities possess the capacity to productively contribute and be self-reliant provided the conditions of work are just and fair. However, people on grounds of disability have encountered rampant

discrimination due to inadequate safeguards in the law. The medical fitness criteria for entry and retention of government service outrightly discriminates people on grounds of disabilities. A petition was filed under Article 32 in the Hon'ble Supreme Court of India by one Narendra Kumar Chandla vs State of Haryana & Ors. AIR 1995, S.C.519. Chandla was aggrieved on account of being reduced in rank on acquiring disability during service. The Supreme Court, however, at that stage refused to entertain the petition under Article 32. The petitioner, therefore, approached the Punjab & the Haryana High Court, which dismissed his petition. Chandla again filed a Special Leave petition in the Supreme Court. Though the Supreme Court by its Order appointed him as L.D.C. (clerk), which was lower in rank but protected his salary in the pay scale of Rs.1,400-2,300. However, he was deprived of his right to promotion to the next higher grade forever. No doubt, to a great degree the Supreme Court removed the injustice and protected his livelihood but it did not lay down the law prohibiting discrimination in the matter of career enhancement on acquiring disability during service. In order to prevent discrimination on grounds of disability extra legal safeguards have now been provided, for example, Section 47 of Persons with Disabilities Act, 1995 lays down that "No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefit. Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. No promotion shall be denied to a person merely on ground of his disability."

The medical fitness criteria for entry in the government service and in the public sector undertakings are so provided that it outright denies opportunity of entry in the service on grounds of disability even if the post in question is the one already identified for PWDs and the candidate in question has already qualified the selection criteria. In the case of Nandakumar Narayanarao Ghodmare Vs. State of Maharashtra and Ors. (1995 Vol.6, Supreme Court Cases 720), a physically handicapped candidate was rejected because of colour blindness. When it was pointed out to the Court that only 5 posts out of 35 posts required perfect vision, the Supreme Court directed the Government to consider the case of the appellant and to appoint him

to any of the posts of the Agricultural Class II Service post, other than the posts which required perfect vision. But unfortunately, the medical fitness standards laid down by most governments and public sector undertakings still are unfair and are in violation of law.

International Covenants and Agreements for Persons with Disabilities

Declarations

In the 1970s, the evolution in thinking on disability issues at the United Nations manifested itself in a number of UN initiatives, which embraced the growing international concept of human rights of persons with disabilities and equalization of opportunities for them. For instance, 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. Furthermore, the Assembly declared that there should be proper legal safeguards to protect the mentally retarded person against every form of abuse if it should become necessary to restrict or deny his or her rights”.

In 1975, the General Assembly of the UN adopted the Declaration on the Rights of Disabled Persons, which proclaimed 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”. This Declaration is a comprehensive instrument with a clear focus on the rights of persons with disabilities.

Rules and Resolutions

The world community observed 1981 as the International Year of the Disabled Persons. Its central theme was – “Full Participation and Equality.” It set the trend of human rights in the disability arena, as the State was held responsible to guarantee enjoyment of full citizenship and fundamental rights by persons with disabilities. Subsequently, the UN General Assembly adopted the World Programme of Action (1982 — the most comprehensive global

strategy which placed ‘equalization of opportunities’ as a central theme and as its guiding principle for the achievement of full participation of persons with disabilities in all aspects of social and economic life. To give recognition to economic, social and cultural rights of PWDs the period 1983 –1993 was observed as the UN Decade of Disabled Persons. The Decade intensified debate on equal opportunities and non-discrimination. Recognition of the inherent equality of all human beings as well as the entitlement of each individual to all human rights forms the core of human rights law. In International Human Rights Law, equality is founded upon two complementary principles: 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 arbitrary denial of opportunities for equal participation. For example, 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. Such exclusion has several adverse consequences on the psyche, development and growth of the individual. It saps initiative. It cripples the will to contribute ones very best to any productive endeavor. It demoralizes and demotivates people to come up with the best of their imagination and ingenuity which would promote quality of work.

Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes much beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.

Material Equality

Commonly, the notion of equality manifests in two distinct ways: legal equality and material equality. In the material equality perspective, society is obliged to modify those differences that deny or impair the right of each individual to be an equal member of society. “Policy research demonstrates that building codes, principles of barrier-free design, adapted curricula, targeted policy and funding commitments are useful mechanisms to reduce discrimination and increase equal participation” (Marcia, 2002). 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 implying “that 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.”

Standard Rules

The UN Standard Rules imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. States are required under the Rules to remove obstacles to equal participation and to actively involve disability NGOs as partners in this process. In the first operative paragraph of resolution (2000/51), the Human Rights Commission recognizes the UN Standard Rules as an evaluative instrument to be used to assess the degree of compliance with human rights standards concerning disabled people. The Commission further recognizes that any violation of the fundamental principle of equality or any discrimination or other negative differential treatment of persons with disabilities inconsistent with the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities is an infringement of the human rights of persons with disabilities. (Para. 1)

Asian and Pacific Decade

The Governments of the ESCAP region, proclaimed, the Asian and Pacific Decade of Disabled Persons, 1993-2002, by resolution 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 12 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, 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:

- Better coordination among various ministries at national and State level.
- Enactment of comprehensive legislations for the protection and promotion of rights of the disabled.

- Establishing accessible information systems for wider dissemination of critical knowledge.
- Removal of barriers from built environment, transport system and public facilities.
- Production, maintenance and distribution of assistive devices to overcome various impairments.
- Strengthening self-help organizations of persons with disabilities, their parents and of women with disabilities.

A comparative advantage of the ESCAP disability programme was the development of active inter-divisional collaboration, including the ESCAP Human Settlements Section, in the promotion of non-handicapping environments; the rural development section, in poverty alleviation among rural disabled persons; the general transport, coordination and communications section and the tourism unit, in the promotion of accessible public transport and the promotion of barrier-free tourism. 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. In May 2002, 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 towards an inclusive, barrier-free and rights-based society for persons with disabilities.” To achieve the goal, the framework identifies seven priority areas for action, in each of which critical issues and targets with specific time frames and actions follow. In all, eighteen targets and fifteen strategies supporting the achievement of all the targets are identified.

The UN Human Rights Instruments and Disability

There has been an increasing international recognition that disability is a human rights issue. There is also recognition that disability and disability-related exclusion and marginalization is a concern for the UN human rights bodies. In August 1984, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur, Mr. Leandro Despouy, to conduct a comprehensive study on the relationship between human rights and disability. In his report (1993), Mr. Despouy made it clear

that disability is a human rights concern, with which the UN monitoring bodies should be involved.

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

The Committee on Economic, Social and Cultural Rights under 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 General Comment states: “The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant’s provisions apply fully to all members of society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant. Moreover, 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 ICESCR, a few articles can be examined. For instance:

Article 7 refers to the “right of everyone to the enjoyment of just and favourable conditions of work which ensures adequate remuneration”. The just and favourable conditions of work have been interpreted and translated into the domestic labour standards by several governments. The concept of reasonable accommodation and barrier-free work environment is in fact premised 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 installation of 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”. Available statistics show that world over this article is violated grossly in the case of persons with disabilities. High correlation between disability and poverty, and disproportionate number of disabled children in orphanages,

visible presence of maimed, blinded and mentally ill persons amongst beggars are some examples.

International Covenant on Civil and Political Rights (ICCPR)

The Quinn and Degener study on the use of human rights instruments in the context of International Covenant on Civil and Political Rights, suggests that out of 114 States party reports reviewed, 76 (67%) made some reference to disability. Other than addressing social welfare measures and equality laws, States party reports tend to refer to disabled persons in connection with civil commitment and the compulsory treatment of mentally ill or intellectually impaired persons. The State parties with reference to disabled persons do not extensively cover treatment of disabled defendants and prisoners, voting rights, marriage and divorce laws, and immigration laws and bioethics issues. With the exception of the initial report of the Czech and the second periodic report of Ireland, which frankly acknowledge that State prisons are unable to accommodate disabled prisoners. Denmark reports that the State has established a training programme for police officers on how to deal with disabled prisoners. UK reports that a common standard of conduct has been laid down for all the staff working in prisons, which also refers to disabled inmates. These trends reflect greater respect for civil and political rights of PWDs in a much broader context.

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 to hold office. The Comment further states that persons assisting disabled voters must 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 who constitute a sizeable minority but have been an insignificant political constituency due to unfavorable circumstances. From the approach adopted by the Treaty Monitoring body, it is evident that people may be different from a physical and intellectual standpoint but so far as their civil and political rights are concerned, all people are the same.

Convention on Rights of the Child (CRC)

There's yet another important international instrument viz. Convention on Rights of the Child (CRC) which establishes the rights of a disabled child

to effective access and reception of education, training, health care services, rehabilitation 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 (Article 23). In fact, this is the only instrument, which has comprehensive and exclusive provisions regarding rights of the disabled children, although Article 2 of this Convention prohibits any discrimination in respect of the enjoyment of Convention rights on the ground of disability. In paragraph 2 of Article 23, States parties are encouraged and required to ensure assistance to children with disabilities who are eligible and who 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. "The Committee on the Rights of the Child considers the self representation and full participation of children with disabilities as central to the fulfilment of their rights under the Convention. Article 12 may thus be viewed as the Convention's backbone. It 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. Furthermore, 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." (Kilkelly, 2002) The CRC is unique in explicitly addressing the issue of disability, and it, therefore, has a great potential in advancing the rights of children with disabilities.

Torture Convention

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. The imbalance of power is the root cause of such violations which happen due to poor supervision and arbitrary standards in the special institutions for PWDs. Mental health institutions, homes for severely and multiple disabled are the breeding grounds of such unlawful practices. Torture has aroused profound concern in all quarters. Article 5 of the overarching Universal Declaration on Human Rights and Article 7 of ICCPR prevent inhuman and degrading treatment including medical treatment without the consent of the individual in question. The fact that the Convention only covers torture committed by or with the

consent of public officials may be thought to limit its significance in the context of disability. Since, increasingly, countries in the developing world and some in the developed are routing services through private voluntary organizations, 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. It is mainly due to their total dependence for survival on these institutions and State sponsored care providers. In this respect, the disability related discrimination is an outcome of inadequate regulations and indifference to the problems faced by the disabled. 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.

Convention on the Elimination of All Forms of Discrimination against Women

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. Recognizing that disability combined with gender stereotype causes multiple disadvantages, the Treaty Monitoring Body under this Convention adopted General Recommendation No 18, which urges State 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 they are for other women. The purpose of adopting a General Comment is to assist State parties in fulfilling their reporting obligations. The attention of the State parties through a General Comment is drawn to the insufficiencies and to the neglected areas. The Treaty Monitoring Body not only analyses the shortcomings in the report but also provides useful suggestions to stimulate appropriate response from the State parties. Most importantly, the General Comments offer authoritative interpretation of the Covenant and its application in domestic law.

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 a proposal for a comprehensive and integrated international Convention taking into account the recommendations of the Commission for Human Rights and the Commission for Social Development.

While arguing for the Disability Convention, the Asian and Pacific forum of Human Rights institutions emphasize that “a coherent and integrated human rights approach to disability cannot be developed under the present treaty system” and an exclusive Convention would give “status, authority and visibility” to disability in the human rights area which cannot be achieved through the process of reform of existing instruments and monitoring mechanisms. Adding a new treaty would also complement existing international standards for the rights of the disadvantaged. Favouring thematic treaty on disability rights Gerard Quinn states “It would make much more sense to encapsulate the relevant human rights standards in a single legal instrument. It would clarify State parties obligations and it would give disability NGOs a clear target – one that is dedicated to disability rights in a holistic sense. This, in turn, could potentially enable international law to accelerate positive developments within states.”

A human rights and social justice approach enables the use of various categories of rights and also recognizes how rights have to be a concern in thinking about approaches to disability and social policy that enhance, rather than diminish, the status of those with disabilities. In conclusion, international and domestic laws are a reliable vehicle that can aid transformation in material conditions and mental attitudes towards disabilities.

The 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 measures necessary 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 analyzed here.

Legal Provisions

The Mental Health Act of India, 1987

There is a general agreement that among persons with disabilities, those with intellectual and psychological impediments are most vulnerable and are discriminated both outside and within the families. To afford protection to the rights of this section, the Government of India repealed the outdated and inadequate Indian Lunacy Act, 1912 and the Lunacy Act, 1977 and enacted the Mental Health Act of 1987. Conditions conducive to protect autonomy, freedom and dignity of the mentally ill persons should have been created since the Act lays down comparatively rational criteria for admission in psychiatric hospitals and psychiatric nursing homes, and for the custody of his person, his property and its management. Under this Act, a District Mental Health Authority has been provided. Until 1995, many mentally ill persons were consigned to jails and those living in mental health institutions were no better as the conditions both in prisons and in mental institutions are far below the stipulated standards. “In the Chandan Kumar Banik Vs State of West Bengal, 1995 Supp. [4] SEE 505, the Supreme Court went into the inhuman conditions of the mentally ill patients in a mental hospital at Mankundu in the District of Hooghli. The Supreme Court deprecated and discontinued the practice of tying up of inmates with the iron chain who were unruly or not physically controllable and ordered drug treatment for these patients. The administration of the Hospital was also removed from the Sub-Divisional Officer and replaced by a competent doctor with requisite administrative ability and powers. The Supreme Court gave directions to remove other deficiencies in the care to ensure that the patients now detained in the mental hospitals would receive appropriate attention in all respects in a humane manner.” (Bhandare, 2001)

Due to deep-rooted prejudice and insufficient understanding of the Mental Health Act, the menace of committing people to jail did not stop for many years after the Mental Health Act became the law. Sheela Barse Vs. Union of India & Anr. 1993 4 SEE 204 was a case of detention of non-criminal mentally ill persons in the jails of West Bengal. Their appalling condition were noted by the Supreme Court, which observed:

- 1) That admission of non—criminal mentally ill persons to jails is illegal and unconstitutional.
- 2) The Court directed that the function of getting mentally ill persons examined should vest with Judicial Magistrates and who, upon the

advice of mental health psychiatrists, should assign the mentally ill person to the nearest place of treatment and care.

The NHRC has been deeply concerned with the unsatisfactory conditions prevailing in mental hospitals in the country, many of which function as custodial rather than therapeutic institutions. In the light of problems like overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission came to the view that there was great need for it to take up this issue which, if not redressed, would result in the continuing violation of the rights of those greatly in need of understanding and support. Subsequently, an operational research project was undertaken in collaboration with NIMHANS. Based on the findings of this project, a comprehensive set of guidelines has been developed and widely disseminated with a view to ensuring quality in the Mental Health Institutions. The Commission is monitoring the performance of State governments in the light of guidelines and directions of The Hon'ble Supreme Court Supreme Court of India.

The Rehabilitation Council of India (RCI Act)

The Rehabilitation Council of India was set up by the Government of India in 1986, initially as a society to regulate and standardize training policies and programmes in the field of rehabilitation of persons with disabilities. The need of minimum standards was felt urgent as majority of persons engaged in education, vocational training and counselling of PWDs were not professionally qualified. Poor academic and training standards adversely affect the chance of disabled in the world of work. Therefore, an Act of Parliament in 1993 enhanced the status of the Council to a statutory body with an aim:

- 1) To regulate the training policies and programmes in the field of rehabilitation of people with disabilities.
- 2) To standardize training courses for professionals dealing with people with disabilities.
- 3) To prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities
- 4) To regulate these standards in all training institutions uniformly throughout the country.
- 5) To recognize institutions/organizations/universities offering Certificate, Diploma, undergraduate and postgraduate degrees in the field of rehabilitation of persons with disabilities.

- 6) To promote research in rehabilitation and special education*.
 - 7) To maintain Central Rehabilitation Register for registration of professionals.
- * Added as per amendments in the RCI Act.

Sixteen categories of professionals and para-professionals are covered under the RCI Act. The Council has so far developed and standardized 85 different courses, which are offered by 203 academic institutions. The Council has accorded importance to both pre-service and in-service training, as inclusion of disability-perspective is vital to the integration of persons with disabilities in all facets of community life. In the Central Rehabilitation Register, about 21,000 professionals have been registered so far. The Manpower Development Report prepared by the RCI estimated that in the 9th plan period 3,63,000 trained persons would be needed. But the total output has not exceeded above 25,000. To accelerate the human resource development the distance education mode is now being explored.

The National Trust Act

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act was passed in 1999 and became operational in 2001. This Act provides for the constitution of a national body for the welfare of persons covered under this Act. The main objectives of the Act are: -

- To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong.
- To strengthen facilities to provide support to PWDs to live within their own families.
- To extend support to registered organizations to provide need based services during the period of crisis in the family of PWDs.
- To deal with problems of PWDs who do not have a family support.
- To promote measures for the care and protection of PWDs in the event of death of their parent or guardian.
- To evolve procedures for the appointment of guardians and trustees for PWDs requiring such protection.

The Act mandates the creation of Local Level Committees comprising District Magistrate or the District Commissioner along with one representative from

a registered organization and one person with disability. The Local Level Committee is vested with the authority to decide upon the applications of legal guardianship received from parents, relatives or registered organizations duly authorized by the natural guardians of persons. The Committee is required to maintain inventory and annual accounts of the property and assets, claims and liabilities submitted by the legal guardians to it. The Local Level Committee can remove a guardian so appointed for negligence or for misappropriating the property of the person with disability.

Activities	Number	States	Union Territories
Formal awareness programmes	100	24	4
Local level committees formed	347	25	4
Organizations registered	277	25	1
State level master trainers trained	43	25	
District level master trainers trained		11	

Disabilities Act, 1995

To give effect to India's commitment to the Proclamation on the Full Participation and Equality of Opportunity for the Persons with Disabilities 1993, in the Asian and Pacific Region the Parliament of India, enacted a very comprehensive piece of legislation known as "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". The Act spells out the responsibilities of the various organs of the State and provides policy guidelines in the area of education, employment, manpower development, housing, social security, research and training. It aims to promote creation of barrier free environment for persons with disabilities. The Act also lays down specific provisions for the development of specific services and programmes for equalizing the opportunity for the enjoyment of right to education, work, housing, mobility, communication and public assistance in case of severe disability and unemployment. For the translation of intended aims Central Coordination Committee and State Coordination Committees have been envisaged in a multi-sectoral mode with representation to persons with disabilities, Members of Parliament, professional bodies and eminent citizens. To counteract problems of discrimination, prejudice, neglect and non-compliance to mandated responsibilities the institution of Chief Commissioner in the Center and Commissioner for persons with disabilities in the States have been provided. These quasi-judicial bodies are vested with

the powers of a civil Court. This mechanism has been quite effective in redressing individual grievances on account of deprivation of rights, facilities and guarantees. The wide-ranging provisions of this Act are compiled under 14 different chapters. The chapter on Prevention and Early Detection of Disabilities (chapter 4), Education (chapter 5), Employment (chapter 6), Affirmative Action (chapter 7), Non-Discrimination (chapter 8), Research and Manpower Development (chapter 9), Institution for Persons with Severe Disabilities (chapter 11) contain substantial provisions of the Act.

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. The transport, buildings and information systems are designed on 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 the 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 per cent of the complaint cases before the Chief Commissioner for PWDs 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, have denied admission to students on grounds of their disability. Hon'ble Supreme Court of India in the Rekha Tyagi versus 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 as per Section 39 of the Disabilities Act, 1995.

Endemic Areas and Important Statistics

Poverty and Malnourishment

In general, people with disabilities are estimated to make up 15 to 20 per cent of the poor in developing countries (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 anaemia
- Vitamin D deficiency – rickets (soft and deformed bones)
- Iodine deficiency – slow growth, learning difficulties, intellectual disabilities, goitre
- Iron deficiency – anaemia, which impedes learning and activity, and is a cause of maternal mortality
- Calcium deficiency – osteoporosis (fragile bones) (All Caps), 2002b)

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

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 per cent of the total 2,38,081 reported cases under IPC (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 fingertips, 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 can't 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 to persons in detention. Custodial crimes, which include death, rape and disability, have drawn attention of public, media, legislature and human rights organizations. Bhagalpur blinding case is the illustration of this menace.

Accidents and Disability

As per 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. "It is estimated 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 behavioral disorders are some disabilities common among survivors of such accidents. (Disability in 21st Century, 2002).

Occupational Hazards and Disability

To maximize profits, production is often located wherever costs are lowest, regulations are loose and workers 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. children employed in the carpet, cracker and match industry, have not received appropriate and sustained attention, as occupational health has not been perceived important enough both by the corporates and those responsible to regulate work standards. Even in the western countries, permanent disablement as a result of industrial and highway accidents outnumbers war casualties, for example, 44,000 people lost their limbs in industrial accidents, while 17,000 American soldiers became disabled in the Vietnam war (Murickan and Kutty, 1995).

Similarly, poor farmers and peasants are very vulnerable to disability as they work for long hours exposed to sunlight, dust and smoke. Wheat harvesting and amputations, paddy sowing and muscular diseases, coconut picking and spinal cord injuries are some common hazards associated with agricultural activities. The efforts to improve the design of agricultural implements have been quite successful in preventing disabilities. However, parallel improvements in the primary health system have not been achieved, as it lacks the capacity to deal with agricultural accidents which occur at the village level.

Employment of the Disabled

Creation of opportunities for gainful employment is a task which governments all over 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.

As per 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

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

Source: NSSO, 1991

The employment scenario regarding PWDs presents a rather discouraging picture. Underemployment and unemployment continues to be rampant among the disabled, despite efforts made to improve employment opportunities for PWDs by the Government of India, State Governments and UT administrations. As per the sample survey, conducted by NSSO in 1991, the rate of employment among the PWDs in rural areas was 29.1% and in the urban areas 25.2%.

The table below gives classified information:

Table 2

Sr. No.	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

Source: NSSO, 1991

Education

The first school for hearing impaired children was established at 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 deprived of educational opportunities, even lacking basic literacy skills. Of the children dropped out in 1991 43% are reported to have acquired disability. This highlights the inadequacies of the education system. The NSSO 1991 yielded 42 per cent are rate of education covering blind, hearing, speech and locomotor impaired persons. If 3 per cent population of mentally retarded and mentally ill persons is added to 1.9 per cent of other four disabilities, the coverage of 42 per cent comes down to approximately 20 per cent, in fact, even less.

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:

Table 3

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

Summary Notes for the District Officers

Coordination

- a) The District Magistrates coordinate various development programmes in the district. Therefore, they can ensure that people

with disabilities benefit from all the developmental schemes particularly those aimed at women, children, elderly persons, unemployed and socially disadvantaged sections.

- b) Better coordination among authorities in health, education, rural development, urban development, transport, traffic is vital to the translation of laws and policies and schemes for the disabled into reality.
- c) All the district committees, programme heads and officers in charge of schemes meant for persons with disabilities can form a District Coordination Committee. The District Magistrates can chair meetings of such a Coordination Committee and review its performance in a most effective and least time-consuming manner.

Affirmative Action

- a) The competent authorities in urban development, rural development, revenue deptt. etc. may be advised to ensure that people with disabilities are given preference in the allotment of houses, shops, kiosks and agriculture and industrial land pattas including houses under Indira Awas Yojana and likewise as per Section 40 and 43 of the Disabilities Act, 1995.
- b) Scholarships to students with disabilities, pensions to the elderly disabled persons and unemployment allowance to those disabled whose names are registered for more than two years in the employment exchange must be given and any hurdles causing delay should be reduced by eliciting monthly progress report from the concerned authorities as per Section 30(d) and 68 of Disabilities Act, 1995.

Certificates

- a) The District Chief Medical Officer and District Hospital should be advised to constitute a Medical Board which should meet on one fixed day atleast twice a month for looking after the need for the Disability Certificate as per rule 4, 5, and 6 of the Implementing Rules under Disabilities Act, 1995.
- b) Through a quarterly camp-approach at the block level, Disability Certificate, Income Certificate, Caste and Domicile Certificate, Free Bus Pass, Railway Concession Forms can be distributed to PWDs. Pension, scholarship and unemployment allowance can be disbursed

in these camps to ensure efficiency, transparency and to check delay and malpractice.

Block level activities

Block Development Officers can be advised to:

- a) Ensure that 3% of JGSY works are allocated for the disabled in your block as per the Government of India directions and in accordance with Section 40 of the Disabilities Act, 1995.
- b) The BDOs can also ensure that each disabled person is given a house under Indira Awas Yojana.
- c) Credit assistance can be given for economic upliftment to a large number of disabled people under SGSY (Swarna Jayanthi Gram Swaraj Yojana) Scheme as 3% budget is earmarked for PWDs in this scheme.
- d) The panchayats can be encouraged to facilitate creation of barrier-free school, post office, health center, rail and bus stand, panchayat building and religious shrines from the Swaran Jayanti funds.

Education

- a) All the heads of the educational institutions at school, college, university, technical and professional level should be advised not to refuse admission on grounds of disability as per Section 26 of the Disabilities Act, 1995.
- b) All educational institutions, government and government aided, should reserve 3% seats for students with disabilities as per section 39 of the Disabilities Act, 1995.
- c) All written tests, exams and interview procedures must be modified to ensure that persons with disabilities can participate without any discrimination and in accordance with the provisions referred to under the Chapter of Education in the Disabilities Act, 1995.
- d) The NGOs and district education authorities engaged in integrated education of disabled children must be helped in accessing funds under the scheme of Integrated Education of the Disabled Children (IEDC, Government of India, thorough the Ministry of HRD). Similarly, the schools covered under DPEP must be monitored closely to see the performance of disabled children and the teachers in these schools.

- e) Orientation and sensitization programmes should be introduced for the teachers, co-curricular staff and administrators of the regular school system, so that integration of the disabled children can be achieved more effectively. The Rehabilitation Council of India can provide assistance in this regard.
- f) The school authorities and medical authorities should coordinate the school health check-up programme to identify disabilities and for their prevention and treatment as per Section 25©.
- g) The District Social Welfare Officers should be encouraged to bring all the disabled children to the *Balwadis* and *Anganwadis* for early integration. Sensitization of the *Balwadis* and *Anganwadis* workers can be looked after by NIPSID.

Accessibility

- a) All the educational institutions and health institutions can be advised to provide ramps, barrier-free toilets and other facilities as per Section 45 and 46 of the Disabilities Act, 1995.
- b) The Municipal Corporation and competent authorities should be advised to adopt model-building byelaws developed by the Ministry of Urban Affairs, Government of India. All the new buildings, private and for public use, thus, would be built on accessible norms as prescribed in Section 45 and 46 of the Disabilities Act, 1995.
- c) All the renovation activities and commissioning of new buses and other means of transport should be approved only if they comply with accessible standards laid down in Section 44, 45 and 46 of the Disabilities Act, 1995.
- d) The Municipal Commissioners can ensure that all the shops, commercial establishments, cinema theatres, bus stops etc. are provided with facilities like ramps, hand railings, barrier free toilets and accessible drinking water facility for the disabled people.

Employment

- a) For starting a business enterprise like provision stores, tea shops, vegetable and fruit stalls, STD booth etc. the SC/ST unemployed disabled people can be covered under the schemes for SC/ST.
- b) Under PMRY (Prime Minister's Rozgar Yojana) Scheme a number of disabled youth can be helped to set up STD booths, Xerox centres, computer internet browsing centres etc.

- c) You can ensure that the Government local bodies and Government undertakings furnish information to employment exchanges about vacancies reserved for disabled people. This would ensure proper utilization of 3% quota in jobs for the disabled as per Section 33 of the Disabilities Act, 1995. Government, public sector undertakings and all the institutions receiving aid from any government is obliged to appoint disabled persons on 3% posts in all the categories as per Section 33 and 2(k) of the Disabilities Act, 1995.
- d) All the State Governments and the Government of India have compiled a list of identified jobs in various services and sectors for different categories of the disabled. This list is in pursuance of Section 32 of the Disabilities Act and thus can be used by the district authorities and all those requiring to employ PWDs.
- e) All the appointing authorities in the Government and government-aided sectors must not dispense any employee from service, reduce in rank, deny promotion to an employee on merely grounds of disability. Instructions to this effect must be issued as per Section 47 of the Disabilities Act, 1995.

Women with disabilities

- a) You can ensure that all the disabled women are made members in the local self-help group of women (SHG) under the women development programme of the Government, so that they can become recipients of the Government assistance under the revolving fund and the economic activity assistance under SGSY.

The Nilgiri District in Tamil Nadu and Anantpur in Andhra Pradesh are examples of good practice and District Magistrates can always rely upon these model disability-friendly districts.

Senior Citizens of India

1. Introduction:

We have started living in the age of ageing, but it is only the dawn of that Age. From 12 million in 1901, we rose to be 20 million in 1951, and there are now nearly 77 million older persons in India today. This figure is projected to be 177 million in 2025 (United Nations Projections, 1998), about 11% of these are above 80 years. By 2025, we would have 25% of these who would be above 80 years.

The population statistics do not mean anything useful unless we sufficiently consider what these numbers add up to. About 90% of older persons today are from the unorganized sector, that just means that at the age of 60, they have no regular source of income, no worthwhile form of social security, i.e. no provident fund, no gratuity, no medical insurance, after formally or informally retiring from active earning. About 80% of the older persons live in rural areas and have limited access to health care and other services.

Ageing has important implications, both at the macro and micro levels. While at the micro level, it affects individuals and their families, at the macro level it affects the entire nation. With about 33% of the elderly living just below the poverty line, and another 33% just above it, but belonging to the lower income group, the financial situation of about 66% of the older persons today is fragile. This relates to serious livelihood insecurities caused by factors including growing incidence of prolonged old age ailments, disabilities, dysfunctions, lack of opportunities in gainful activities and little or no familial support. Old age poverty in India would be a permanent feature, if today we don't cope with it by setting aside substantial resources and ensure that public health and social services are up to the task.

Situation of Older Women is an area of serious concern. While 48.2% of the older persons today are women, this proportion is likely to rise further and, in a few years, we would have a feminine India. This feminization of ageing has further consequences. The older woman in India faces a triple jeopardy – being a woman in a largely patriarchal society, economically

dependent and aged. And to add to that, if she is a widow, which is the case with 55% of elderly women today, the world may not be a pleasant place to live.

This is a situation very few perceived decades ago and, therefore, very little or no action was taken at various levels to correct it. We anticipate that ageing populations will drain our resources, but that cannot be a ground to throw them by the wayside for the simple reason that, when the old were young, they had made significant contribution to the family, society and the nation. Time has, therefore, come for the young to repay even a millionth part of that debt which they owe to the old.

Family plays a major role in looking after the elderly. Family is viewed as one of the most unique entities; it holds together dynamic relationships of members of different ages and generations. The concept of respecting the elders was ingrained in children during their younger years of upbringing. However, the influence of demographic changes on the family is very evident today. With the shift of household platform from extended families to nuclear families, there is an increased demand on family resources, making it necessary for individual family members to have more than one job. This reduces the time family members spend together. With the migration of working members in search of employment, the older persons are left behind – alone too. This just means that they have to look after themselves. So, the welfare of older persons is gradually shifting for family to community and government.

2. Human Rights Issues:

Violence against older people is an infringement of their most basic human rights. The human right against the elderly can be categorized as: -

- Physical abuse: the infliction of pain or injury, physical coercion, physical/chemical restraint
- Psychological/emotional abuse: the infliction of mental anguish
- Financial/material abuse: the illegal and improper exploitation and/or use of funds or resources
- Sexual abuse: non-consensual contact of any kind with an older person
- Neglect: intentional or unintentional refusal or failure to fulfil a care-giving obligation

3. International Conventions/Agreements

In the United Nations, the issue was first raised in 1948 at the initiative of Argentina with a preparation at that time, of a 'draft declaration of Old Age Rights'. Then, more than 20 years later, the question was again placed on the agenda of the UN General Assembly at the initiative of Malta, eventually leading in 1982 to the advent of the World Assembly on Ageing, held that year in Vienna. This was followed in the same year by the General Assembly's adoption of the International Plan of Action of Ageing, that we commonly know as the Vienna Plan of Action. The UN Principles on Older People, published in 1992, outline the then fundamental areas of social, political, cultural and economic rights of older people.

The year 1999 was designated as the International Year of Older Persons in recognition of the humanity's demographic coming of age. India has followed by nominating the year 2000 as the National Year of Older Persons.

4. Constitutional Provisions

In the Constitution of India, entry **24 in list III of Schedule VII** deals with the "Welfare of Labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and **old age** pension and maternity benefits. Further, **item no. 9 of the State List and item 20, 23 and 24 of Concurrent List** relates to old age pensions, social security and social insurance, and economic and social planning.

Article 41 of Directive Principles of State Policy has particular relevance to **Old Age Social Security**. According to this Article, "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 case of unemployment, OLD AGE, sickness and disablement and other cases of undeserved want".

5. Legal Provisions

a) *Code of Criminal Procedure, 1973:*

Section 125(1) (2) makes it incumbent for a person having sufficient means to maintain his father or mother who is unable to maintain himself or herself and, on getting proof of neglect or refusal, may be ordered by a first class

magistrate to make a monthly allowance not exceeding Rs.500/-. It is applicable to all, irrespective of their religious faith and religious persuasion, and includes adoptive parents. This section has been interpreted by the Supreme Court in its ruling, so as to make daughters and sons, married or unmarried, equally responsible to maintain their parents.

b) *Hindu Adoption and Maintenance Act, 1956:*

By Section 20(1) of the act, every Hindu son or daughter is under obligation to maintain aged and infirm parent. Amount is determined by the Court taking into consideration the position and status of the parties.

c) *Legislation by the Himachal Pradesh Government:*

The Himachal Pradesh Mata-Pitah aur Arthrik Pariposhan Vidhayak 1996 passed by Himachal Pradesh Vidhan Sabha makes it mandatory for children to look after their aged parents and other dependents or pay a maintenance allowance. The amount of maintenance is to be commensurate with the family's status.

The status of Government through this legislation has tried to bypass the Courts. Complainants can simply go to a Sub-Divisional Magistrate or any other appellate authority to seek redress of their grievances. The Government of Maharashtra has passed a Bill on similar lines.

d) *Income Tax Rebate (Section 88B of Finance Act, 1992):*

This provides for rebate in Income Tax to senior citizens. The rebate is available in the case of a resident individual (s/he may be an ordinary resident or a non-ordinary resident; he may be an Indian citizen or a foreign citizen) who has attained the age of 65 years at any time during the relevant previous year. From the assessment year 2001-2002, tax rebate under section 88B shall be:

- (a) The amount of income-tax before giving any rebate under sections 88, 88B and 89(a); or
- (b) Additional tax rebate of 100% of tax on total income subject to a maximum limit of Rs.15,000 (men and women) under section 88B
- (c) Tax rebate of 15% is given under section 88 for income between Rs.1.5 lakhs to Rs. 5 lakhs

- (d) Ceiling on savings for tax rebate is now raised from Rs.80,000/- to Rs.1,00,000/-
- (e) Investment of up to Rs.2 lakhs in the Relief Bonds issued by RBI have been declared tax-exempt for Senior Citizens or employees retiring under VRS.

(Taxpayers Information Series-31; Taxation of Salaried Employees Pensioners and Senior Citizens, Directorate of Income Tax (RSp and PR) New Delhi, July 2001)

e) Income Tax Rebate (Section 88C):

This provision relates to the additional rebate of Rs.5000/- to women taxpayers.

- Senior Citizens are excluded from “One by Six” scheme for filling income tax return under proviso to section 139(1), if they own immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise (clause 1) or are a subscriber to a telephone (clause 3). The conditions specified in both the clauses above do not apply to any senior citizen who has attained 65 years of age but is not engaged in any business or profession during the previous year.

(Taxpayers Information Series – 31; Taxation of Salaried Employees Pensioners and Senior Citizens, Directorate of Income Tax (RSp and PR) New Delhi, July 2001 and Notification nos. S.O. 710(E) dated 27th June, 1997, S.O. 668(E) dated 6th August, 1998 and S.O. 710(E) dated 20th August 1998 as mentioned in <http://incometaxdelhi.nic.in/vsincometaxdelhi/scheme/onesix.htm>).

f) Deduction in respect of medical insurance premia (Sec. 80D):

An assessee is entitled to a deduction up to Rs.15,000 with effect from the assessment year 2000-01 where the assessee or his/her spouse, or dependent parents or any member of the family is a senior citizen (Rs.10,000 in case of others).

g) Deduction in respect of medical treatment (Sec. 80D):

This section provides for a separate deduction to a resident assessee being an individual or a Hindu undivided family member for expenditure incurred for medical treatment for the individual himself or his dependent

relative in respect of any disease or ailment which may be specified in the rules. The deduction shall be limited to Rs.40,000.

However, where the expenditure incurred is in respect of the assessee or his dependent relative or any member of a Hindu undivided family of the assessee and who is a senior citizen (65 years of age anytime during the previous year) a fixed deduction of Rs.60,000 will be available.

Senior Citizens suffering from any chronic disease need not pay tax, if their income is up to Rs.2.15 lakhs.

(Taxpayers Information Series-31; Taxation of Salaried Employees Pensioners and Senior Citizens, Directorate of Income Tax (RSp and PR) New Delhi, July 2001 and Courtesy: office of the Joint Secretary (Revenue) Ministry of Finance, Government of India)

h) Concessions in Travel:

By Road:

- 50% discount on fare for travel on Delhi Transport Corporation buses to Senior Citizens who have attained the age of 65 years. Discount is applicable on Monthly Pass Only.
(Letter No. TR/1/130/99/3568, Delhi Transport Corporation, Government of N.C.T of Delhi, dated 10.09.99)
- In Tamil Nadu Transport Corporation buses, two seats in the front exclusively for old people and handicapped.
- BEST buses in Mumbai offer no concessions. However, senior citizens can enter the bus from the front side.
- MSRTC (Maharashtra State Road Transport Corporation) buses provide 50% concession, if a person is 65 years and above and has an election identity card or a Tehsildar's certificate.
- Local trains in Mumbai have around 8-10 seats for the senior citizens in only one of the compartments.
- Senior citizens pass holders get 50% travel concession for travelling in city buses in Chandigarh.
- Kadamba transport corporation (K.T.C) provides 5% reservation of seats in bus for senior citizens.

- Elderly women above 60 years enjoy free travel in Punjab.
- Rajasthan State Road Transport Corporation provides a concession of 25% to a person of 65 years and above.
- Free passes are provided to old people who are freedom fighters to travel in fast and express buses. Reservation of two seats in the buses for senior citizens.

By Train:

Indian Railways provide **30% concession** in all classes and trains including Rajadhani/Shatabdi trains for male/female senior citizens who have attained 65 and 60 years of age respectively.

No certificate is required at the time of purchasing ticket. However, a documentary proof showing the age/ date of birth issued by some competent authority must be carried.

In Tamil Nadu and West Bengal, lower berth for senior citizens is also provided on request.

[Vide office memo of Government of India, Ministry of Railway by Telex/Post Copy issued on 27.07.1998. No. TCI/2066/95/Sr. Citizens/Policy. Reference S.No. 42 of Annexure to Rule 101 of IRCA Coaching Tariff No. 24, Part I (Vol.II) regarding concession to Senior Citizens]

By Air:

- **50% discount** on normal adult fare for travel on Indian Airlines domestic flights only to Senior Citizens, who have attained the age of 65 years. Discount is applicable in economy class only. For permanent identity card two recent stamp size photographs and for one time journey one passport size photograph are required.
- **50% discount** on basic fare for travel on SIAL domestic flight only to Senior Citizens, who have attained the age of 62 years. Discount is applicable in economy class only.
- **50% discount** on basic fare for travel on Jet Airways domestic flight only to Senior Citizens, who have attained the age of 65 years. Discount is applicable in economy class only.

i) Other facilities:

Priority is given to senior citizens while paying the electricity/telephone bills in Punjab and Chandigarh.

In Delhi a separate counter has been opened to facilitate the senior citizens for submission of property tax bills.

(Vide circular No. A&C (PC)/SAU/PA(R)/IV-38/99-518 dated 24-6-99, Municipal Corporation of Delhi, Assessment & Collection Department, Special Assessment Unit)

7. Special Programs:

a) OLD AGE PENSION FOR THE GENERAL PUBLIC

▪ *National Old Age Pension Scheme (NOAPS):*

Under National Old Age Pension Scheme, Central Assistance of Rs.75/- per month is granted to destitute older male or female above 65 years. The person must not have any regular means of subsistence from any source.

This scheme is implemented in the States and Union Territories through Panchayats and Municipalities. Both Panchayats and Municipalities are encouraged to involve voluntary agencies as much as possible in benefiting the destitute elderly.

(Guidelines, National Social Assistance Programme, Ministry of Rural Development, Government of India – October 1999, New Delhi)

b) INSURANCE SCHEMES:

1. Jeevan Dhara:

Pension plan for the individuals, who are self-employed, as these individuals cannot have 'Pension' benefit after they cease to earn.

Restrictions: Age range at entry: 18 to 65 years

Minimum notional cash option – Rs.50,000/- for premiums other than single premium.

Minimum single premium – Rs.10,000/-

Minimum Annual Premium – Rs.2500/-

Benefits:

Reversionary bonus and final additional bonus (if any) will be added to the notional cash option

Annuity will be available with following options:

- (i) Annuity for life
- (ii) Annuity for life with guaranteed period of 5,10,15 and 20 years.
- (iii) Annuity for life with return of purchase price.
- (iv) Annuity for life increasing at simple rate of 3%.
- (v) Annuity for life with a provision for 50% of the annuity payable to the spouse of the annuitant for life or death of the annuitant.

On the death of the policyholder, whether the policy is in force or paid up, the premiums paid under the policy (excluding any extra premium) will be refunded to the nominee accumulated at 5% p.a. Term rider is available only on annual premiums.

All modes of payment are available under the plan. Rebate at the rate of Rs.2.6%, 1.3%, 0.5% is available on yearly, half yearly and quarterly mode of payments.

(Agent Manual-LIC of India)

3. Jeevan Akshay:

Pension plan to provide life long pension and a lump sum death benefit and also a survival benefit at the end of seven years under certain terms and conditions. Minimum and maximum age at entry: 40 and 79 years respectively.

Minimum Purchase Price: Rs.25,000/- with a premium annuity installment of Rs.250/-.

(Agent Manual-LIC of India, 2002)

(For more details, please contact the nearest LIC Branch or your LIC agent)

4. Jeevan Suraksha:

Plan type:

Jeevan Suraksha is available in three types to suit individual needs

Human Rights Manual for District Magistrate

- (A) Pension with life cover
- (B) Pension without life cover
- (C) Pension with Endowment type

Contributions under Jeevan Suraksha up to Rs.10,000 p.a. will be eligible for tax exemption under Sec. 80 CCC(1) of the Income Tax Act, 1961.

Commuted value up to 25% as allowed under the plan is free of tax.

(Agent Manual-LIC of India, 2002)

(For more details, please contact the nearest LIC Branch or LIC agent)

5. Bima Nivesh

Bima Nivesh is a short-term, single-premium life insurance scheme that also provides safety, liquidity, attractive return and tax benefits. Contributions are eligible for tax exemption under Section 88 of IT Act. No medical examination required. Only a Simple declaration of good health to be submitted.

Medical Insurance Schemes:

The Medical Insurance Scheme known as Mediclaim is available to persons between the age of 5 years and 80 years. The sum insured now varies from Rs.15,000/- to Rs.5,00,000/- and premium varies from Rs.175/- to Rs.12,450/- per person per annum depending upon different slabs of sum insured and different age groups. The cover provides for reimbursement of medical expenses incurred by an individual towards hospitalisation/domiciliary hospitalisation for any illness, injury or disease contracted or sustained during the period of insurance.

(For more details, please contact the nearest New India Assurance Company Ltd. Branch or your agent) website:www.niacl.com

Group Medical Insurance Scheme:

The group Medi-claim policy is available to any group/ association/ institution/ corporate body of more than 100 persons provided it has a central administration point. The policy covers reimbursement of hospitalisation and/or domicillary hospitalisation expenses only for illness/

diseases contracted or injury sustained by the insured person. The basic policy under this scheme is Medi-claim only. This policy is also available to persons between the age of 5 years and 80 years. The sum insured varies from Rs.15,000/- to Rs.5,00,000/- and premium varies from Rs.175/- to 12,450/- per person per annum depending upon the different slabs of sum insured and different age groups.

(For more details, please contact the nearest New India Assurance Company Ltd. Branch or your agent)

Jan Arogya:

The scheme is primarily meant for the larger segment of the population who cannot afford the high cost of medical treatment. The limit of cover per person is Rs.5,000/- per annum. The cover provides for reimbursement of medical expenses incurred by an individual towards hospitalisation/ domiciliary hospitalisation for any illness, injury or disease contracted or sustained during the period of insurance. Age limit – 70 years.

c) Banking

- Indusind Bank Ltd. has launched a Senior Citizens Scheme – an investment option that gives you high returns with the assured security. It offers
 - Free ATM Card
 - Tele banking
 - Internet banking

It has 26 branches all over India.

- RBI has permitted higher rates of interest on fixed deposits schemes of senior citizens. Accordingly, w.e.f. 15.05.01 the Bank has permitted 0.5% higher rate of interest on term deposits, subject to conditions as given in Annexure No. 2
- Employee's State Insurance Act 1948

This is a health insurance which was amended in 1966. It provides for medical care and income security benefits in respect of health related

contingencies such as sickness, maternity, occupational injuries on a contributory basis. Employee's State Insurance Corporation (ESIC) administers it. It is a social insurance scheme in which the benefits are related to contributions made by the employees, employers and the state. Contributions are paid weekly to ESIC. Penal provisions exist in case of any defaulters.

(Source: Bali P. Arun Care of the Elderly in India, Changing Configurations Indian Institute of Advanced Study Rashtrapati Nivas, Shimla, 2001)

- Deposit Scheme for Retired Govt./Public Sector Company Employees:

This is a scheme providing regular income, exclusively meant for retired government and PSU employees. It offers interest @ 10% per annum. This interest is totally tax-free for investors. The account can be closed after 3 years. Only one account can be opened in one name or jointly with spouse. Account is to be opened within 3 months of receiving retirement benefits. Scheme is operated through branches of State Bank of India and its subsidiaries and selected branches of nationalized banks. Minimum investment is Rs.1000/-. Maximum not exceeding the total retirement benefits. Entire balance can be withdrawn after the expiry of 3 years from the date of deposit. Premature encashment can be made after one year from the date of deposit @ 4% interest payable on the amount withdrawn from the date of deposit to the date of withdrawal.

[Taxpayers Information Series-31; Taxation of Salaried Employees Pensions and Senior Citizens, Directorate of Income Tax (RSp and PR), New Delhi, July 2001]

8. Statistics on Past Violations:

Information on the extent of human right violations of the elderly is scant. The few population based surveys that have been conducted suggest that between 4% and 6 % of the older people experience some form of abuse in the home and that mistreatment in institutions may be more extensive than generally believed. In a survey in the USA, 36% of nursing home staff in one State reported having witnessed at least one incident of physical abuse on an elderly patient in the previous year, 10% admitted having committed at least one act of physical abuse themselves, and 40% said that they had psychologically abused patients. In Tanzania, some 500 elderly women, accused of witchcraft are murdered each year. (Source: World Report on Violence and Health, WHO, 2002).

As compared to the abundance of systematic data on population ageing and statistics, there is complete lack of research, or published data on elder abuse in India. It is grossly under-reported or un-discussed as the older people themselves do not want to discuss it, and the relatives and neighbours who are aware of this do not want to get involved. Concept of elder abuse as relevant to the developed world is alien to the Indian society. In our traditional family system, the older people are considered respectable. Due to technological advances and migration from rural to urban areas, the roles of older people have become ill defined and too insignificant for the family.

In a study conducted by Help Age India among older people, participants talked about 'emotional problems', 'neglect by family members', 'feeling of insecurity', 'loss of dignity' and 'disrespect'. Not a single person was willing to label it as 'abuse'. They linked abuse to very severe acts of violence, which they all seemed to agree was abnormal and 'did not happen in our societies'. There was a genuine attempt among the target group to evade the issue. Most of them seemed to be reconciled with the 'neglect', blaming it on the changing scenario and changing value system.

9. Civil Society and Media Concerns:

The society can play an active role in preventing human right violations against the elderly. The major strategies that can be focused are:

- Awareness and education: people need to be educated to perceive older adults more favourably as positive contributors to society.
- Intergenerational Relationships: the social isolation and neglect of older adults need to be broken.
- Training of Professionals and Civil Servants: they can protect the older people from their human rights being violated.
- Empowerment of Older People: they can act for themselves and on their own behalf.
- Role of Media: media can create greater awareness in the society.
- Research: lack of adequate studies in this area, especially in developing countries, is to be looked after.
- Legal Action: Specific and comprehensive legislation on elder abuse would imply a much stronger commitment to eradicating the problem.

Conclusion:

While national and International laws and charters can uphold rights and promote good practice, resources will continue to be contested at various levels. Policies may fail to have effect because of poor communication, implementation and enforcement structures. A human rights approach implies a responsibility for groups at all levels and across sectors to promote these rights, and to develop effective legislation to protect them. Enabling older people to participate fully in this process, thorough training and awareness raising programmes should be a priority.

State's Responsibility to Assuage Hunger and Ascertain Food Security

A pacifism which can see the cruelties only of occasional military warfare and is blind to the continuous cruelties of our social system is worthless.

— Mahatma Gandhi

At the overall macroeconomic picture, the country may be food sufficient or surplus but from the human rights perspective, what is important is whether the individual of the country is food secure or not. Despite tremendous increase in agricultural production, reaching adequate standards of food security and nutrition at the household level is still a goal to be achieved. Food security relates to the fulfillment of the '*want of food*' of the society which is difficult to achieve due to inequalities, discrimination, oppression and exploitation. The injustice can be understood as the concept of 'paradox of hunger amidst plenty'¹ as expressed by Jean Dreze and Amartya Sen.

True that after independence, the efficiency of control over famines has increased but neither has it guaranteed food security nor the remedy to individual starvation. The chronically pernicious and hidden 'malady of hunger' manifests itself in the society time and again. Hunger is difficult to detect as there is always a social stigma attached to admitting it. The situation worsens as some of the officials who are the deemed insurers of the right to food, are sometimes seen to suppress or twist hunger-death reports². Starvation is a serious issue as it preys on the individual, robbing his immunity and capabilities, thereby debilitating him completely. With the changing dynamics of societies, hunger is largely a personal problem and a personal shame. Hence, it needs to be handled with dignity and with rights based rather than a gratuitous relief

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¹ Refer to Dreze and Sen (1999) "Hunger and Public Action" (Oxford University Press, New Delhi) for a detailed understanding of the various issues regarding hunger and famine, and the required public action.

² Refer to Chaudhuri, SN (2005) "Human rights and poverty in India -volume IV" (Concept Publishing Company, New Delhi)

approach. Hunger should not be relegated to a mere statistics or trend; it is a crisis whose humanitarian redressal both locally and globally is a call of the day.



No, sir, this famine has not affected us. We have always starved here, you see.

[First Published by The Times of India]

Food Security in India through the International Perspective

The preamble of the WHO constitution projects a vision of the ideal state of health as an eternal and universal goal. It illustrates the indivisibility and interdependence of rights as they relate to health. It recognizes the enjoyment of the highest attainable standard of health as a fundamental right of every human being. India at present has a long way to go especially in comparison to its international counterparts³. India had reached self sufficiency in grain production years before china, but even today it is home to 35% of all the underweight children in the world. According to UNICEF, India has 57 million children suffering from malnutrition compared to only seven million in China.

The map clearly depicts that India continues to be amongst the nations with high rates of hunger and undernourishment⁴. With the commitment towards achieving the Millenium Development Goals (MDG)⁵ of halving

³ The World Hunger Series report for 2006 highlights what it calls India's "silent emergency". It points out that although India has not witnessed any major famine since the 1943 Bengal crisis, more people die each year of malnutrition in the country than those who lost their lives in 1943.

⁴ Refer to the Hunger map of the Statistics Division of the Food and Agricultural Organization, United Nations www.fao.org, which clearly shows high rates of hunger and malnutrition in India.

⁵ Refer to the website of the United Nations Development Programme, India www.undp.org.in

hunger poverty by 2015, the Government of India should be prepared for a long siege ahead.



[Source: <http://faostat.fao.org/site/563/default.aspx> , **FAOSTAT, Statistics Division, Food and Agriculture Organization of the UN**” (October 4, 2007)]

The recent World Bank report⁶ has highlighted the pervasiveness of hunger in India. The reduction of poverty may not always lead to eradication of hunger. Instead hunger is being viewed as one of the main causes of poverty, instead of the other way round⁷. The report also gives focus on the role of infrastructure in the form of improvements in drinking water, electricity etc. as an essential aspect of ensuring food security. The

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”
 – Universal Declaration of Human Rights:
 Article 25 (1948)

⁶ Refer to Deolalikar, Anil B (2005) “Attaining the Millenium Development Goals in India”(Oxford University Press, New Delhi)

⁷ “Food insecurity is both a cause and effect of poverty.” Refer to Gustafson “Building a Hunger-Free India from the Ground- Up: The Importance of Smallholder Agriculture for Poverty reduction and Food Security” National Food Security Summit (2004)

percentage of villages in districts that are connected by *pukka* roads is also an important determinant of ensuring food security. Hence, cognizance has to be taken of the importance of infrastructural developments in the country.

As a cumulative outcome of state interventions, as well as autonomous social and economic transformations, there has been a substantial decline in the severe grades of under-nutrition in India, especially amongst children. However, India still has a worse record than some of the poorer counties in the SAARC region, and indeed globally, excluding Sub Saharan Africa. According to the UNICEF report (2005), the percentage of infants of low birth weight in India (1998-2003) was 30, as compared to 21 and 9 per cent in Nepal and Bhutan which are much poorer countries.

The Indian Constitution: Directives for Food Security

The right to food is a natural implication of the fundamental “right to life” as enshrined in **Article 21** of the Indian Constitution. The Constitution also highlights other critical aspects of the responsibility of the State towards ensuring the realization of this right. **Article 38** requires the State to secure a social order for the promotion of the welfare of the people, in which justice – social, economic and political – shall inform all the institutions of the national life. Also, **Article 39(a)** requires the State to direct its policy towards securing that all individuals have the right to an adequate means of livelihood. **Article 43** states that 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, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Further, **Article 47** makes it clear that one of the State’s primary responsibilities is to raise the level of nutrition and the standard of living of its people. Hence, right to food has been expressed in a holistic manner, involving livelihood security, employment security, etc.

The directives of the Constitution remain crucial for the Indian State especially as they are supported by International agreements⁸ ratified by India, such as the 1966 International Covenant on Economic Social and Cultural Rights. It expressly recognizes “the fundamental right of each individual to

⁸ The 1996 World Food Summit accepts the definition “food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.” (WFS, 1996 papr.1) Hence, the three definitional and interrelated aspects of food security, access to food, its availability and its utilization by the health body of a consumer are well understood and appreciated by the policy makers and those who are in food security implementation.

be free from hunger and malnutrition” as well as “the right to an adequate standard of living, including adequate food” (Article 11). The Declaration of the Rights of the Child (Article 24, 27) recognizes the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. By ratifying these legal instruments, India has recognized its obligation to respect, protect and fulfill the progressive realization of these rights, especially the right to adequate food.

The Existing Schemes of the Government for Implementing Food Security

The Central government has introduced various schemes to ascertain that food should be made available to every needy person in India⁹. Despite enormous amount of money being spent by the Government of India for feeding the children, the poor, through subsidized and free food, etc. the problem continues to persist. Mere schemes without implementation are of no use. There are numerous studies that point out the corruption in these schemes¹⁰. The District Magistrate by using the government machinery can implement and monitor these schemes effectively, so that the goal of satisfying hunger of the people can be realized. The brief account of these schemes and its implications is as follows:

- **Mid-Day Meal Scheme**

This Scheme covers students of Class I-V in the Government Primary Schools / Primary Schools aided by Government and the Primary Schools run by local bodies. In order to cut down delays in implementation of the scheme, Department of Elementary Education and Literacy has been authorized to make State / UT-wise allocation of food grains under intimation to this Department. Food Corporation of India (FCI) releases food grains to States/UTs at BPL rates as per allocation made by Department of Elementary Education and Literacy.

The scheme is essential and successful as it caters to children who may not receive any other form of adequate and wholesome nutrition. This scheme

⁹ Agriculture, which is meant to satisfy the food requirements of the country, is a State subject. However, very few states have been able to implement special programmes on food security, thereby requiring the Central government to assume more than a promotional role.

¹⁰ The Tenth Five Year Plan suggests that there is 20% to 70% leakage in the numerous food schemes. The rampant demands of bribes by officials and implementing agencies for accessing the benefits of the scheme, arrangement with contractors to share earnings, politically motivated allocation of resources, etc. are being reported in the food schemes in India.

has been revamped very successfully in areas of Chattisgarh with the synergetic efforts of the officials as well as the rural community members.

- **Wheat Based Nutrition Programme:**

This Scheme is implemented by the Ministry of Women and Child Development. The food grains allotted under this Scheme are utilized by the States/UTs under Integrated Child Development Scheme (ICDS). This scheme is essential for ensuring that children and women get adequate nutrition in extremely crucial period of development. This has long term consequences for health and nutrition standards for the society as a whole.

- **Scheme for supply of food grains to hostels/welfare institutions (5% of BPL allocation):**

With a view to meet the requirement of Hostels /Welfare Institutions *viz.* NGOs/ Charitable Institutions which help the homeless poor and other categories not covered under TPDS or under any other Welfare Schemes, an additional allocation of food grains (rice and wheat) equal to 5% of the BPL allocation of each State/UT is made to States/UTs at BPL rates. This scheme was introduced during 2002-2003 to liquidate the stocks of food grains.

- **Scheme for supply of food grains for SC/ST/OBC hostels:**

This scheme was introduced in 1994 with the Ministry of Consumer Affairs, Food and Public Distribution is the nodal Ministry for the scheme. The residents of the hostels having 2/3 students belonging to SC/ST/OBC are eligible to get 15 kg. food grains per resident per month. In such hostels, food grains are provided for the entire resident student, including those who belong to other categories. Only Karnataka and Andhra Pradesh are availing this scheme at present.

- **Annapurna scheme:**

The Ministry of Rural Development launched the scheme in 2000-2001. Indigent senior citizens of 65 years of age or above and those who are eligible for old age pension under the National Old Age Pension Scheme (NOAPS) but are not getting the pension, are covered and 10 kgs. of food grains per person per month are supplied free of cost under the scheme. Since destitution is one of the prime causes of starvation amongst the elderly, this scheme merits a lot of attention. From 2002-2003 it has been transferred

to State Plan along with the National Social Assistance Programme comprising the National Old Age Pension Scheme and the National Family Benefit Scheme.

- **Sampoorna Gramin Rozgar Yojana:**

The Ministry of Rural Development, the nodal Central Ministry for this programme launched the scheme in 2001. The purpose of the scheme is to support the organization of various employment generation programmes across the country.

- **Special Component of Sampoorna Gramin Rozgar Yojana:**

Special Component of Sampoorna Gramin Rozgar Yojana was initiated with a view to extend support to the people affected by Natural Calamities in the various States/UTs.

- **Nutritional Programme for Adolescent Girls:**

This has been one of the pilot projects ever since its inception in 2002. It was re-launched again in 2005 as it recognized the nutritional deficiencies amongst many poor adolescent girls. Since hunger has a strong gender bias in India, such endeavours are extremely crucial to ensure that the young girls have an equal access to food and nutrition at the central level and State/UT governments implement the scheme. The revised guidelines do not consider financial status as a condition of eligibility. Hence, the perceived discrimination through the arbitrary classification of APL/BPL has been done away with. Instead the weight of the individual is the only criteria for availing benefits under this scheme.

It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life—the sick, the needy and the handicapped.

-HUBERT H. HUMPHREY

- **Emergency Feeding Programme:**

Emergency Feeding Programme, introduced in 2001, is a food-based intervention targeted on old, infirm and destitute persons belonging to BPL

households to provide them food security in their distress conditions¹¹. With large scale distress migration out of rural areas, the elderly, the infirm, etc. are vulnerable for chronic hunger and starvation. As long as destitution persists, hunger will remain engrained in the system.

- **National Food for Work Programme:**

This scheme has identified that the generation of supplementary wage employment, creation of basic economic, social and community assets can contribute successfully to the overall food security in the region. Through the provision of food and work ever since its inception in 2004, the government is developing the rural areas in a more efficient and wholesome manner.

- **Village Grain Banks Scheme**

This scheme was first launched in 1996, in a few selected states¹² with the main objective of implementing food security during the period of natural calamity or the lean season. With the aim for promoting participation of the overall community, the revised committees at the grassroots will include members of Village Panchyat/Gram Sabha, Self Help Group or NGOs, etc. identified by the State government. The formation of the new grain banks¹³ under the revised Village Grain banks Scheme is subject to the approval of the eleventh five year plan.

- **Public Distribution System:**

The Public Distribution System (PDS), amongst the largest government initiatives in the world is an important instrument to ensure food availability and security to all. The equality of its access and distribution is the responsibility of the state government. Unfortunately the PDS is fraught with many problems in most parts of the country in the form of irregularities, discrepancies, caste based prejudices, etc. There is a need to overhaul the system and make it viable as it continues to be needed by the poor of the country.

¹¹ During 2006-07 14,400.00 MT of rice was allocated for the 2 lakh beneficiaries @6 kgs/beneficiary/month till August, 2006. From September, 2006 to March, 2007 an additional quantity, of 2,110 MT of rice has been allocated for the 2 lakh beneficiaries @ 7.5 kgs/per beneficiaries /month. Thus, the total allocation for the year 2006-2007 becomes 16,510 MT for the period from September, 2006 to March, 2007.

¹² During 1996-97 to 2004-2005 Ministry of Tribal Affairs released Rs.10.26 crores for establishing 4,858 Grain Banks. Now the scheme has been transferred to the Ministry of Food and Public Distribution.

¹³ The estimated cost of setting one grain bank is Rs. 60,000 which includes training, storage, transport, etc.

- **Targeted Public Distribution System:**

This was initiated in order to exclusively cater to the poorer sections. The earlier PDS was viewed discriminative as it seemed to have an urban bias and very poor coverage of the poorer states. The efficacy of this scheme largely rests on a comprehensive classification of families into BPL and APL. This classification has been fraught with many discrepancies¹⁴ and there has been consensus for some version of the Universal PDS to remain.

“In case of famine there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available but the distribution amongst the very poor and destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems.”

- Supreme Court on July 23, 2001.

The Supreme Court’s Action to implement Food Security

The Supreme Court has dispelled the confusion over the status of *right to food* as a fundamental right. It has explicitly stated that the right to life should be interpreted as a right to “live with human dignity”, which includes the right to food and other basic necessities. The right to food has been understood as an implication of the fundamental “right to life” in Article 21, and Directive Principles of State Policy Articles 38, 43, 47 of the Indian Constitution as detailed aforesaid.

The persistent and chronic hunger has inspired the citizens of India to seek justice from the Supreme Court time and again. A petition was filed by the People’s Union for Civil Liberties in April 2001 to seek legal enforcement of the right to food. These cases¹⁵ demonstrate the fervor amongst the community of intellectuals, activists, NGO’s, etc. to establish the status of food as a right. The judiciary, especially the Supreme Court, has recognized the right to food and reaffirmed it through stating that the “right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with dignity; it would include all these aspects which make life meaningful, complete and living”

¹⁴ The poverty ratios as well as the methods of targeting the 36% BPL populations are under debate as they have been considered faulty and inaccurate.

¹⁵ Maneka Gandhi *vs.* Union of India AIR 1978 SC 597; Shantistar Builders *vs.* Narayan Khimalal Totame (1990) 1 SCC 520; Kishen Pattanayak & another *vs.* State of Orissa (1989) AIR 677; PUCL *vs.* Union of India and Others, Writ Petition (Civil) 196 of 2001.

In an interim order on November 28, 2001, the Supreme Court converted most food and employment-related schemes into “legal entitlements”. Therefore, these schemes cannot be modified or removed without a judgment from the court permitting the government to do so.

The orders on universalising access to food, especially for children through the Midday Meal Scheme and the Integrated Child Development Scheme (ICDS) have been landmark judgments. On November 28, 2001, the Supreme Court directed state and central governments to universalise the midday meals and provide hot, cooked meals to all primary school children in India. The interim order also universalised the ICDS programme, making it mandatory for the government to provide supplementary nutrition to all children below the age of six, pregnant women, nursing mothers and adolescent girls.

Non compliance from the central as well as state governments has compelled the judiciary to pass further orders. The orders on October 7, 2004 further directed the Government of India to increase the number of ICDS centres to cover 14 lakh habitations. This would require starting at least 7 lakh additional centres as a minimum requirement to universalise the ICDS. The same order recommended the increase of the allocation of “rupee one per child per day” to “rupees two per child per day”, with the central and state governments contributing one rupee each¹⁶.

The same interim order has also directed the government to make “earnest effort to cover the slums under ICDS” and ensure that all SC/ST habitations got an Anganwadi “as early as possible”. The use of contractors for providing supplementary nutrition has been banned, instead women’s self-help groups and mahila mandals are to supply the supplementary food distributed in Anganwadi centres. This will ensure accountability to the community as well as transparency of all food schemes. The recent order on December 2006, has directed the government to open minimum 14 lakh new Anganwadis in a phased manner by December 2008. This will be a crucial step towards universalising ICDS.

The National Rural Employment Guarantee Act (NREGA) emerged in 2005 as an unprecedented initiative to improve the condition of the rural poor. This Act came as a result of political will as well as the community mobilization that was created from the advocacy of the right to food. Despite

¹⁶ At the macro level the budget of the ICDS has gone up nearly three times from Rs. 1,500 crore in 2003-2004 to almost Rs. 4,000 crore for 2006-2007.

many orders being passed over the years, many still continue to be excluded from the ambit of these schemes. Certain groups continue to need special focus of the government and the bodies that will be working for food security. These can broadly be understood as the Dalits, tribals¹⁷, women, children, manual scavengers, leprosy patients, sex workers and their children, beggars, urban poor, victims of displacement due to mega projects, etc. Giving special attention to them is a humanitarian necessity and not a choice.

The interim order of October 29, 2002, has directed that the “Chief Secretaries” of the concerned states would be held responsible for any persistent default in compliance with orders. In another order, the Supreme Court invoked the procedure of the D.K. Basu protocol for the right to food and stated that “*Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental actions also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter*”. Hence, the policy changes at the national level have to be implemented in a focused manner through legal and bureaucratic interventions. Lack of political and administrative will should no longer be allowed to continue as a reason for neglect of hunger and morbidity.

In order to establish an independent mechanism to ensure compliance by the state and central government, the Commissioners of Supreme Court have been appointed, through an interim order on May 8, 2002. Through their reports, the Commissioners have highlighted pertinent issues of non-compliance, hurdles in implementation, etc. Through the mandatory response required from the central and state governments, the system has become more streamlined to address the issues of hunger.

The Commissioners operate through a network of honorary state and national advisers to monitor the progress of the food schemes; suggest reforms in the laws, policies and programmes pertaining to the Right to Food and, wherever necessary, get directions from the Supreme Court and, take action against erring state/central government officials. Hence, they are also empowered to move contempt of court charges against chief secretaries and other senior state/central government officials when the non-compliance is willful and deliberate.

¹⁷ Tribals suffer disproportionate amount of food denials. A study by the Centre for Environment and Food Security (2005) in Rajasthan and Jharkhand, found that a staggering 99% of the tribal households from the surveyed villages were facing chronic hunger. Out of the 500 sample tribal household, not a single had two square meals for the whole previous year.

The Joint Commissions of Enquiry (JCEs) established by the Commissioners enquire into charges of malfeasance by government officials in food schemes. These commissions are presently working in the states of Chhattisgarh, Assam, West Bengal and Madhya Pradesh. Their enquiries have led to the dismissal of a few officials, departmental enquiries against some, and suspension from service for others. Through them the grievances of the society regarding implementation of food schemes are finally being addressed.

With the active involvement of the Supreme Court, the bureaucracy, and the intellectual community many milestones have been achieved. There is no dearth of schemes at present; however, the administrative will is required to ensure that each scheme realizes its objectives and goals. The stakes are high as they deal with human life and dignity. Without a human rights conscious administration, many of the schemes and community initiatives will not be able realize its full potential. Hence, the onus lies on the governments at all levels to take inspired actions to make sure that the *want of food* is satisfied of all individuals.

National Human Rights Commission: Upholding the Right to Food

Why should there be hunger and deprivation in any land, in any city, at any table, when man has the resources and the scientific know-how to provide all mankind with the basic necessities of life? There is no deficit in human resources. The deficit is in human will.

- MARTIN LUTHER KING, JR.

The National Human Rights Commission (NHRC) has expressed that the Right to Food includes nutrition at an appropriate level. It also implies that the quantum of relief to those in distress must be adequate to ensure that the Right to Food is actually secured and does not remain a theoretical concept. The Commission is of the view that mortality alone should not be considered as the indicator of starvation but focus should also be given to destitution and the continuum of distress¹⁸. There is, thus, an accompanying need for a paradigm shift in public policies and relief codes in this respect.

¹⁸ The concept of vulnerability needs to be addressed especially in matters of natural shocks, the efficacy of natural disaster preparedness, mitigation strategies and the coping mechanisms adopted by households. The FIVIMS study conducted in Orissa, gave focus on all these issues, as well as understanding the livelihood sustainability of different groups in the region.

The starvation deaths in Orissa were extensively investigated by a team sent by NHRC in 1996. The inquiry by the NHRC merits special attention¹⁹, as it was not limited to the violation of the Right to Food but included issues of access to livelihood, i.e. access to forest resources by the Scheduled Tribes. The Commission also appointed a Special Rapporteur whose role was not only to enquire into the implementation of the Developmental Plan in Orissa, but also its relevance for furthering the Right to Food and the Right to Livelihood. Hence, NHRC has highlighted through its prior work, to look at the issues of hunger in a holistic manner which includes livelihood security, ownership of assets, etc.

The Commission has also observed that starvation deaths are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the government officials. It strongly supports the view that to be free from hunger is a Fundamental Right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right.

<p>HUNGER IS SILENT!!!</p>	<p><i>In case of violation of an individual's political or civil right, one can go to the court and demand justice. However, when weakened by prolonged hunger, where does one go for justice? Is one aware that one's rights are being violated? Do the concerned authorities recognize it as a right in the first place?</i></p> <p style="text-align: right;"><i>– Dreze & Sen (Hunger and Public Action)</i></p>
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Pursuant to the orders of the Supreme Court, the Indian Council of Legal Aid and Advice filed a petition before the Commission on the 1st of September 1997, making a number of suggestions in regard to interim relief to the affected population in Orissa. Hence, interim relief measures were institutionalized for a two year period. The Commission also requested the Orissa State Government to constitute a Committee to examine all aspects of the Land reform question in the KBK districts. Further, the Commission, with the assistance of its Special Rapporteur, has been regularly monitoring the progress of the implementation of its directions.

Since January 2004, the Commission has also organized meetings with leading experts on the subject to discuss issues relating to Right to Food. *The*

¹⁹ The hearings and field visits in the KBK districts (Kalahandi, Balangir and Koraput which are now sub divided into smaller districts) showed that destitution and chronic distress alone are proof of starvation, rather than mortality.

Commission approved the constitution of a Core Group on Right to Food to advise on issues referred to it and also suggest appropriate programs, which could be undertaken by the Commission. Thereby it has firmly established the economic, social and cultural rights at par with the civil and political rights in the Indian context.

A National Action Plan (NAP) was proposed in this regard, for the promotion and protection of human rights in 2005. In order to ensure that every one is free from hunger, NHRC re-constituted a Core Group on Right to Food in 2006. It was discussed that the availability of schemes and agencies to execute Right to Food is not enough unless and until they are fulfilling their desired objectives. The main challenge is to monitor targeting and universality of access towards “Zero Hunger”. As per the available record, Haryana has surplus production of food grains with a Public Distribution System (PDS) in place. However, the malnutrition level is 82.5% among children (6-35 months) and 62.5% among married women (15-19 years). This demonstrates the paradox of “hunger amidst plenty” and, therefore, the government officials are urged to ensure that food reaches everyone.

In the last meeting of the Core Group it was decided to constitute committees at village/block level in each state, which will monitor the access and availability of food grains to the eligible and most vulnerable in particular. These Committees will be independent of vertical monitoring system to ensure that schemes are properly implemented and food grains are available and distributed properly. The Committee can report to the concerned authorities in the State or to the National Human Rights Commission directly as the case may be. Hence, NHRC is working towards ensuring a hunger free society in a focused and a sustainable manner.

Food security measures as a form of relief for regions witnessing farmer suicides:

The tragedy of farmers’ suicides in India especially in the States of Andhra Pradesh, Kerala, Tamil Nadu, Maharashtra and Punjab reveals the crisis of survival faced by the Indian peasants²⁰. This is especially alarming as it is taking place in relatively prosperous states. It is essential to understand the social framework within which this happens.

²⁰ In Andhra Pradesh from 1997 to January 2006 over 9,000 peasants took their lives due to failure of cotton crops. Similarly, Karnataka registered 5,610 suicides among farmers during 2001 to 2005. In Kerala, about 1,600 farmers have committed suicide since 2001 and in Maharashtra about 3,799 cases of suicide by farmers found in the year 2004 alone. Punjab has also recorded a high rate of farmer suicides; there were 2,116 cases of farmers’ suicides from 1998 to 2005.

It has been observed that indebtedness, lack of credit availability, increasing crop failure and rising costs of cultivation are the major factors compelling the farmers to commit suicide across the country. This agrarian distress has also been unintended consequence of the policies of trade liberalization, failure of credit through nationalized banks and corporate globalization over the years.

Starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat.”

- Amartya Sen

Even here, food security emerges as a critical requirement to reduce some of the rural distress and enhance the capabilities to improve the socio-economic condition. The government of Karnataka has tackled the issue from addressing the needs of education, livelihood security, food, etc. Through giving greater focus to ICDS, Sarva Siksha Abhiyan Scheme, Employment Guarantee Scheme, etc. the distress in the state has been reduced to a large extent. Hence, these economic, social and cultural rights should be taken seriously and implemented on a priority basis. Even though they have been referred to as “soft rights” the subsequent benefits from their implementation have widespread and sustaining benefits.

The District Magistrate: The Visionary with a mission:

The District Magistrate/Collector has the mantle as well as the responsibilities that of a Chief Secretary, at the district level. The image of the government entirely depends on him, as his performance establishes the legitimacy of the government. The District Magistrate is the reflector and the articulator of the hopes and aspirations of the people. The confidence in the government policies lies with its execution at the district level. This demonstrates the vital role played by him.

With the initiation of poverty amelioration and other development works, the volume of responsibilities has increased tremendously. The powers and duties of District Magistrate have become multifaceted, multifarious and enormous. As head of the district, He/she is required to maintain law and order, amity and communal harmony. Despite an array of officials at the district level, the ultimate responsibility rests with the District Magistrate. He/

she is required to ensure maximum amount of revenue collection with regard to land revenue, water rate, excise, registration, transport, etc.



Doesn't matter if it sounds a bit impractical, sir. The audience know it's only a slogan.

[First Published by *The Times of India*]

With the initiation of poverty amelioration and other development works, the volume of responsibilities has increased tremendously. The powers and duties of District Magistrate have become multifaceted, multifarious and enormous. As head of the district, he/she is required to maintain law and order, amity and communal harmony. Despite an array of officials at the district level, the ultimate responsibility rests with the District Magistrate. He/she is required to ensure maximum amount of revenue collection with regard to land revenue, water rate, excise, registration, transport, etc. The Collector is called upon to discover new sources of revenue to augment revenue collection. He/She is required to see that all developmental works are executed sincerely, faithfully within time and Utilization Certificates sent to proper quarters. It is his/her duty to implement all the poverty eradication programmes which aim at improving the quality of life of the people. The Collector has concern for the field units of other departments such as Agriculture, Food Cooperation, Engineering, Fisheries, Forest, Health, Veterinary, Industries, Education, and Horticulture, etc. In times of natural calamities and other crisis, the role of Collector assumes greater significance as he/she conducts relief and rehabilitation operation zealously.

As head of the office he/she has full administrative, statutory and financial powers. He/she has original, appellate and revisional powers under various Acts and regulation. The District Magistrate issues guidelines and policies, alongside conducting regular inspections in order to promote accountability and transparency in the government. In the context of food security, the challenge lies in ensuring its implementation at the individual level and to ensure that food reaches even the most marginalized person of the society.

The attitude of the local governance towards hunger and starvation depends largely on the perspective of the District Magistrate. He is required to be the force and the visionary to create empathy towards hunger and also inspire his team to ensure that this hunger is satiated. The death reporting agencies need to be sensitized to take note of the empty food canisters in the homes before attributing the deaths to diseases such as Cholera, etc. It is important to note that few people die directly and exclusively of starvation. Instead, they live with severe food deficits for long periods, and tend to succumb to diseases that they would have survived if they were well nourished.

There has been a contradictory situation in India, with persistent and chronic hunger existing despite the mounting food grain stocks. The food grain stocks available with the Food Corporation of India (FCI) have stood at an all time high against an annual requirement for ensuring food security.



We are not satisfied with our present statistician--suppose we appoint you, will you able to give rosy, cheerful figures?

*[First Published by **The Times of India**]*

Human Rights Manual for District Magistrate

Still, an estimated 200 million people are underfed and 50 million have been on the brink of starvation, even resulting in starvation deaths. The paradox lies due to inherent flaws in the existing policy and the implementation bottlenecks. The Central government has already introduced various schemes to tackle the situation as explained in the chapter. Unfortunately benefits of these schemes do not always reach to the person who needs it the most. Hence, their success lies in linking them together as a means towards a development that is people oriented and not target oriented. The success of each initiative depends largely on the initiative and will of the District Magistrate and his staff, as the efficacy of the policy lies in its implementation at the grassroots.

The District Magistrate can play a vital role by utilizing his power to ensure proper implementation of schemes. In order to ensure food security at the individual level, it is important to ensure equality and justice in distribution, allocation, universal access as well as full capacity utilization of all schemes. The issues of hunger and starvation can be handled by meeting the representatives from the local bodies on a regular basis and addressing any discrepancies on a priority basis. A scheme, an Act, a special focus committee, etc. are not ends in themselves; rather they are a medium for a humanitarian state to be accountable to its people.

Therefore, efforts need to be made to establish and support participatory food governance. When the government from the smallest to the highest level becomes accountable to the people, then the human rights violations tend to decline. Hence, a code of participatory food governance has to be set up in which, through public participation the food situation is monitored and any discrepancies are checked. It is important to ensure that the food security norms should not be with implemented with a 'top down' approach.

Food security also needs to be viewed with a holistic approach that includes water security, employment security, livelihood empowerment, etc. However, considering the endemic hunger that is there in the country, the food security programmes should first get full attention on a priority basis. Efforts need to be made to establish and support participatory food governance. Afterwards the food security measures should be integrated to other vital issues of water harvesting, micro credit support, and employment guarantee schemes, etc. so these measures do not remain narrow based or detached from the bigger picture.

Food security needs to be institutionalized and implemented at various levels. There needs to be effective flow of information across all levels

especially in form of regular feedback and appraisal. The goal is to establish a forum for advocacy of right to food in a public context. For this to be successful, the need for participatory form of governance at the grassroots level is crucial. The 'right-cum-duties' approach needs to be used in this context. The people need to be sensitized toward the fact that food is their basic right, and they need to take full advantage of all government support available to them. Alongside the local governance has to admit and realize their responsibilities towards the regular hunger and endemic under nourishment that is there in the country. The District Magistrate needs to play the pivotal role in changing the overall landscape of their districts to promote an egalitarian and a hunger free society.

Food security does not exist in a vacuum. It is an intrinsic part of the overall socio-economic picture. The silent and hidden hunger continues everyday, when masses go to sleep hungry, with the women being the last to eat, and if food is scarce, they are likely to eat the least. Gender discrimination regarding food is ingrained in the cultural beliefs and practices. From childhood, girls are taught to believe that their duty is to sustain other members of the family, even at the cost of their nutrition and health. Hence, focusing on providing nutritional benefits to women is essential, especially in a society which has a sense of dispensability towards women. Sensitive and proactive governance is required, with the District Magistrates leading the endeavour towards a hunger free and food secure society.

Useful websites for reference and information:

The Food and Agricultural Organization of United Nation	www.fao.org
The Special Programme of Food Security	www.fao.org/spfs
United Nations Development Programme	www.undp.org.in
The Right to Food Campaign of India	www.righttofoodindia.org
United Nations Development Fund for Women	www.unifem.org.in
UNICEF	www.unicef.org/india
National Family Health Survey	www.nfhsindia.org
Rome Declaration of World Food Security and World Food Summit Plan of Action	www.fao.org/docrep

Chapter 13

Right to Health*

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes, or the adoption of specific legal instruments.¹¹ *The right to the highest attainable standard of health: 11/08/2000. E/C.12/2000/4. (General Comments)*

Sanitation and hygiene, nutrition and safe drinking water are basic determinants of good health. Nobel laureate Amartya Sen has identified illiteracy, malnutrition and lack of health care as the **three** great **unfreedoms** while speaking of ‘*development as freedom*’.

International Standards on Right to Health

There is a strong affirmation of right to health and access to health services in various international Human Rights Covenants to which India is a party.

The Universal Declaration of Human Rights (1948) (UDHR) states that:

*“Everyone has the **right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control**”².*

¹¹Writer by Shri. Y.S.R. Murthy, Director (Research), NHRC

¹ *The right to the highest attainable standard of health: 11/08/2000. E/C.12/2000/4. (General Comments)* General Comment No. 14 issued by the Committee on Economic, Social and Cultural Rights

² The Universal Declaration of Human Rights (1948) (UDHR), Art 25(1).

³ Ibid, Article 25(2).

In addition, UDHR further provides that “*Motherhood and childhood are entitled to special care and assistance*”³

The International Covenant on Economic, Social and Cultural Rights, 1966 recognises “*the right of everyone to the **enjoyment of the highest attainable standard of physical and mental health***”.⁴ The International Covenant on Economic, Social and Cultural Rights further stipulates that “Special protection should be accorded to mothers during a reasonable period before and after childbirth...” Also “...Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or **health** or dangerous to life or likely to hamper their normal development should be punishable by law...”⁵

The International Convention on Elimination of Racial Discrimination, 1965 obliges States parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equal treatment before law, notably in the enjoyment of rights and in particular, the **right to public health, medical care**, social security and social services⁶.

The Convention on Elimination of Discrimination against Women, 1979 obliges States parties to take all appropriate measures to **eliminate discrimination against women in the field of health care** in order to ensure, on a basis of equality of men and women, **access to health care services, including those related to family planning**⁷. It is further provided that States parties must ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation⁸. Today, there is an increased emphasis on women’s right to reproductive health and women’s access to health care.

The Convention on the Rights of the Child, 1989 has detailed provisions regarding health rights of children. It recognises the right of the child to the **enjoyment of the highest attainable standard of health** and to facilities for the treatment of illness and rehabilitation of health and provides that no child is deprived of his or her right of access to such health care services⁹.

⁴ Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966.

⁵ Ibid, Article 10.

⁶ International Convention on Elimination of Racial Discrimination 1965 Art 5(e)(iv).

⁷ Convention on Elimination of Discrimination against Women 1979 Art 12(1).

⁸ Ibid, Art. 12(2)

⁹ See the Convention on the Rights of the Child 1989 Art 24(1).

States parties are obliged to take measures, amongst others, (1) to diminish infant and child mortality, (2) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care and, (3) to combat disease and malnutrition and to ensure appropriate pre-natal and post-natal health care for mothers. In addition, States parties are obliged to ensure that all segments of society have access to education on child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents¹⁰. An obligation has been placed on the States parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children¹¹. The Convention on the Rights of the Child has some important provisions regarding child health, including provision for children with disabilities¹², the rehabilitation of children in armed combat situations¹³ and state support when parents cannot care fully for children's welfare¹⁴.

The Government of India has ratified all the above-mentioned international human rights Conventions and has assumed legal obligations flowing there from. In addition, it has endorsed the Vienna Platform for Action (1993), Cairo Platform for Action (1994) and the Beijing Platform for Action (1995), in which right to health was emphasised.

The Constitution of World Health Organization, proclaims that “*Health is a state of complete physical, mental and social well being and not merely the absence of disease and infirmity*”. The Preamble of WHO further states that the enjoyment of highest attainable standard of health is one of the fundamental rights of every human being”. Alma Ata Declaration, 1978 called for urgent action by all government health and health development workers, and the world community, to protect and promote the health of all the people of the world, using the primary health care approach besides a call for “health for all by 2000 AD”.

The Millennium Development Goals and targets adopted by the United Nations in 2001 also highlight the need to reduce child mortality,¹⁵ improve

¹⁰ Ibid, Art 24(2)

¹¹ Ibid, Art 24(3)

¹² Ibid, Art 23.

¹³ Ibid, Art 39.

¹⁴ Ibid, Art 19 & 20.

¹⁵ MDG Goal 4 Reduce child mortality

• Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate.

maternal health,¹⁶ combat HIV/AIDS, malaria, and other diseases,¹⁷ and ensure environmental sustainability¹⁸.

Elaboration of Normative Content of Right to Health by Treaty Bodies:

The Committee on Economic, Social and Cultural Rights (CESCR) in General Comment No. 5 on persons with disabilities quotes the UN Standard Rules for Treatment of Persons with Disability in indicating that the same level of medical care within the same medical system for persons with disabilities and persons without disabilities is a key element of the right to health. The CESCR interprets Article 12 of the ICESCR as a guarantee ‘to have access to, and to benefit from, those medical and social services ... which enable persons with disabilities to become independent, prevent further disabilities and support social integration.’ It further says, “Similarly, such persons should be provided with rehabilitation services which would enable them ‘to reach and sustain their optimum level of independence and functioning.’ All such services should be provided in such a way that the persons concerned are able to maintain full respect for their rights and dignity¹⁹.”

The Committee on Economic Social and Cultural Rights General Comment No. 14 on the right to health discusses the core obligations and elements of the right: **availability, accessibility, acceptability and quality**²⁰. Non-discrimination is a key element of accessibility and the CESCR highlights the accessibility needs of vulnerable groups, including persons with disabilities. It stresses ‘the need to ensure that not only the public health sector but also the private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities.’ Physical or mental disability is specifically mentioned as a prohibited ground of discrimination²¹.

¹⁶ MDG Goal 5 Improve maternal health

· Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio.

¹⁷ MDG Goal 6 Combat HIV/AIDS, malaria, and other diseases

· Have halted by 2015 and begun to reverse the spread of HIV/AIDS

· Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases.

¹⁸ MDG Goal 7 Ensure environmental sustainability

·

· Halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation..

¹⁹ Committee on Economic, Social and Cultural Rights General Comment No. 5, para. 34.

²⁰ Committee on Economic, Social and Cultural Rights General Comment No. 14, para. 12, National Human Rights Commission Disability Manual 2005, p. 79.

²¹ Ibid, para. 14.

Spelling out the core obligations, CESCR says they include at least the following obligations:

- (a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;
- (b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
- (c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
- (d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;
- (e) To ensure equitable distribution of all health facilities, goods and services;
- (f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups²².

In addition, the Committee also confirms that the following are obligations of comparable priority:

- (a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;
- (b) To provide immunization against the major infectious diseases occurring in the community;
- (c) To take measures to prevent, treat and control epidemic and endemic diseases;
- (d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;
- (e) To provide appropriate training for health personnel, including education on health and human rights²³

The CEDAW General Recommendation No. 24 on women and health refers to the need to give special attention to the health needs and rights of women who belong to vulnerable and disadvantaged groups, including women with physical or mental disabilities²⁴.

²² CESCR General Comment 14(2000), para 43.

²³ Ibid, para. 44.

²⁴ CEDAW General Recommendation 24, para. 6.

The Committee on the Rights of the Child has issued a General Comment on adolescent health and development, General Comment No. 4. The Committee requires States to ‘adopt special measures to ensure the physical, sexual and mental integrity of adolescents with disabilities, who are particularly vulnerable to abuse and neglect²⁵. The Committee notes that systematic collection of data is necessary to be able to monitor the right to health, including data on adolescents with disabilities²⁶.

Constitutional Provisions Relating to Health and Relevant Supreme Court Orders

The Constitution of India – the supreme law, recognises health as a fundamental human right. The provisions of Article 21 of the Constitution have been judicially interpreted to expand the meaning and scope of the right to life so as to include right to health and make it enforceable by virtue of the constitutional remedy available under Article 32 or Article 226 of the Constitution.

The right to life does not indicate merely a negative duty on the part of the government to not take away an individual’s life, but also a positive duty to provide the basic conditions necessary to lead a life that is more than a mere ‘animal existence²⁷. The apex court read the right to health²⁸, right to clean environment²⁹, right to privacy³⁰ and so on into the right to life and personal liberty.

To live a life with dignity and equality, the right to health and medical care to protect the health and vigour has been granted as a fundamental right of a worker. The right to health of a worker is an integral facet of meaningful right to life and lack of health denudes him of his livelihood³¹.

In *Consumer Education and Research Centre and Ors. vs. Union of India and Ors.*, the Apex Court held that:

²⁵ CRC General Comment 4, para. 12.

²⁶ Ibid, para. 13.

²⁷ *Francis Coralie vs. Union Territory of Delhi* AIR 1981 SC 746, at 753.

²⁸ *Consumer Education and Research Centre vs. Union of India* AIR 1995 SC 922, (1995) 3 SCC 42; *Parmanand Katara vs. Union of India* (1995) 3 SCC 248, 1995 SCC (Cr) 464, *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal* AIR 1996 SC 2426, (1996) 4 SCC 37.

²⁹ *M C Mehta vs. Union of India* AIR 1987 SC 1086; *Bandhua Mukti Morcha vs. Union of India* AIR 1984 SC 802; *Vellore Citizens Welfare Forum vs. Union of India* AIR 1996 SC 2715; *B L Wadhera vs. Union of India*, AIR 1996 SC 2969; *Indian Council for Enviro-Legal Action vs. Union of India*, AIR 1996 SC 1446.

³⁰ *Peoples Union for Civil Liberties vs. Union of India*, AIR 1997 SC 568.

³¹ *Consumer Education and Research Centre vs. Union of India* AIR 1995 SC 922, (1995) 3 SCC 42.

“The jurisprudence of personhood or philosophy of the Right to life envisaged under Art.21, enlarges its sweep to encompass Human personality in its full blossom with invigorated health to sustain the dignity of person and to live a life with dignity and equality, Right to health and medical care to protect health and vigour is a Fundamental Right of a worker under Art 21. The Right to health of a worker is an integral facet of meaningful Right to life. Lack of health denudes him of his livelihood.”

“The expression ‘life’ assured in article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure.” The Court has interpreted the right to health as “an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour³².”

In *Bandhua Mukti Morcha vs. Union of India*, the Supreme Court held that: “Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of article 39 and articles 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and conditions of freedom and dignity....³³” The Supreme Court in *C.E.S.C. Ltd. vs. Subhash Chandra Bose* has given a wider meaning to the concept of health, saying ‘Health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity.’ Upholding the right to health of workers, in the light of Articles 22 to 25 of the Universal Declaration of Human Rights, the ICESCR, and socio-economic justice assured in the Constitution, the Court held, ‘right to health is a fundamental human right to workmen³⁴.’

Whether the patient is innocent or is a criminal, it is an obligation of those in charge of community health to preserve the life of the patient. To this effect, all government hospitals, medical institutions have been advised to provide immediate medical aid to all the cases irrespective of the fact whether they are medico-legal cases or otherwise. The Constitution of India³⁵ casts the obligation on the state to preserve life. No law or state action may intervene

³² Ibid.

³³ *Bandhua Mukti Morcha vs. Union of India* [1984 3 SCC161]

³⁴ *C.E.S.C Ltd. vs. Subhash Chandra Bose* [(1992)1 SCC 441], National Human Rights Commission Disability Manual 2005, p 81.

³⁵ Constitution of India 1950 art 21.

to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure which interfere with the discharge of such obligations may not be sustained³⁶.

The Supreme Court³⁷ declared that the right to life enshrined in the Indian Constitution (Article 21) imposes an obligation on the State to safeguard the right to life of every person and that preservation of human life is of paramount importance. This obligation on the State stands irrespective of constraints in financial resources. The Court stated that denial of timely medical treatment necessary to preserve human life in government-owned hospitals is a violation of this right. The Court asked the Government of West Bengal to pay the petitioner compensation for the loss suffered. It also directed the Government to **formulate a blue print for primary health care with particular reference to treatment of patients during an emergency**³⁸. The Supreme Court has given **detailed guidelines on the access to emergency medical care**:

(i) Adequate medical facilities to give immediate primary treatment to stabilise the patient's condition.

(ii) upgradation of hospitals at the district level and sub-division level so that serious cases may be treated there.

(iii) facilities for giving specialist treatment at the hospitals at the district level and the sub-division level.

(iv) a centralised communication system so that an emergency patient may be sent immediately to the hospital where bed is available, and where appropriate treatment is available.

(v) proper arrangement for ambulance transport of a patient from the primary health centre to the district hospital or sub-division hospital and from the district hospital or subdivision hospital to the state hospital.

(vi) ambulances, which are adequately provided with necessary equipment and medical personnel.

(vii) emergency preparedness in health centres and hospitals for larger volumes of patients needing emergency treatment during certain seasons, accidents, or mass casualty³⁹.

³⁶*Parmanand Katara vs. Union of India* (1995) 3 SCC 248, 1995 SCC (Cr) 464.

³⁷*Paschim Banga Khet Mazdoor Samity vs. State of West Bengal* AIR 1996 SC 2426, (1996) 4 SCC. The petitioner sustained serious injuries after falling off a train. He was refused treatment at six successive State hospitals because the hospitals either had inadequate medical facilities or did not have a vacant bed.

³⁸ESCR-Net, International Network for Economic, Social and Cultural Rights.

³⁹*Ibid.*

The Apex Court has made it clear that the right to health is fundamental with an obligation on the state to cater to the needs of the health of the people⁴⁰. It is important to note that the Court held that a lack of financial resources does not excuse a failure to provide adequate medical services. The case was the first in which the Supreme Court held that the right to life included an obligation to provide timely medical treatment necessary to preserve human life. According to legal experts, the decision in *Paschim Banga* delineates the right to emergency medical care for accident victims as forming a core minimum of the right to health. “*Paschim Banga* was subsequently discussed and distinguished by the Constitutional Court in the South African case of *Soobramoney vs. Minister of Health*. In the later case of *Consumer Education and Research Centre vs. Union of India* (1995 3 SCC 42) the Supreme Court recognised that state resources are not unlimited and that no breach of the Constitution was incurred by reducing some employees’ entitlements to medical benefits (1997 (12) BCLR 1696 (CC))⁴¹”.

Supreme Court entrusts NHRC the task of monitoring Agra, Gwalior and Ranchi Mental Hospitals and Agra Protective Home

The Supreme Court of India, through an Order dated 11 November 1997, requested the Commission to be involved in the supervision of the Agra Protective Home in order to “ensure that the home functions in the manner as is expected for achieving the object for which it has been set up”. Giving its order in Writ Petition (Crl.) No.1900/81 (*Dr. Upendra Baxi vs. State of Uttar Pradesh & Others*), the Supreme Court observed “now that the benefit of the National Human Rights Commission with statutory powers under Protection of Human Rights Act, 1993 is available and since most of the problems associated with the functioning of the Agra Protective Home are such that they can be better dealt with by NHRC, we consider it expedient to make this order to involve the NHRC in this exercise”. It further stated that “the NHRC, acting on the reports of the District Judge or otherwise in the manner it considers fit will ascertain the facts relating to the actual functioning of the Agra Protective Home and would issue the necessary directions to the concerned authorities for prompt compliance by them so as to ensure proper functioning of the Home. It is expected that all the concerned authorities would promptly comply with such directions given by the NHRC”.

In another Order dated 11 November 1997, in Writ Petition (Civil) in the case of *Rakesh Chandra Narayan and Others vs. State of Bihar*, the Supreme

⁴⁰ Ibid.

⁴¹ ESCR-Net, International Network for Economic, Social and Cultural Rights.

Court requested the Commission to be involved in the supervision of the functioning of the Agra, Gwalior and Ranchi mental hospitals also, in the manner in which the Commission was requested to undertake similar work in respect of the Agra Protective Home.

In pursuance, the National Human Rights Commission has been monitoring the conditions in these institutions. The specific recommendations made by it have led to significant improvements in these institutions and also better protection of rights of people living therein.

Important Developments in Health Policy

In consonance with the Constitutional provisions, the National Health Policy was formulated in 1983. While some of the policy initiatives yielded results, there were shortfalls in several other areas. As a result, the new Health Policy was adopted in the year 2002 which sought to achieve public health goals in the socio-economic circumstances prevailing in the country.

The Government has also relied upon a number of programmes to control major diseases in the country. Prominent among these are the National Vector Borne Disease Control Programme, National Leprosy Eradication Programme, Revised National T.B. Control Programme, and National Programme for Control of Blindness, National Cancer Control Programme, National Mental Health Programme, Integrated Disease Surveillance Projects and National AIDS Control Programme. In the year 2000, the Government of India brought out the National Population Policy, which provides a framework for advancing goals and prioritization strategies during the next decade to meet the reproductive and child health needs of the people of India as well as achieve required replacement levels of Total Fertility Rate by 2010. The National Common Minimum Programme of the United Progressive Alliance Government also identifies health as an important thrust area. During 2005-06, the National Rural Health Mission (NRHM) was launched throughout the country. The main aim of NRHM is to provide accessible, affordable, accountable, effective and reliable primary health care facilities, especially to the poor and vulnerable sections of the population. It also aims at bridging the gap in rural health care services through creation of a cadre of Accredited Social Health Activists (ASHA) and improved hospital care, decentralisation of programmes to district level to improve intra and inter-sectoral convergence and effective utilisation of resources. The NRHM further aims to provide overarching umbrella to the existing programmes of Health and Family Welfare including Reproductive and Child Health – II

(RCH – II), malaria, blindness, iodine deficiency, filaria, kala azar, T.B., leprosy and integrated disease surveillance. It further addresses the issue of health in the context of sector-wide approach addressing sanitation and hygiene, nutrition and safe drinking water as basic determinants of good health in order to have greater convergence among the related social sector ministries/ departments, i.e., women and child development, AYUSH, panchayati raj, sanitation, water and rural development, etc.

The Government of India has enacted a number of Acts to regulate health care services and facilities. For example, the Indian Medical Council Act 1956; the Prevention of Food Adulteration Act, 1954; Tobacco Control Act, 2003; etc. With a view to contain the declining sex ratio and curbing the evil practice of female foeticide, the Government brought into force the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in 1994. The Act was later amended and after amendment has been renamed as Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act.

NHRC Recommendations on Health and Human Rights

A. Emergency Medical Services (EMS)

Deeply concerned about the prevailing unsatisfactory system of emergency medical care in the country, which results in the loss of many lives, the Commission constituted an Expert Group headed by Dr. P.K. Dave, former Director, All India Institute of Medical Sciences in April 2003 to look into the issue.

The Commission, on receipt of a complaint from Association of Victims of Uphar Tragedy about lack of adequate and appropriate facilities for providing emergency health care to accident victims and the inordinate delay in the establishment of Centralized Accident Trauma Services (CATS), obtained response from the Health Secretary, Director General of Health Services, Government of India as well as from the Health Secretaries of all the State Governments and sent them for opinion of this Expert Group.

The Group of Experts deliberated on various facets of emergency medical care and submitted a report on 7 April 2004. The Expert Group reviewed the existing scenario and centralized Accident and Trauma Services (CATS). In its report, the Expert Group mentioned that nearly 4,00,000 persons lose their lives every year due to injuries caused by accidents, nearly 75,00,000

persons are hospitalized and 3,50,00,000 persons with minor injuries received emergency care at various places in India. The present EMS in the country is functioning sub-optimally and requires up-gradation. The report brought to the light the lacunae that exist in the present EMS and made a series of recommendations for implementation in the short-term as well as in the long term. These include enunciation of a National Accident Policy, establishment of Centralized Accident and Trauma Services in all Districts of all States/ Union Territories, etc.

While pointing out a number of deficiencies in the existing Emergency Medical Care Services (EMS) of the country, it suggested the following short-term as well as long-term measures so as to address the lacunae.

SHORT-TERM MEASURES on Emergency Medical Care (To be undertaken within one year)	LONG-TERM MEASURES on Emergency Medical Care (To be taken up within 5 years)
<ul style="list-style-type: none"> • Enunciation of a National Accident Policy. • Establishment of a central coordinating, facilitating, monitoring and controlling committee for EMS under the aegis of Ministry of Health and Family Welfare. • Specification of 3-4 districts for attachment to Medical colleges, which will act as referral centers in each State and Union Territory. • Establishment of Centralized Accident and Trauma Services in all districts of all the States and Union territories in the country. • Development of a computerized information base at all levels of health care to help in perspective policy planning and networking. • Setting-up of a National Trauma Registry by the Government for data collection and analysis. • Information dissemination to all of the existing facilities for EMS health care utilization. • Formulation of proposals by the States for up-gradation of EMS. <p>Organization of training in EMS in the Medical Colleges and other regional areas.</p>	<ol style="list-style-type: none"> 1. Implementation of the proposed recommendations of the National Accident Policy. 2. Setting-up of a well-equipped trauma centre with trained staff at the Regional and National level. 3. Specialized multidisciplinary trauma care facilities in all District Hospitals. 4. Establishment of Emergency Medicine as a speciality. 5. Dedicated communication toll free number to respond in case of emergency, which should be common for the entire nation. 6. A communication call center as well as an ambulance equipped and staffed to be stationed every 30 Kms on the Golden Quadrangular Road Project. Emergency care centres manned by paramedical staff should be established every 50 kms. All the National Highways should also have the same facilities.

B. Public Hearings on Right to Health Care

In 2004, the National Human Rights Commission organized five regional public hearings on right to health care. They culminated in the National Public Hearing in New Delhi on 16 – 17 December 2004, in which the civil society representatives presented structural deficiencies noted in various regional public hearings, followed by delineation of state-wise systemic and policy issues related to denial of health care. In addition, the National Action Plan to Operationalize the Right to Health Care was proposed. The Objectives of the National Action Plan⁴² were as follows:

- **Explicit recognition of the Right to Health Care**, to be enjoyed by all citizens of India, by various concerned parties: Union and State Governments, NHRC, SHRCs and civil society and other health sector civil society platforms.
- **Delineation of essential health services and supplies** whose delivery would be assured as a right at various levels of the Public Health System.
- **Delineation of citizen's health rights related to the Private medical sector** including a Charter of Patients Rights.
- **Legal enshrinement of the Right to Health Care** by enacting a Public Health Services Act, Public Health Services Rules and a Clinical Establishment Regulation Act to regulate the Private Medical Sector.
- **Operationalization of the Right to Health Care** by formulation of a broad time table of activities by Union and State Governments, consisting of the essential steps required to ensure availability and accessibility of quality health services to all citizens, which would be necessary to operationalize the Right to Health care. This may include a basic set of Health Sector reform measures essential for universal and equitable access to quality healthcare, and guidelines regarding the budgetary provisions to be made available for effective operationalization.
- **Initiation of mechanisms for joint monitoring** at District, State and National levels involving health departments and civil society representatives, with specified regularity of monitoring meetings and powers to monitoring committees. In parallel with this, an institutionalised space needs to be created for regular civil society inputs towards a more consultative planning process. These should be combined with **vigilance mechanisms** to take prompt action

⁴² For details, see NHRC Annual Report for 2004-05 Annexure 8. pp 226-233, at <http://www.nhrc.nic.in>

regarding illegal charging of patients, unauthorized private practice, corruption relating to drugs and supplies, etc.

- **Functional redressal mechanisms** to be put in place at District, State and National levels to address all complaints of denial of health care

In order to review the implementation of these recommendations, the Commission held a National Review meeting in 2006 and 2007. In the National Review Meeting on Health organized by the Commission on 6 March 2007, concern was expressed regarding inadequate provision of public health services in rural areas. In this context it was stated that although sufficient Doctors are available in absolute number in the country, however, there are still innumerable pockets in the country where there is a shortage of Doctors especially in the rural and remote areas. As result, nearly 56% of the population is still being treated by the quacks. The recommendations made in the National Review Meeting on Health are annexed.

C. Fluorosis

The Commission is deeply concerned about the health dimensions of fluorosis, which affects nearly 66 million persons in 196 districts in 19 States of the country. The Commission had therefore sought information related to fluorosis from 19 endemic States. There is a need for a concrete Policy to deal with it in all its dimensions – prevention, detection, diagnosis and treatment.

The Fluorosis Research and Rural Development Foundation, New Delhi, informed the Commission that it was basically a health problem, which is not diagnosed correctly. As a result of inaccurate diagnosis, fluorosis is being treated wrongly. Its early detection is the key solution to the problem. The need for educating the doctors and making diagnostic facilities available in all districts was emphasised.

After a detailed discussion with the authorities concerned, the Commission recommended as follows:

- Mount a National Programme covering endemic states affected by fluorosis.
- Prepare a Plan of Action in consultation with the Director General Health Services, ICMR and the Fluorosis Research and Rural Development Foundation, New Delhi within a month.
- Take up the issue of fluorosis in its various manifestations and dimensions in the next meeting of the Central Council of Health

and Family Welfare scheduled in December 2004, which will be attended by all Health Ministers and Health Secretaries of all States.

- Department of Health to give a directive to the Medical Council of India (MCI) to include fluorosis in the training of medical interns, which will enable MCI in turn to send a circular to all medical colleges.
- Creation of awareness about treatment among the general public.
- ICMR and NICD to develop a standardized treatment.

D. HIV/AIDS

HIV/AIDS is shrouded in an atmosphere of silence, denial, prejudice, stigma and discrimination. Deeply concerned about violations of human rights of those affected/infected by HIV/AIDS, the Commission made detailed recommendations to all concerned authorities based on the National Conference organized by it in New Delhi on 24 – 25 November 2000, in collaboration with the National AIDS Control Organization, Lawyers Collective, UNICEF and UNAIDS. The recommendations cover areas such as: consent and testing, confidentiality, discrimination in health care, discrimination in employment, women in vulnerable environments, children and young people, people living with or affected by HIV/AIDS and marginalized populations (Annexed). The Commission made supplementary recommendations to all the States and UTs on 25th November, 2003 in connection with “mother to child transmission” of the virus. It emphasized that public health action should focus on preventing mother to child transmission of the virus and measures to achieve its objective should receive prioritized attention from health policy makers both at the Central and State level.

The Commission addressed letters to the Union Minister for Human Resource Development, Health Minister and Chief Ministers of all States/ Union Territories on 6 September 2004 urging them to take steps to prevent discrimination of children affected or infected by HIV/AIDS in their access to education and healthcare.

In particular, the Commission recommended the following:

- Enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school.
- Address school fees and related costs that keep children, especially girls, from going to school.

- Provide care and protection to children whose parents are unable to care for them due to HIV/AIDS.
- Provide all children, both in and out of school, with comprehensive, accurate and age-appropriate information about HIV/AIDS.

E. Illegal trade in Human Organs

Deeply concerned about exploitation of the poor persons who are often deprived of their kidneys or other organs for a small price by certain middle men often in collusion with some doctors and hospitals and concerned about the misuse of compassionate donor provision in the Human Organ Transplantation Act, the Commission recommended as follows:

a) State Medical Councils should screen the records of hospitals performing organ transplants (especially kidney transplants) and estimate the proportion of transplants which have been made through a **‘compassionate donor’ mechanism. In case of kidney transplants, wherever the proportion has exceeded 5% of the cases performed in any of the past 5 years, the State Medical Council should initiate a full fledged enquiry into the background of the donors and the recipients,** as well as a careful documentation of the follow-up health status of the donor and the nature of after care provided by the concerned hospital. Wherever police enquiries are needed for such background checks, the help of the State Human Rights Commission may be sought for providing appropriate directions to the State agencies.

b) Cadaver Transplant programmes should be promoted to reduce the demand for ‘live donors’.

c) Facilities for chronic renal dialysis should be increased and improved in hospitals, to provide alternatives to kidney transplantation.

d) Better facilities should be provided for transparent and effective counseling of prospective donors.

e) Wherever possible, a mechanism should be established for independent verification of the veracity of ‘compassionate donation’ by a group of experts which is external to the hospital wherein the transplant procedure is proposed to be performed.

F. Silicosis

Deeply concerned about the adverse effects of silicosis on the health of workers and the general public and its implications for their human rights, the Commission organized a meeting of various stake holders including the Ministry of Labour, Health, Industries and others. Based on that meeting, the Commission made, among others, the following short term and long term recommendations:

Short Term Recommendations:

1. There is a need to work aggressively to create awareness among workers, medical practitioners and employers about silicosis being health hazard for which we have to adopt electronic and print media at all levels.
2. Monitor the States identified with high number of cases of silicosis and the State should also issue notification under Section 85 of Factories Act so that entrepreneurs employing less than 10 labourers also come in the fold.
3. To obtain the case study from Madhya Pradesh and to analyze as to how in a convergent and comprehensive way the preventions and the issue of health care and insurance has been incorporated.
4. Collect surveys already available with different agencies to identify and map the pockets with incidence of silicosis. Such State government officials be summoned by NHRC to monitor effective steps taken by the State government authorities.
5. There is a need to work on deficiency and lethargy on the part of the State and enforcing agency. Thus, if this is the case there is a need to impress and stress that enforcement takes place properly.
6. To launch a national programme for eradication of silicosis, a background paper is to be prepared by Shri S.K. Srivastava, Joint Secretary, M/o Labour, Government of India.
7. While organizing the National Review Meeting on Health either half a day be devoted to the issue of silicosis or a separate National Review on Silicosis need to be organized.
8. There is a need to workout the compensation and its modality towards the victims or next to the kin.

9. Select NGOs may be invited to make a presentation on the status of silicosis and share experience.

Long Term Recommendations:

1. It is to be deliberated whether existing laws are adequate or not. Whether there is a need for separate/specific legislation dealing with the issue.
2. There is a need to constitute a National Working Group. It may be termed as National Task Force on Silicosis or a National Core Group on Silicosis.
3. The Group has to work within the given time frame on the issue and make recommendations which in turn may be taken up with the Central/State Government as the case may be.

In pursuance, the National Human Rights Commission has constituted the National Task Force on Silicosis.

G. Maternal Anemia

Serious developmental disabilities are caused to children born in this country due to inadequate attention to certain essential nutritional requirements of expectant mothers, belonging largely to disadvantaged sections of society. The number of those born with neurological disadvantages, permanently affecting their intellectual future, is alarmingly large. The Commission considered the problem of nutritional anaemia affecting the mental development of the foetus and the infant child to be an important human rights issue.

Central to the Commission's concerns in respect of the right to health has been its anxiety about the deleterious effects of maternal anaemia both on the mother and on the child. The Commission has, thus, taken-up the issue of the widespread prevalence of iron deficiency among expectant mothers, which has resulted not only in high infant and maternal mortality but also in low birth-weight related developmental disabilities, particularly among economically disadvantaged sections of society. It was in order to evolve a plan of action for systemic improvements in the health care delivery system, that a two-day Workshop on Health and Human Rights, with special reference to maternal anaemia was organized by the Commission on 26-27 April 2000 in partnership with the Department of Women and Child

Development and UNICEF. The recommendations of that Workshop were transmitted to the concerned Ministries of the Central Government for appropriate action⁴³. The Commission has been monitoring progress in this regard.

The Commission's Core Advisory Group on Health noted that though the Government had promised to provide Iron and Folic Acid at all levels in five years, however, the same had not been achieved and this issue needed the attention of various State governments. Further, the National Review Meeting on Health organized by the Commission on 6 March 2007 recommended, among other things, that the maternal health services should also focus on adequate treatment of maternal anemia including safe institutional delivery services, health promotion and health education concerning safe motherhood.

I. QUALITY ASSURANCE IN MENTAL HEALTH

NHRC has been deeply concerned about the conditions prevailing in the mental hospitals all over the country. Many of them function as custodial rather than therapeutic institutions. In addition, there are problems of overcrowding, lack of basic amenities and poor medical facilities. Keeping in view the seriousness of the task, the Commission had entrusted a research project on 'Quality Assurance in Mental Hospitals' to NIMHANS, Bangalore. Based on the report submitted, detailed recommendations were sent to all the mental hospitals and to the State Health Secretaries for necessary follow up action. The following are some important recommendations:

- Provide out patient services preferably in a separate block;
- Provide twenty-four hours casualty and emergency services;
- A short stay ward of five to ten beds to admit emergency cases;
- To provide open ward with a provision for a relative to stay with the patient;
- Provide for intensive care unit with separate nursing staff, ward attendants, etc.;
- Kitchen and dietary services should be under supervision of a dietician and should have facility of stainless steel vessels, adequate storage facilities, cold storage for perishables;

⁴³ NHRC Annual Report for 1999-2000, see annexure 6 for details of recommendations.

- Provision and supply of clean and fresh linen;
- Medical store with facilities of telephone, refrigerator to store certain drugs to retain potency;
- Hospital should have a medical records section headed by an officer trained in handling of medical records;
- There should be proper facilities to dispose both hospital waste and food waste;
- There should be a central sterilization and supply department;
- The medical superintendent / Director should have administrative / financial and legal powers to ensure proper functioning of the hospital;
- Provision of well structured rehabilitation center attached to hospital;
- Provision of a day care centre with a structured activity schedule;
- Adequate provision of mental health professionals, clinical psychologists, psychiatric social workers and psychiatric nurses with in-service training programmes;
- A separate estate department in the hospital for preservation and maintenance of the estates, lands, properties and infrastructure of the hospital;
- Provision of residential accommodation to at least for 50% of the staff and for all emergency duty staff and payment of special allowance to motivate the staff to work in the mental hospital;
- A monitoring mechanism at internal and external level and to strengthen the central health authority to monitor the mental health activities.

Role of District Magistrates in protecting and promoting the Right to Health

The National Rural Health Mission has *inter alia* spelt out the vision, goals, strategies, Plan of Action, role of State governments, Panchayati Raj institutions and NGOs.⁴⁴ The Plan of Action further provides, among other things, clear

⁴⁴ National Rural Health Mission 2005-2012 Mission Document, see <http://mohfw.nic.in/NRHM/Documents/NRHM%20Mission%20Document.pdf>

cut steps to converge sanitation and hygiene under NRHM, District Health Plan, strengthening primary health centers, sub centres and CHCs for first referral care and accredited social health activists.

The Supreme Court has held Right to Health as a fundamental right. The relevant provisions of the Constitution of India as mentioned earlier on provide clear goals to the administrators. In addition, India is a party to several international Human Rights Conventions which proclaimed the right to health. The National Human Rights Commission took up many important issues related to right to health *viz.* maternal anemia, availability of doctors, human rights and HIV/AIDS, illegal trade in human organs, unsafe drugs and medical devices, flurosis, mental health and made specific recommendations for better protection of rights of our people.

Even while implementing the National Rural Health Mission, there is a need to respect, protect and promote human rights at every stage. The District Magistrate needs to keep in view recommendations made by the National Human Rights Commission as mentioned above to ensure their implementation at various levels and also **monitor** them.

ANNEXURE - 1

NHRC's Recommendations based on the National Review Meeting on Health on 6th March 2007.

1. To fulfil health rights of citizens, especially in rural areas, there is a need to ensure universal provision of guaranteed health services - particularly services for maternal health, child health, emergency medical care and provision of essential drugs.
2. It is recommended that all non-government employees living in the rural areas be issued a Limited Paying Capacity Card which will ensure free accessibility to all the essential medical services as is being provided to BPL Card holders. This card could be issued by the local district administration.
3. To facilitate the provision of these essential services in rural areas, there is a need to have a recognized course for Nurse Practitioners to ensure availability of independent treatment and also specialists like Nurses Anesthetist and Gynecologists in the rural parts of the country. This will definitely have a direct impact on the IMR, MMR and also health status.
4. There is a need that the Medical Council of India and the Nursing Council of India to have a relook and work out a methodology to recognize course for Nursing Practitioner. It is also necessary for Medical Council of India to have an inbuilt compulsory rural attachment and it may reduce number of years for post graduate training.
5. There is need to have a Community Health Worker in every village. Thus, ASHA to be strengthened so that she remains not just motivator but a Community Health Worker capable of providing basic health care. Assistance be taken to make comprehensive training manual.
6. It is recommended that Public Private Partnerships (PPP) be considered in the area of Healthcare. However, there is a need to have a regulatory mechanism to ensure quality standards by the private partners and national norms for PPPs, to ensure that all such partnerships fulfil public health goals.
7. It is also recommended that there is a need to enact a National Clinical Registration and Regulation Act to develop various

standards to be observed even by the private institutions running health care facilities. National and State level legislations should include provisions to protect patients rights.

8. The availability of drugs at affordable price is an essential element to ensure right to health. Hence the group strongly recommends that there is a need to have a proper drug procurement mechanism to ensure guaranteed availability of all essential drugs at the primary and secondary care level. The Tamil Nadu Model of procurement of essential drugs be taken as a standard by the other states and be executed within a time frame. Examine issue of stay-order issued resulting in delay in drug procurement.
9. To create awareness concerning the availability of the essential drugs, the appropriate government may print a booklet having a list of essential drugs which would be necessarily available at PHC/CHC/District Hospitals. This booklet be printed and be made widely available.
10. To protect the right to health, the drug be made available at a cheaper rate. Towards this end, it is recommended that all essential drug and its analogues be placed under the Drug Control Order.
11. The groups also reiterated the need for rational use of drugs and need for implementing mandatory standard treatment protocols in both public and private sector to avoid over subscription.
12. It was also recommended that there is a need to develop 'Emergency Medicines' as a specialty to improve the emergency medical services in the country. The snakebites, dog bites and bleeding be included in emergency services and their respective treatment to be provided to all free of cost. In addition, approval should be given to use of Intradermal rabies vaccination in all facilities at the earliest to enable its universal free availability.
13. The discussions today has reiterated its earlier recommendations on the issue of Organ Transplantation and suggested that there is a need to have a follow up on them.
14. It further noted that Silicosis is an occupational hazard and it needs necessary interventions and convergence of efforts of the industries, labour and health departments of the government along with NIOH (Ahmedabad) and NIMH (Nagpur). There is a need to have a comprehensive legislation and operational

mechanism to ensure prevention of further cases and care for all the affected persons. It is insisted that technology like electrostatic dust precipitators be implemented in all hazardous workplaces. Compensation and care to be given to all silicosis affected workers within a short time frame.

15. Concerning the issue of Fluorosis and other water related diseases the core group recommended that to fulfill the right to have potable drinking water the government be requested to ensure safe potable water to all citizens of the country.
16. The discussions expressed concern on the drop in the rate of immunization as has been reflected in NFHS III. Thus, it is recommended that the immunization programmes of the Health Departments have the focus to achieve nothing less than 100% immunization. Efforts should include provision of complete Ante-Natal and Post Natal care. There is also need to take care of key childhood diseases, namely, Diarrhea and acute respiratory infections and to provide effective nutritional supplementation to all children to minimize malnutrition.
17. It is recommended that the maternal health services should also focus on adequate treatment of maternal anemia including safe institutional delivery services, health promotion and health education concerning safe motherhood.
18. It is recommended that all States enact a Public Health Act to enshrine the Health Rights of citizens related to public health services and public health conditions.
19. There is a need to have a redressal mechanism to ensure right to health as such it is recommended the complaints received by the Rogi Kalyan Samiti/Monitoring Committees be referred to the respective State Human Rights Commission.
20. There is a need to review pulse polio based eradication strategy and to consider compensation for all children affected by Vaccine Associated Paralytic Polio.
21. Finally the group strongly advocates that the improvement is more of a management issue and good governance than of resource crunch.
22. Steps taken by Union and State governments for implementation of the recommended measures may be communicated for periodic review by NHRC.

ANNEXURE - 2

Recommendations of the National Conference on Human Rights and HIV/AIDS Organised by the National Human Rights Commission (NHRC) in collaboration with the National AIDS Control Organisation (NACO), Lawyers Collective, UNICEF and UNAIDS 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 Indian context.

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 same staff need to be sensitised on universal precautions, provided with an appropriate infrastructure and conducive environment enabling 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 and enabling to prepare HIV positive people physically, mentally, 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 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 give their consent. This would include inter alia 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 and/or accessibility 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 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’

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.

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.

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 both 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.

- Train and sensitise law enforcement authorities or other authorities/ sections of the community that might be closely connected with the workplace on the issues of HIV/AIDS, stigma and discrimination.
- 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.

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) to 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, challenging cultures of shame and blame.

Children and Young People

- Ensure that the response to children and young people is shaped and driven by their rights guaranteed under the CRC, and also, 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 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 for 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.

People Living with or Affected by HIV/AIDS (PWHAs)

- Formulate institutional guidelines with standards placing the issues of PWHAs in a larger framework.
- Scale up availability and access to appropriate health care for PWHAs within mainstream services (including increase in availability of voluntary testing centres). Explore practical ways to ensure that the right of PWHAs to treatment of opportunistic infections is promoted, respected and protected in practice. This should include efforts to reduce stigma and discrimination in the health care system, reduction of the cost as well as increase of availability and affordability of drugs.
- 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.
- Ensure ways to protect everyone's right to information about HIV/AIDS, means of protection and support available for 'positive living, among others, by strengthening the quality control of the services and drugs, and access to information on policy of all partners. This includes the training of testing technicians and physicians on HIV/AIDS technical aspects.
- Increase legal literacy among PWHAs 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 IPC), 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.

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.

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 of 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.

Human Trafficking*

Introduction

Trafficking in women and children is a violation of several human rights. Today, it is one of the fastest growing areas of national and international criminal activities.

Trafficking, by definition, is illegal trade in a commodity. Trafficking in children is perhaps the most heinous form of commodification.....

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol) that was adopted in the year 2000 and came into force in December 2003, has laid down a working definition of trafficking at the global level. Article 3 of the Protocol defines trafficking as:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

⁴³ Writer by Ms. Aditi Sharma

- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Trafficking is a complex multi-dimensional problem. India is not only a source but also the transit point and destination of traffickers. Trafficking can broadly be categorised as:

- 1) Trafficking for sex based exploitation, including, brothel based and non-brothel based CSE (Commercial Sexual Exploitation), pornography, paedophilia, sex tourism, mail-order brides, disguised sexual abuse in the garb of massage parlours, beauty parlours, bars and friendship clubs.
- 2) Trafficking for non-sex based exploitation, including servitude, slavery and exploitation, which is commonly seen in bonded labour or forced labour, domestic servitude, industrial servitude, servitude in the entertainment industry (e.g. Camel racing and circuses), drug peddling, begging, adoption, trading in human organs, trafficking for false marriages and other similar exploitative practices.

In India, it is difficult to arrive at authentic numbers of trafficked people, by virtue of the stigma attached to prostitution and the clandestine nature of operations.

- 9,368 cases of trafficking in women and children in India in 1999: this figure has shown a steady increase since 1997, increasing by 7.7 per cent in 1998. (NCRB)
- There are more than 2 million prostitutes in India, 20 per cent of them being minors.
- A study conducted in 1992 estimated that at any given time 20,000 girls are being transported from one part of the country to another.
- There are reportedly 3,00,000 to 5,00,000 children in prostitution in India.

- The number of women and children in sex work is stated to be between 70,000 and 1 million. Of these, 30 per cent are below 20 years of age.
- Roughly 2 million children are abused and forced into prostitution.
- Among the large number of women trafficked into Indian brothels from various sources, 70 per cent of women found in the Kolkata brothels are from Bangladesh. 10,000 Bangladeshi women are also found in Bombay and Goa. There are roughly 100,000 to 160,000 Nepali girls found in Indian brothels, with 5,000 to 7,000 girls being sold everyday.

HUMAN RIGHTS VIOLATIONS RELATED TO THE ISSUE

The many human rights that are violated include – the very right to life, the right to liberty, security of a person, the right from torture or cruelty, inhuman or degrading treatment, the right to a home and family, the right to education and proper employment, the right to health care – in short everything that makes for a life with dignity.

LEGAL PROVISIONS

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. **Article 23** of the Constitution specifically prohibits “traffic in human beings and begar and other similar forms of forced labour”. **Article 24** further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are **Article 14** relating to equality before law, **Article 15** that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, **Article 21** pertaining to protection of life and personal liberty and **Article 22** concerning protection from arrest and detention except under certain conditions.

The Directive Principles of State Policy articulated in the Constitution are also significant, particularly **Article 39** which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocations; and that children and youth should be protected against exploitation. Further, **Article 39A** directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. In addition

to this, **Article 43** states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.

The commitment to address the problem of trafficking in human beings is also reflected in various laws/legislations and policy documents of the Government of India. The **Indian Penal Code, 1860**, contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery/labour, buying or selling a minor for prostitution, importing/procuring a minor girl, rape, etc.

The **Immoral Traffic (Prevention) Act, 1956 (ITPA)**, initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define ‘trafficking’ *per se* in human beings. The other relevant Acts which address the issue of trafficking in India are the Karnataka *Devdasi* (Prohibition of Dedication) Act, 1982; Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh *Devdasi* (Prohibiting Dedication) Act, 1989; Information Technology Act, 2000; the Goa Children’s Act, 2003; and the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Beside these, there are also certain other collateral laws having relevance to trafficking. These are the Indian Evidence Act, 1872; Child Marriage Restraint Act, 1929; Young Persons (Harmful Publications) Act, 1956; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Bonded Labour System (Abolition) Act, 1976; Indecent Representation of Women (Prohibition) Act, 1986; and the Transplantation of Human Organs Act, 1994.

Additionally India is also a signatory to the Convention on Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the two International documents recognising the plight of the vulnerable and upholding their rights and thereby ensuring a life of dignity for all.

However, legislation without implementation is meaningless, hence the importance of the role of executive machinery of which the District Magistrate is the nodal officer.

The menace of trafficking is so deep-rooted that successful implementation of laws is impossible without a multi-pronged strategy which covers:

- 1) Prevention
- 2) Rescue
- 3) Rehabilitation
- 4) Reintegration/Repatriation

Some suggested areas for action of District Magistrates are as follows:

SCOPE FOR DISTRICT OFFICERS

PREVENTION

- a) Develop State Plans of Action to address trafficking and review it every two years.
- b) Initiate prospects of empowerment for the vulnerable sections living in remote corners of the country by extending to them various welfare, development and anti-poverty schemes of the Government of India, such as, Swadhar, Swayamsidha, Swa-Shakti, Swawlamban, Balika Samridhi Yojana, Support to Training and Employment Programme for Women (STEP), Kishori Shakti Yojana, etc. This would provide scope for ample economic opportunities for the women and other traditionally disadvantaged groups in their native place itself so as to reduce their vulnerability to trafficking.
- c) A mapping exercise needs to be undertaken to understand trafficking source, destination and routes.
- d) Village schools should be inspected and made to conform to standards of quality to keep children from dropping out.
- e) Undertake situation analyses on street children **and vulnerable communities** to understand the nature and magnitude of the phenomenon and to identify the vulnerabilities.
- f) Create District networks for exchange of information on traffickers in source areas.
- g) Bring out a yearly report on realization/violation of Rights of children in India with emphasis on their Right to Protection.

- h) Create District level repositories of information on trafficked victims, missing and abducted children and women and traffickers.
- i) Have a window in the website with information on missing/trafficked /kidnapped/abducted children and women both within the country and across borders. Similarly, a website on profiles of traffickers and those convicted. The same must be disseminated through District networks.
- j) Develop a victim tracking software, which is victim-friendly and protects the victims, for checking re-trafficking within the country and across borders. Including alert notices on suspected traffickers.
- k) In the case of cross border trafficking, create a system which allows information sharing of missing/trafficked/abducted victims across borders while ensuring that the information is classified.
- l) Special police officers may be designated to combat trafficking.
- m) Provide market for based vocational training, adolescent girls, school drop-outs, rescued victims of trafficking.
- n) Make registration of all births and marriages compulsory.
- o) Set up of Short stay homes and Family Counselling Centres in high supply areas to provide guidance to high risk groups like widows. Divorced/socially ostracized girls, street children, child brides, bonded labourers, etc.
- p) Initiate micro- enterprises by linking with existing programmes and with local self help groups, Banks, small scale industrial units and marketing agencies.
- q) Develop a comprehensive policy and legislation on trafficking through a consultative and participatory process.
- r) Organize exchange visits between India and other countries to share technical expertise on issues related to trafficking including development of training modules, training and capacity building and minimum standards for protection of trafficked victims during their rehabilitation.
- s) Ensure close co-ordination between all the stakeholders to jointly prevent the activity.

RESCUE

- a) Take effective measures for planning and devising a rescue strategy, specifying victim- friendly provisions and structure for trafficked victims.
- b) Set up Rescue Committees with Police, government and NGOs as members to conduct frequent searches of places **where the target population is at risk** and to rescue victims.
- c) Ensure recruitment of women police officers in all police stations.
- d) Ensure, in partnership with non-governmental organizations, that trafficked victims, including children, are provided access to legal, medical and counselling services. It should also be ensured that they are treated with dignity and not humiliated by the police, medical personnel or the court. Women police personnel must preferably accompany the victim and also take charge of the questioning sessions.
- e) Set up 'fast track' /special courts for ensuring speedier justice and increased conviction of traffickers, especially those caught trafficking children.
- f) Develop and use uniform registration forms for rescued victims of trafficking which will facilitate setting up an effective case management system.
- g) Sensitize/train CWC members on their roles and responsibilities and on different aspects of the JJ Act.
- h) Develop protocol and Standard Operating Rules for both inter-state and cross border transfer of victims of trafficking.
- i) Strengthen infrastructure in all police stations in terms of additional transport facilities, human resources, etc. to facilitate rescue operations.
- j) Conduct frequent raids and take appropriate action against owners of industrial units such as zari factories, brick kilns where child labour exists - under relevant existing laws.

Rehabilitation

- a) Develop ethical guidelines for interviewing rescued children. The rescued victims need sensitive handling. The police and judiciary must be sensitized

to the vulnerability of these victims so as to negate their likelihood of falling back into the trap.

- b) Promote schemes to address trafficking including strategies to prevent trafficking and for rehabilitation of rescued victims of trafficking with involvement of the corporate sector and with emphasis on care and protection of the victims including improved health and nutrition and counselling services, school education for children, vocational training for adolescents and adults and provision for legal aid to victims. The objective will be to establish model homes and also to ensure targeted interventions in vulnerable, sensitive areas.
- c) Set up infrastructure as per the JJ Act including Child Welfare Committees.
- d) Formulate a comprehensive rehabilitation policy for women and children displaced due to insurgency/conflict.
- e) Provide informed testing for H.I.V/AIDs and informed treatment for those with HV/AIDS, based on established ethical guidelines.
- f) Promote incamera trial for victims in the presence of the concerned lawyer and the NGO to protect the victims and hasten the judicial process. The victims' identity must at all times be protected.
- g) Develop witness protection protocols for both in-country and cross border trafficking and ensure complete safety of the child/victim during trial period.
- h) Ensure speedier communication between stakeholders leading to early repatriation and reintegration.
- i) State budget should be well defined.

Repatriation/Reintegration

- a) Develop standardized Protocols, guidelines and checklists for family tracing and for communication and sharing of information between States and between India and neighbouring countries which are source countries, and create mechanisms to make the information flow speedier,

- b) Set up transit shelters at the border between India and neighbouring country (where required) for victims of cross border trafficking waiting to be repatriated.
- c) Rewards, commendations and medals for good work by law enforcement agencies.

District Officers have been entrusted with the functions of providing human rights, apart from their regulatory and developmental duties. Every individual is entitled to dignity and civil and political rights conferred by the laws of the land as well as socio-economic rights to satisfy his/her basic needs. This is the mission of a District Magistrate which he fulfils with sensitivity and vision, a unique blend between the heart and the mind.

Integrated Plan of Action

**TO PREVENT AND COMBAT
HUMAN TRAFFICKING**

WITH

SPECIAL FOCUS ON

CHILDREN AND WOMEN

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

Supported by

NATIONAL HUMAN RIGHTS COMMISSION

MINISTRY OF HOME AFFAIRS

NATIONAL COMMISSION FOR WOMEN

And

UNICEF

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Introduction

Trafficking in human beings, more so in women and children, is one of the fastest growing forms of criminal activity, next only to drugs and weapons trade, generating unaccountable profits annually. The reasons for the increase in this global phenomenon are multiple and complex, affecting rich and poor countries alike. India is no exception to this. The source areas or points of origin are often the more deprived places, regions or countries, and the points of destination are often — although not always — urban conglomerates within or across borders. For all those who view trafficking in economic terms, it is the real or perceived differential between the economic status of source and destination area that is important. In practice, however, human beings may be and are trafficked from one poor area to another poor area as well for reasons best known to the traffickers, a fact that has been corroborated by research studies and documentation across the world. The fact that the process of trafficking is designed and manipulated by traffickers for their own ends for which they employ all kinds of means, it would, therefore, be wrong to assume that human beings are always trafficked from undeveloped to more developed places, as this is not always so. This, to a large extent, also signifies that trafficking primarily is a human rights issue for it violates the fundamental human rights of all those who are trafficked. (and analysing it solely from an economic lens inevitably masks its human rights dimensions. Moreover, since tools of economic analysis are designed to explain and evaluate issues in terms of their overall efficacy, these tools, by and large, are not that well designed to protect and promote the goals of human rights— to delete).

1. **Defining Trafficking**

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol) that was adopted in the year 2000 and came into force in December 2003, has perhaps brought the much-needed and widespread consensus on a working definition of trafficking at the global level. Article 3 of the Protocol defines trafficking as:

- (a) *“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- (b) *The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- (c) *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- (d) *“Child” shall mean any person under eighteen years of age.*

The above definition clearly spells out that trafficking covers not only the transportation of a person from one place to another, but also their recruitment and receipt so that anyone involved in the movement of another person for their exploitation is part of the trafficking process. It further articulates that trafficking is not limited to sexual exploitation only for it could occur also for forced labour and other slavery like practices. This means that people who migrate for work in agriculture, construction or domestic work, but are deceived or coerced into working in conditions they do not agree to, be also defined as trafficked people. The Government of India signed the Trafficking Protocol on 12 December 2002. This is a huge step forward in advancing the human rights of trafficked people as it not

only prevents and protects the victims of trafficking but also punishes the traffickers. It encompasses the 1949 Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), all of which have been ratified by the Government of India. It would be pertinent to mention here that the Government of India has also ratified the two Optional Protocols to the Convention on the Rights of the Child – (i) on the Involvement of Children in Armed Conflicts and (ii) on the Sale of Children, Child Prostitution and Child Pornography. The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution devised by the South Asian Association for Regional Cooperation (SAARC) in 2002, has also defined the term ‘trafficking’ as “the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking”. The Government of India has also ratified this Convention.

2. *Existent Framework*

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. **Article 23** of the Constitution specifically prohibits “traffic in human beings and begar and other similar forms of forced labour”. **Article 24** further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are **Article 14** relating to equality before law, **Article 15** that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, **Article 21** pertaining to protection of life and personal liberty and **Article 22** concerning protection from arrest and detention except under certain conditions.

The Directive Principles of State Policy articulated in the Constitution are also significant, particularly **Article 39** which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work; that men, women and children should not be forced by economic necessity to enter unsuitable avocations; and that children and youth should be protected against exploitation. Further, **Article 39A** directs that the legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. In addition to this, **Article 43** states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life.

The commitment to address the problem of trafficking in human beings is also reflected in various laws/legislations and policy documents of the Government of India. The **Indian Penal Code, 1860**, contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery/labour, buying or selling a minor for prostitution, importing/procuring a minor girl, rape, etc.

The **Immoral Traffic (Prevention) Act, 1956 (ITPA)**, initially enacted as the 'Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define 'trafficking' *per se* in human beings. The other relevant Acts which address the issue of trafficking in India are the Karnataka *Devdasi* (Prohibition of Dedication) Act, 1982; Child Labour (Prohibition and Regulation) Act, 1986; Andhra Pradesh *Devdasi* (Prohibiting Dedication) Act, 1989; Information Technology Act, 2000; the Goa Children's Act, 2003; and the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Beside these, there are also certain other collateral laws having relevance to trafficking. These are the Indian Evidence Act, 1872; Child Marriage Restraint Act, 1929; Young Persons (Harmful Publications) Act, 1956; Probation of Offenders Act, 1958; Criminal Procedure Code, 1973; Bonded Labour System (Abolition) Act, 1976; Indecent Representation of Women (Prohibition) Act, 1986; and the Transplantation of Human Organs Act, 1994.

The judiciary too has played an active role in preventing and combating trafficking by pronouncing some landmark judgments in "Public Interest Litigations". Prominent among them are the 1990 case of *Vishal Jeet v. Union of India* and the 1997 case of *Gaurav Jain v. Union of India*. In the former case, on the directions given by the Supreme Court, the Government constituted a Central Advisory Committee on Child Prostitution in 1994. Subsequently, State Advisory Committees were also setup by State Governments. The outcome of the latter case was constitution of a Committee on Prostitution, Child Prostitutes and Children of Prostitutes to look into the problems of commercial sexual exploitation and trafficking of women and children and of children of trafficked victims so as to evolve suitable schemes in consonance with the directions given by the Apex Court. These and subsequent case laws

thereafter have influenced government policies, programmes and schemes, as well as law enforcement.

3. *Role of Ministry of Women and Child Development*

Based on the Report of the Central Advisory Committee on Child Prostitution, the recommendations of the National Commission for Women and the directions of the Supreme Court of India as well as the experiences of various non-governmental organizations working in this area, the Ministry of Women and Child Development, the Nodal Ministry in the Government of India dealing with issues concerning women and children drew up a National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children in the year 1998. A Central Advisory Committee under the chairpersonship of Secretary, Ministry of Women and Child Development has also been constituted with members from Central Ministries like the Ministry of Home Affairs, Ministry of External Affairs, Ministry of Tourism, Ministry of Health, Ministry of Social Justice and Empowerment, Ministry of Information Technology and Ministry of Law and Justice to combat trafficking in women and children and commercial sexual exploitation as well as rehabilitate victims of trafficking and Commercial Sexual Exploitation and improve legal and law enforcement systems. This Committee meets once in every three months wherein senior representatives of State Governments where the problem of trafficking is found to be rampant are also invited. Other invitees to the meetings of the Central Advisory Committee are representatives of prominent NGOs and international organizations working in the area of trafficking, National Commission for Women, National Human Rights Commission, Central Social Welfare Board, National Crime Records Bureau, Border Security Force, Intelligence Bureau, Central Bureau of Investigation, Sashastra Suraksha Bal, etc. The Ministry of Women and Child Development has requested all Secretaries of the Department of Women and Child Development in the States and Union Territories to hold regular meetings of State Advisory Committee constituted under the 1998 National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children and monitor initiatives being undertaken by them with regard to prevention, rescue, rehabilitation, reintegration and repatriation of victims of trafficking.

The Ministry of Women and Child Development has also undertaken a study in collaboration with UNICEF on Rescue and Rehabilitation of Child Victims Trafficked for Commercial Sexual Exploitation. The Report of this study was released to the public in 2005. The Ministry of Women and Child Development, in 2005, also formulated a Protocol for Pre-Rescue, Rescue

and Post-Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation. This Protocol contains guidelines for State Governments and a strategy for Rescue Team Members for pre-rescue, rescue and post-rescue operations concerning children who are victims of trafficking and were sexually being exploited for commercial reasons. The Ministry of Women and Child Development in collaboration with UNICEF and various other organizations has developed three manuals – the “Manual for the Judicial Workers on Combating Trafficking of Women and Children for Commercial Sexual Exploitation”, “Manual for Medical Officers for Dealing with Child Victims of Trafficking and Commercial Sexual Exploitation”, and “Manual for Social Workers Dealing with Child Victims of Trafficking and Commercial Sexual Exploitation”. The Manual for Judicial Workers has been developed in collaboration with the National Human Rights Commission.

4. *Role of National Human Rights Commission*

In view of the existing trafficking scenario and at the request of the UN High Commissioner for Human Rights as well as on the recommendations of the Asia Pacific Forum of National Human Rights Institutions, the National Human Rights Commission nominated one of its Members to serve as a Focal Point on Human Rights of Women, including Trafficking in 2001. Among the activities initiated by the Focal Point was an Action Research on Trafficking in Women and Children in India in the year 2002 in collaboration with UNIFEM and the Institute of Social Sciences, a research institute in New Delhi. The main focus of the Action Research was to find out the trends, dimensions, factors and responses related to trafficking in women and children in India. Besides, it looked into various other facets of trafficking, viz., the routes of trafficking, transit points, the role of law enforcement agencies, NGOs and other stakeholders in detecting and curbing trafficking. It also reviewed the existent laws at the national, regional and international level. The Action Research was completed in July 2004 and its Report was released to the public in August 2004. The recommendations and suggestions that emerged out of the Action Research were forwarded to all concerned in the Central Government, States/Union Territories for effective implementation. They were also requested to send an action taken report on the steps taken by them. In order that the recommendations and suggestions of the Action Research were implemented in true spirit, the Commission subsequently devised a comprehensive Plan of Action to Prevent and End Trafficking in Women and Children in India and disseminated the same to all concerned.

Before commencing the Action Research, an Information Kit on Preventing and Combating Trafficking in Women and Children was also published by the Focal Point. The main aim of the Information Kit was to inform the society about the various aspects of Trafficking – its forms, the estimates, the causes, the consequences, the modus operandi and the role of the Commission in preventing and combating trafficking. Prior to the establishment of the Focal Point, the Commission with the help of UNICEF and other organizations had carried out a campaign of Public Awareness on the problem of Child Prostitution and Sexual Abuse of Children in 1998.

Pained with the plight of children who were victims of trafficking, the Commission and the Prasar Bharati, with support from UNICEF, collectively prepared a Guidebook for the Media on Sexual Violence Against Children. The main objective of the guidebook is to encourage media professionals to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interests of children. Further, to prevent cross-border trafficking, the National Human Rights Commission requested the Directors General of Police of Uttar Pradesh, Bihar and West Bengal to be vigilant about the issue. The National Human Rights Commissions of India and Nepal have prepared a Memorandum of Understanding (MoU) to prevent and check cross-border trafficking. However, the draft MoU is still pending with the Ministry of External Affairs, Government of India.

To spread awareness on prevention of sex tourism and trafficking, the Commission in collaboration with the UNIFEM and an NGO organized a one-day Sensitization Programme on Prevention of Sex Tourism and Trafficking in the year 2003. The main objective of the programme was to sensitize senior representatives of the hotel and tourism industry on various issues relating to sex tourism and trafficking. A National Workshop to Review the Implementation of Laws and Policies Related to Trafficking was also organized in 2004 in collaboration with PRAYAS, A Field Action Project of the Tata Institute of Social Sciences, Mumbai to work towards an effective rescue and post-rescue strategy.

5. Role of Ministry of Home Affairs

The Ministry of Home Affairs is also concerned with the problem of trafficking in human beings. It organized a two-day National Seminar on Trafficking in Human Beings in collaboration with the National Human Rights Commission and the United Nations Office on Drugs and Crime (UNODC) at the India Habitat Centre, New Delhi on 27 and 28 October 2005. The

recommendations that emanated out of this Seminar have been sent to all concerned for compliance. In August/September 2006, the Ministry of Home Affairs set up a Nodal Cell for Prevention of Trafficking. The main function of this Cell is to coordinate, network and provide feedback to the State Governments and other concerned agencies on a sustained and continuous basis so as to prevent and combat trafficking in human beings. This Cell has also been made responsible to document 'best practices' in preventing and combating trafficking in human beings as well as share data inputs with other stakeholders. In order to review the overall status of trafficking in the country, the Cell proposes to convene regular meetings every quarter with all stakeholders.

6. *Role of National Commission for Women*

The National Commission for Women is also dealing with the problem of trafficking in women and children. In late 90s, it undertook two studies entitled 'The Lost Childhood' and 'Velvet Blouse – Sexual Exploitation of Children'. In 2001, it undertook another study entitled 'Trafficking – A Socio-Legal Study'. Later in 2004, a study on 'Coastal Sex Tourism' was carried out by it. Along with these research studies, it has organized various seminars, training programmes and conferences on the subject of trafficking. Based on the above, it suggested amendments to ITPA in order to have a comprehensive law on trafficking. The Commission also organizes legal awareness campaigns to sensitize the women on various legal issues.

The Ministry of Women and Child Development, the Ministry of Home Affairs and the National Human Rights Commission have requested all Chief Secretaries and Directors General of Police to sensitize the subordinate functionaries at the cutting edge on trafficking as well as other issues related to trafficking so that perpetrators of trafficking and its allied activities are severely dealt under the relevant provisions of law. The Ministry of Women and Child Development, the Ministry of Home Affairs, the National Human Rights Commission and the National Commission for Women on their own and in collaboration with the civil society are sensitizing the judicial officers, police officers, government officers and various other stakeholders on issues related to trafficking in human beings for various purposes.

7. *Role of National Commission for Protection of Child Rights*

The commission has been recently constituted.

Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women

The introductory chapter gives a broad overview about the initiatives and activities undertaken by various stakeholders to prevent and combat trafficking in human beings. Most of these initiatives and activities have come out with their own recommendations and Plans of Action. The result being that we all are working in isolation rather collectively on the same issue. In order that these recommendations/Plans of Action are properly acted upon, the Ministry of Women and Child Development, Ministry of Home Affairs, National Human Rights Commission and National Commission for Women have decided to work in unison and draw up an **Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women**. This, we feel, would guide and facilitate uniform action on the part of all concerned so that trafficking is eliminated from its roots. The Integrated Plan of Action outlined below consists of action points grouped under:

- Ensuring Human Rights Perspective for the Victims of Trafficking
- Preventing Trafficking
- Emerging Areas of Concern in Trafficking – Their Patterns and Trends
- Identification of Traffickers and Trafficked Victims
- Special Measures for Identification and Protection of Trafficked Child Victims
- Rescue of Trafficked Victims Especially in Brothel-Based and Street-Based Prostitution with Special Focus on Child Victims
- Rehabilitation, Reintegration and Repatriation of Trafficked Victims with Special Focus on Child Victims
- Cross-Border Trafficking: National and Regional Cooperation and Coordination

- Legal Framework and Law Enforcement
- Witness Protection and Support to Victims
- Training, Sensitization, Education and Awareness
- Methodology for Translating the Action Points into Action

The ultimate objective of the Integrated Plan of Action is to mainstream and reintegrate all victims of trafficking in society.

Ensuring Human Rights Perspective for the Victims of Trafficking

Violations of human rights are both a cause and a consequence of human trafficking. Accordingly, it is essential to place the protection of human rights at the center of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons, in particular, the rights of those who have been trafficked. The overall machinery deployed by the Central Government/State Governments/Union Territories should consider:

1. Taking steps to ensure that measures adopted for the purpose of preventing and combating human trafficking do not have an adverse impact on the rights and dignity of trafficked persons.
2. Developing standard minimum guidelines for all officials and service providers with regard to pre-rescue, rescue and post-rescue operations including rehabilitation, reintegration and repatriation of trafficked victims. These guidelines should be gender-responsive and should also provide further referral to other service providers in order to prevent revictimization. These could be prepared in the form of information kits/booklets/handbooks/do's and don'ts or be made part of the rules issued under the concerned law and should specify the accountability of the agencies concerned in providing services. This would enable all officials and service providers — judicial officers, prosecutors, lawyers, law enforcement officials, medical and psycho-social professionals, functionaries manning homes/agencies of different kinds and others, to discharge their functions and duties effectively.
3. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensure that such measures are not applied in a discriminatory manner.

4. Ensuring that trafficked children, including girl children, are dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interest of the child should be of prime consideration in all actions concerning trafficked children. Steps to be initiated to ensure that children who are victim of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

Preventing Trafficking

Preventing trafficking should take into account both demand and supply as a root cause. Central Government/State Governments/Union Territories should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.

1. Analysing the factors that generate demand and supply for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.
2. Empowering the vulnerable sections living in remote corners of country by extending to them various welfare, development and anti-poverty schemes of the Government of India, such as, Swadhar, Swayamsidha, Swa-Shakti, Swawlamban, Balika Samridhi Yojana, Support to Training and Employment Programme for Women (STEP), Kishori Shakti Yojana, etc. This would provide scope for ample economic opportunities for the women and other traditionally disadvantaged groups in their native place itself so as to reduce their vulnerability to trafficking.
3. Improving children's access to schools and increasing the level of school attendance, especially of those affected or dependants, including the girl children, especially in remote and backward parts of the country. Efforts should also be made to incorporate sex-education and gender sensitive concerns in the school curriculum, both at the primary and secondary levels.
4. Generating awareness and spreading legal literacy on economic rights, particularly for women and adolescent girls should be taken up. Presently, there seems to be insufficient knowledge and information among the people to make

informed decisions that affect their lives. This would not only enable them to know about their rights but also inform them about the risks of illegal migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.

5. Developing information campaigns for the general public aimed at promoting awareness about the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons as to why individuals may make potentially dangerous migration decisions.
6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect especially with regard to unskilled labour and woman.
7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration on the whole should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.
8. Giving focused attention to the adolescents, who are both potential victims and clients. It would be useful if appropriate information and value clarification is given to them on issues related to 'sexuality' and 'reproductive health'. This exercise would be beneficial in view of the growing evidence of increased pre-marital sexual activity among adolescents and the looming threat of HIV/AIDS within this group.
9. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking. This would include ensuring that law enforcement agencies comply with their legal obligations.
10. Devising necessary mechanisms for concerted coordination between the judiciary, police, government institutions and non-governmental organizations/civil society groups with regard to prevention and combating strategies. This kind of a government-public network would involve and make

the non-governmental organizations/community responsible to act as watchdogs and informants on traffickers and exploiters.

11. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.
12. Setting up of a national database/web portal under the aegis of National Crime Records Bureau. The main purpose of this kind of a mechanism is to create a help desk in providing information on missing persons including women and children, alert notice on suspected traffickers, anti-trafficking networks, do's and don'ts to be followed while dealing with victims of trafficking, etc.
13. Addressing culturally sanctioned practices like the system of *devadasis*, *jogins*, *bhavins*, etc. which provide a pretext for trafficking of women and children for sexual exploitation.
14. Giving adequate publicity, through print and electronic media including 'childlines' and women 'helplines' across the country about the problem of trafficking and its ramifications.

Recommendations on Preventing Trafficking (from the 3 workshops)

1. ***Studies, public hearings and collection of data base***
 - **Conducting studies, focus group discussions, public hearings with aim to preparing a reliable database on source areas, routes, destinations, factors responsible for trafficking, including development and updating of the database from time to time.**
 - **Data base of missing children and women with periodic up gradation at National and State level need to be created as a National data base. There should also be a *victim tracking software* developed for checking re-trafficking and prevention and also that of missing children. This could be achieved by evolving software based victim tracking registry which has several advantages besides checking re-trafficking. This registry may be adopted by the WCD-GOI and made compulsory in all states. The main purpose of this kind of a mechanism is to create a help desk in providing information on missing persons**

including women and children, alert notice on suspected traffickers, anti-trafficking networks, do's and don'ts to be followed while dealing with victims of trafficking, etc.

2. *Sensitization*

- Special training programmes in institutes for the concerned Government officials, NGO representatives and PRI functionaries.
- Joint sensitization programmes for Judicial Officers, senior Police Officers and Public Prosecutors with the objective of ensuring better justice to trafficked victims and increasing the conviction rate.
- Sensitization programmes for media personnel to enable them to play an important role through appropriate reporting of incidents of trafficking.

3. *Education*

- Free and compulsory education upto XIIth standard. 100% literacy among girl children should be made the immediate object of the State and for that, a program should be evolved.
- Programme of providing education and knowledge about reproductive health and life skill education in schools to reduce the risk of deception of young girls for sexual abuse and CSE.
- Market based vocational training along with health check-up and health and nutrition education for school dropout girls, which is the most vulnerable group.
- The Government should lay special emphasis for establishing schools in conflict prone areas like the north east.

4. *Livelihood opportunities*

- Enhancement of people's knowledge about poverty-alleviation and economic empowerment programmes through sustained information sharing.
- Implementation of the aforesaid programmes in source areas with special focus on potential trafficked victims.

- Adequate relief and welfare measures for victims of natural/ man-made calamities to address their vulnerability.
- All schemes need to be integrated holistically into the human trafficking issue. State level departments including experienced NGOs should come together at state, district and block levels for implementation of different schemes with special focus on vulnerable population and vulnerable regions. There can be a political system to monitor the functioning of various schemes.

5. *Advocacy and campaign*

- Extensive usage of materials and strategies (TV spot, radio jingles, folk culture) and holding of seminars, processions, awareness campaigns etc. for generating awareness among the common people on modus operandi of traffickers, their profiles, dangers of trafficking and methods to combat trafficking.
- Involvement of PRI functionaries, grass-root level government Officials including Anganwadi Workers and other opinion builders in the awareness campaign.
- Display of appropriate slides in all cinema/video halls during shows for awareness of the common people.
- Awareness campaigns should be organized in schools and colleges.
- Immigration counters, Hotel rooms, Lok Kala Kendra's/ Tamaasha theatres, Liquor bars, tourism spots, Railway stations, should carry anti-trafficking messages for potential victims mentioning the dangers of getting trafficked, the care to be taken to protect oneself against it and the help available. Helpline Tel Numbers etc may be flashed at railway terminals, railway junctions, and railway stations, S T depots etc will go a long way in preventing trafficking.
- State owned television channels, radio, and hotels should prominently display anti-trafficking messages, slogans with free

helpline numbers. Currently these spaces are sold out to commercial entities against royalty and thus non profit making social messaging becomes unaffordable. A certain percentage of these spaces and time slots must be reserved for anti trafficking messaging.

- Role of panchayats- creating awareness specially the need for eliminating child labor and trafficking of women and children.

6. *Approaches to prevent and combat trafficking*

- There is a need for proper interlinking of NGO's, UN agencies, human rights commission and other government bodies so that trafficking can be addressed collectively and this would also prevent duplication of campaigns and resources.
- Unified Monitoring Committee (UMC) to oversee and coordinate the issue of human trafficking in its totality at state level. Under the UMC, there should be one Anti Traffic Unit, (ATU) at State level under which there should be representatives at district level under the DC / SP/NGO'S as the case may be. Anti trafficking cell at State and District level should be set up which could ensure coordination.
- Establishing Child protection committee/Citizens Committees at village level which could monitor particularly the movement of children from village and be statutorily empowered for preventive interventions. Such committees will facilitate early detection and reporting of trafficking crime.
- Introduce vigilance systems at the community level/such as panchayats/traditional institutions.
- Vigilance citizens committees should be formed on the lines of the vigilance committees provided under Bonded Labour Act and Minimum Wages Act. In one case the Bhartiya Mahila Federation Thane was empowered by the Bombay High Court in Suja Abraham Vs State of Maharashtra where the committee could visit any of the industrial premises in the Wagle Estate Thane to ascertain if there was any forced labour, sexual and other harassment and debt bondage. The details of the case are at (Annexure A).

- Code of conduct for protection of children from sexual exploitation in travel and tourism should:
 - i. establish ethical policy
 - ii. sensitize the employees / tourists
 - iii. provide information to travelers
 - iv. provides stringent penalties
 - v. maintenance of records
 - vi. report any suspicious activities
 - vii. collect / register the details like passport / visa address.
 - viii. Regular sensitization of staff and other functionaries in the hotel and tourism sector,-journalist, tour operators, airline operators and other personnel associated with hotel and tourism industry.

- The Meghalaya Model developed by Impulse NGO Network under the UNODC supported initiative may also be examined and introduced at National Level. (Annexure B).

- ICDS to be the focal point for documentation of births. Registration of the birth is the most important aspect which would help in maintaining of vigilance on children. the Act needs to be implemented in earnest to make registration of Births compulsory, because of the fact that in several cases the verification of the age of the victims is still being done.

- Panchayat Members could also be empowered for registration of births and marriages which should be made compulsory. The Government shall ensure that no birth of a child goes unregistered. Drive to achieve this goal and public awareness shall also be created to stress the importance of registration of births. Similarly, it should be ensured that all deaths are registered. This is to avoid non-registration of the deaths of girl children which results in the disappearance of women. Both N.G.Os and Social Welfare officers may be utilized to achieve this objective.

Emerging Areas of Concern in Trafficking – Their Patterns and Trends

India is a country of vast dimensions. The formidable challenge is the enormity of the problem, both in number of trafficked persons and increasing number of locations. Of late, there is an expanding market for commercial sexual exploitation through non-brothel based modalities where the trafficked persons are made to pose as attendants, masseurs and as bartenders. Child pornography is another area that requires concerted attention. Sex tourism is also growing whereby India is emerging as a major tourist destination. Central/State Governments, where appropriate, non-governmental organizations and the civil society at large should consider:

1. Evolving a comprehensive integrated approach for prevention and protection of trafficked victims, especially children of both sexes who are pushed into non-brothel based prostitution. Simultaneously, there is also need to evolve a strategy to prosecute all those who indulge in exploitation of these kinds.
2. Strengthening/Amending existing laws on trafficking related to non-brothel based prostitution.
3. Spreading awareness about non-brothel based prostitution by organizing campaigns, training/sensitization programmes for staff and other functionaries in the hotel and tourism sector as well as children in schools, adolescents and youth groups.
4. Giving special attention to vulnerable areas like massage parlours, escort services, party hostesses, attendants, companions, etc. so as to prevent linkage between trafficking and non-brothel based prostitution.
5. Developing and distributing brochures and flyers in international/domestic flights for addressing the international/domestic tourists on the legal repercussions of non-brothel based prostitution. Besides, in-flight videos/films could also be prepared for showing on national and international flights.

6. Developing and distributing different kinds of awareness material like posters, hoardings, etc. on trafficking linked to non-brothel based prostitution.

Identification of Traffickers and Trafficked Victims

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from other kinds of clandestine movement of persons is the presence of force, coercion and/or deception throughout or at some stage in the process – such deception, force or coercion being used for the purpose of exploitation. It is therefore very essential to keep a watch on all kinds of movements. Besides, the Central Governments, State Governments and Union Territory Administrations should not only identify and target the traffickers only but also those who are involved in controlling and exploiting trafficked victims. For example, those who are recruiters, transporters, those who transfer and/or maintain trafficked persons in exploitative situations, those involved in related crimes and those who profit either directly or indirectly from trafficking, its component acts and related offences.

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border security personnel, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of traffickers and trafficked victims, including children.
2. Providing appropriate training to relevant State authorities and officials in the identification of traffickers and trafficked victims, including children and correct application of the guidelines and procedures referred to above.
3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification of traffickers and trafficked victims and provision of assistance and support to trafficked victims. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.
4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible

dangers and consequences of trafficking and receive information that enables them to seek assistance if required.

5. Ensuring that all traffickers are arrested, prosecuted and punished with stringent penalties for their deeds. One way could be of confiscating their assets and proceeds of trafficking which could be used for the benefit of victims of trafficking. In no way, the trafficked victims should be prosecuted for the activities they are involved in as a result of their situation. It should be ensured that protection of trafficked victims as well as the confiscation of assets and proceeds of the trafficker for the benefit of trafficked victims is built into the anti-trafficking legislation itself. In fact, consideration should be given to the establishment of a Compensation Fund for victims of trafficking and the use of confiscated assets should finance such a fund. The protection offered to the victims in no way should be made conditional upon the willingness of the trafficked victim to cooperate in the legal proceedings.

Special Measures for Identification and Protection of Trafficked Child Victims

The physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by courts of law, government authorities, legislative bodies or non-governmental organizations. Children who are victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs. The Central Government/State Governments/Union Territory Administrations/inter-governmental and non-governmental organizations, should consider, in addition to the measures outlined under serial no. IV:

1. Ensuring that definitions of trafficking in children, in both law and policy, reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the 2000 Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a child. The mere presence of a child with a trafficker of any kind should connote that the child is trafficked or is being trafficked.
2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking.
3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.
4. In cases where children are not accompanied by relatives or guardians, steps should be taken to identify and locate family members. Measures should also be taken in consultation with the child to facilitate the reunion of trafficked children

with their families where this is deemed to be in their best interest.

5. In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.
6. In both the situations referred to at serial no. 4 and 5 above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affective him or her, in particular, concerning decisions about his or her possible return to the family, the views of the child be given due weightage in accordance with his or her age and maturity.
7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and healthcare assistance.
8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.
9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.
10. Taking measures to ensure adequate and appropriate training, in particular, legal and psychological training, for persons working with child victims of trafficking.

**Recommendations on Special Measures for Identification and
Protection of Trafficked Child Victims**
Some minimum guarantees

- Developing a Guidelines for identification and protection of trafficked child victims which should include the following
 - Right to be treated with compassion and respect for their dignity
 - Right to access to mechanisms of justice and prompt redress for the harm that they have suffered, as provided for by law.
 - Right to protection of identity
 - Every rescued victim who is taken into custody at the time of search shall be produced before the legally competent authority within 24 hours. All victims, apparently or suspected to be minors, should be kept at a special home for juveniles in need of care and protection and must be produced before the competent authority within 24 hours.
 - After rescue it should be ensured that the victim is immediately taken to a certified place of safety after the raid. The victim should never be kept overnight in the police station
 - Ensured as far as possible that a social worker or a support person, preferably a female, is present when the girls are being interviewed by police officers after the rescue.
 - Counseling for therapeutic intervention and right to professional, medical (physical and mental) assistance and professional counselling
 - The age and other tests of the rescued victims should also be done as far as possible in the presence of child-supporting individuals and preferably within 48 hours from the rescue.
 - Questioning should be done mostly by women police officers. The mental health aspects of the children have to be kept in mind. There should not be too much pressure on the child to speak all the details of the traumatic incident.
 - Investigation should necessarily be conducted into the trafficking angle in all cases of missing persons, procurement

of minor girls, buying and selling, child marriages, and all cases of kidnapping and abduction.

- Rescue operations to be more humanely and sensitively carried out along with a rehabilitation plan, protecting the human rights of the victims
- Examination of the victim/witnesses should be in the presence of social workers/women police/parents or others who have the trust or confidence of the child. Examinations should also be done in a victim-friendly atmosphere and not in police stations.
- The Magistrate/Juvenile Justice Board should handle all cases involving sexual abuse of children within a stipulated time frame preferably within a period of six months.
- On production of the rescued traffic victims, the concerned Magistrate/Board shall ensure that medical examination is conducted in order to check sexual abuse and/or rape.
- Issue appropriate directions to conduct enquiry to find out who is the parent or guardian and whether they are responsible for the trafficking of the child and if need be, to appoint a guardian ad litem to protect the interests of the child. The custody of the rescued child should not be handed over to parent/guardian without involving the Probation Officer/Social Worker and if necessary the Magistrate/Board may make an order for the child's intermediate custody in a safe place.
- In camera trials - Ensure that the evidence of the child is taken in-Camera, as per Section 327 of the Cr.P.C. and arrange for translators, if the child is from another State and does not speak the local language.
- The State Legal Services Authority shall form a Legal Aid Clinic in every vigilance home/shelter home, so that, if the victims need recourse to law, either under the criminal jurisprudence or under the civil jurisprudence, steps can be taken without delay.
- Anonymity of the victim of the crime should be maintained throughout.

- while holding the trial of a child sex abuse or rape cases, the courts should ensure that -
 - i. A screen or some such arrangements are made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused.
 - ii. The victims of child abuse or rape cases, while giving testimony in court, should be allowed sufficient breaks as and when required.
 - iii. The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court, who may put them to the victim or witnesses in a language which is clear and is not embarrassing to her.
 - iv. Orders sending victims to Homes must be made with their consent after providing them legal representation and counselling.
 - v. precautions need to be ensured that the facial and other identity of the rescued victim is not revealed to anyone except those who are legally competent to know the same. Particular care shall be taken to protect the identity of the rescued victims from publicity through media and victims shall be protected against their being used by the media for its own commercial end.
- legal Aid Clinic in every vigilance home/shelter home, so that, if the victims need recourse to law, either under the criminal jurisprudence or under the civil jurisprudence, steps can be taken without delay.
- to prevent secondary victimization during interrogation/examination by investigating agencies as well as during court procedure, where a child is made to recall minute details of the sexual acts and experience, and is grilled for getting proof, a model code of conduct should be evolved.
- An Accreditation Council be constituted, consisting of officers to be nominated by the Social Welfare Department in order to identify the genuine N.G.Os.

Rescue of Trafficked Victims, Especially in Brothel - Based and Street - Based Prostitution with Special Focus on Child Victims

The process of trafficking cannot be broken without giving proper attention to the rights and needs of those who have been trafficked. Appropriate measures need to be specifically devised for trafficked victims, especially in brothel-based and street-based prostitution, including children who have been trapped in this without discrimination. The Central Government/State Governments/Union Territory Administrations/inter-governmental/non-governmental organizations should consider:

1. Taking effective measures for planning and devising a rescue strategy specifying victim-friendly provisions and structures for trafficked victims who have been forced into brothel-based and street-based prostitution.

It was generally agreed that there ought to be standard guidelines for all officials and service providers with regard to pre-rescue, rescue and post rescue operations including rehabilitation, reintegration and repatriation of trafficked victims. It would be appropriate that uniform guidelines are issued from a Central Ministry/jointly by the organizers of the workshop, which could uniformly be followed.
2. Creating a specialized cell for rescuing them at the Centre/State/Block/District/Village level. This kind of paraphernalia would also facilitate in coordinating with other relevant departments and non-governmental organizations (intra and inter) for rescuing trafficked victims caught in brothel-based and street-based prostitution including children who have been trapped.
3. Creating a confidential database on traffickers including probable traffickers, brothel owners, madams, *gharwalis*, etc. at all levels.
4. Cultivating a network of informants who will provide specific information about trafficked women victims

including child victims below 18 years who want to be rescued from brothels.

5. Ensuring that rescue team should consist of both men and women police officers and representatives of non-governmental organizations/local inhabitants. Each member of the rescue team should be told about his/her role in the rescue operation and how the same is to be executed. They should also be told to maintain confidentiality and secrecy of the entire rescue operation.
6. Taking due care by all concerned to ensure that trafficked women, particularly children, are not unnecessarily harassed or intimidated during the course of rescue operations. Adoption of humane and rights-based approach would go a long way in building the faith of the victims in the criminal justice system. This would also facilitate the overall rehabilitation, reintegration of the victims.
7. Ensuring, in partnership with non-governmental organizations, that trafficked victims, including children, are provided access to legal, medical and counselling services. It should also be ensured that they are treated with dignity and not humiliated by the police, medical personnel or the court.
8. Ensuring that any victim, including a child, who is rescued, is examined by a Registered Medical Practitioner for the purpose of age and for the detection of injuries/diseases. Trafficked victims should not be subjected to mandatory testing for diseases, including HIV/AIDS.
9. Ensuring that, in cases here the victim rescued is not a child, she should not be *prima facie* treated as a criminal accused of soliciting clients. Steps should be taken to ensure that correct provisions of law are applied and that the FIR is not stereotyped.
10. All efforts should be made to ensure anonymity and privacy of the victims during and after rescue.

Recommendations on Rescue of Trafficked Victims, Especially in Brothel-Based and Street-Based Prostitution with Special Focus on Child Victims

1. **Implementation of Protocol on Pre Rescue , during rescue and post rescue operations.**
2. **State Government should provide a special fund during rescue operation to the team or organization involved in the operation.**
3. **Media should create awareness, maintain confidentiality and avoid sensational reporting. The NHRC guidelines for the media in addressing the child sexual abuse should be implemented.**

Rehabilitation, Reintegration and Repatriation of Trafficked Victims with Special Focus on Child Victims

The rehabilitation, reintegration and repatriation of victims of trafficking being a long process must be planned, taking into account the specific short and long-term needs of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims. All stakeholders should therefore consider:

1. Taking into account the specific short and long-term needs of each individual victim based on their age, education, skills, etc., the rehabilitation, reintegration and repatriation package for victims of trafficking should be worked out.
2. Keeping in view the paucity of government run institutions as well as the deteriorating conditions of these institutions, there is need to identify names of fit persons and fit institutions for providing safe custody to victims of trafficking. This list should be made available to the police, courts, non-governmental organizations and civil society at large for information.
3. Providing access to legal, medical and counselling services to all trafficked victims in order to restore their self-confidence and self-esteem. Special provision should be provided to those who have contracted HIV/AIDS.
4. Enabling victims of trafficking to access both formal and non-formal education structures. Formal education should be made available to those victims who are still within the school going age, while non-formal education should be made accessible to adults.
5. Providing gender sensitive market driven vocational training in partnership with non-governmental organizations to all rescued victims who are not interested in education. Government and non-governmental organizations should also work together to develop partnership with public and

private sector employers in order to provide training/ facilitate work placement as part of the reintegration process. Due care should be taken to give ample choice to victims so that rehabilitation and reintegration becomes a holistic process, which respects their human rights.

6. Involving the community in the rehabilitation, reintegration and repatriation process of trafficked victims. This means involving the families of victims and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.
7. Monitoring the rehabilitation, reintegration and repatriation of rescued victims with the help of non-governmental organizations.
8. Making available to rescued victims various developmental and anti-poverty schemes meant for the general population, both in the rehabilitation and reintegration phase.
9. Upgrading the conditions and capacities of institutions/ homes run by the Government and an increase in the number of such institutions/homes not only in the cities, but also at the district and taluka levels, are of utmost necessity.
10. Recruiting adequate number of trained counsellors and social workers in institutions/homes run by the government independently or in collaboration with non-governmental organizations.
11. Appointing trained social workers and counsellors at police stations, courts and homes/institutions of different kinds meant for accommodating victims of trafficking.
12. Anti-trafficking cells/units should be set up at the Centre, State, Block District and Village levels to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.

Recommendations regarding Rehabilitation, Reintegration and repatriation of Trafficked Victims with Special Focus on Child Victims

1. **The standard of care and support services prevailing in government and privately run shelter homes are appalling in**

quality and quantity. There can be a Guidance & Monitoring Committee system which could monitor the services and other facilities at shelter and rehabilitative homes

2. No rescued child shall be sent back to the family without adequate assessment and without ensuring social acceptance and family support. State will ensure that repatriation is carried out depending on how safe and nurturing the family environment is for the victim. If and when the victim chooses to return to an abusive family situation, that state would need to intervene and repatriate the victim to an institution which can protect and care for the individual. Repatriation will be done after the stay in the shelter
3. Union and State budget should be well defined and funds for trafficking should also be separately allocated.
4. Adequate Shelter homes at the district level. The shelter homes should have all basic amenities and the environment should be clean, pollution free and well ventilated. Each home shall have facilities for periodical health checkups by the Government approved panel of doctors.
5. Every victim and their minor dependants shall be helped in every possible way to obtain formal education free of cost, which includes free supply of text books, uniforms, transport and scholarships to victims and their school going children. Where such education is not possible for certain unavoidable circumstances, as well as in addition to the formal education, life skills education shall be provided. The State Government is directed to frame new schemes for training of the inmates of the Home and traffic victims in computers, languages and related fields. The rescued persons shall be equipped with the knowledge and skills appropriate to their attitude and orientation, so that their economic rehabilitation becomes easier. The rescued person shall have the right to choose her own economic rehabilitation plan. Vocational training and guidance shall also be given to such rescued persons. No rescued victim shall be sent back to the family without adequate assessment and without ensuring social acceptance and family support. State will ensure that rehabilitation is carried out depending on how safe and nurturing the family environment is for the victim.
6. Specialized centres of health shall be set up and maintained to cater to the needs of palliative care for the victims suffering from

terminal states of HIV/AIDS. Specialized counselling shall be provided to victims of HIV/AIDS including pre-test, post-test and ongoing support.

7. Acknowledged that the most difficult task is to re-integrate the sexually abused children or trafficked children into their own families. Such families are reluctant to accept the victimized girl and regular visits by social worker and trained counsellor will be required for family counselling. The Social Welfare Department or the department of women and child development of the States may prepare a panel of social workers and trained counsellors for each District. Similarly, a panel of lawyers should be nominated by the State Legal Services Authority for each District for visiting the Court and pursuing the individual cases in different Courts. Such lawyers can also assist the Public Prosecutor whenever necessary and will also get in touch with Police Investigating Officer concerned whenever required. It will help in quick delivery of justice and such lawyers can work as friends of the Court (*amicus curiae*).
8. The State governments should formulate an effective rehabilitation programme, including the mode of its implementation and may involve the corporate sector and employment agencies in their rehabilitation project.

Cross-Border Trafficking: National and Regional Cooperation and Coordination

Trafficking is a regional and global phenomenon. Enormous trafficking takes place not only within the country but also across borders, especially between the neighbouring countries. A coherent approach is therefore required to tackle the problem of cross-border trafficking which cannot be dealt with at the national level alone. A strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in preventing and combating trafficking activities. States should thus consider:

1. Adopting bilateral agreements with neighbouring countries in order to prevent trafficking and protecting the rights and dignity of trafficked persons and promoting their welfare.
2. Using the Palermo Protocol and relevant international human rights standards as a baseline and framework for elaborating bilateral agreements mentioned at serial no. 1 above.
3. Adopting labour migration agreements, which may include provision for work standards, model contracts, modes of repatriation, etc. in accordance with existing international standards.
4. Developing cooperation arrangements to facilitate the rapid identification of trafficked victims including the sharing and exchange of information in relation to their nationality and right of residence.
5. Establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation.
6. Developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned countries.
7. Ensuring judicial cooperation between countries in investigations and judicial processes relating to trafficking

and related offences. This cooperation should include assistance in: identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and preserving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgments.

8. Ensuring that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested countries without undue delay.
9. Establishing cooperative mechanisms for the confiscation of the proceeds of trafficking. This cooperation should include the provision of assistance in identifying, tracing, freezing and confiscating assets connected to trafficking and related exploitation.
10. Encouraging and facilitating cooperation between non-governmental organizations and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked victims who are repatriated.

Recommendations Cross-Border Trafficking: National and Regional Cooperation and Coordination

1. **Adopting bilateral agreements and review of the SAARC Agreement in the context of human trafficking Issues with neighboring countries in order to prevent trafficking and protecting the rights and dignity of trafficked persons and promoting their welfare.**
2. **address the new trends in trafficking-**
 - a. **drug related human trafficking including dual role as carrier**
 - b. **White collared trafficking like dance troupes exchange programmes.**
3. **Carrying out of exchange programmes between Enforcement agencies', personnel of nations between those who got affected by trafficking. Training courses should also be undertaken for police, enforcement agencies.**

4. Establishment of legal requirements for pre-reintegration assessment of family willingness and suitability, and legal protocols for retaining the child in care in the child's best interests.
5. Memorandum of Association between the government agency and NGO's across the borders and between states to be developed for safe repatriation/ rehabilitation.
6. Adopting labour migration agreements, which may include provision for work standards, model contracts, modes of repatriation, etc in accordance with existing international standards.
7. Increase institutionalized media intervention for increased awareness campaigns for cross border trafficking at regional and national level.
8. Sensitize the Border security forces and the police on the both sides of the border on the relevant legal instruments and the filling of F.I.R.'s for trafficked persons.
9. Establishment of procedures and protocols for preliminary interim care, HIV/STI testing, and trained staff in government shelters and fit institutions.
10. Expanding the holding capacity and available resources of the existing nodal NGO's and support the regularization and development of transit shelters and receiving shelters in the border districts for cross border victims of trafficking enroute to the repatriation border points and to their families.
11. To develop the code of conduct for the hospitality for tourism industry and strategy for effective surveillance and prosecution of pedophiles, in an effort to control incidence of pedophilia in selected areas of the country
16. To undertake measures to prevent means of transport operated by commercial carriers to be used in the commission of human trafficking offenses.
- 17.. There should be a proper and strong cooperation among border control agencies by, inter alia;

establishing and maintaining direct channels of communication.

18. in cases where women and child victims are from foreign countries, a system of co-ordination through the Government of India and through inter-country N.G.O. networks would be set up so as to ensure safe passage, rehabilitation and reintegration in their community in their home countries.
19. Need to set up an internal Task force to ensure that the legislations, programs etc are in place for operationalising the provisions of the SAARC Convention on Preventing and Combating Trafficking of Women and Children in Prostitution
20. Identification of gaps in relevant domestic legislations of the different countries vis a vis provisions of the SAARC convention and incorporate the same into the domestic laws, ensuring at the same time that there is no conflict /contradiction with other major pieces of national legislation;
21. Harmonize the definitions and terminology especially with regard to sensitive definitions such as 'prostitute' 'sex worker' 'sexual exploitation' 'trafficker' etc between the countries so that there is no ambiguity in the implementation
22. Put into action a methodology for developing an information and data base systems on select and key parameters of trafficking for the SAARC countries;
23. ensuring safe migration Conditions – need for minimum guarantees
 - a) Total ban on minors migrating for any form work/ employment to foreign countries
 - b) Protection to women employed in foreign countries to ensure minimum wage, housing, medical facilities, working hours and other conditions of service and a sound mechanism to receive complaints from women requiring help against ill treatment and sexual exploitation

- c) the proposed amendments to the Emigration Act seeks to create a welfare fund for protection and welfare of emigrants, the fund should also be utilized for providing legal representation to women who are victims of sexual abuse and trafficking and ensuring protection to victims
- d) strict action against recruiting agents or any person if they are found to traffic young girls under guise of domestic or any other work –this should be specifically mentioned as an offence under the Emigration Act
- e) **Need for a collaborative approach involving Government**
As well as national and international organizations to make migration a safe option
- f) Establish women /gender cells in embassies abroad and appointment of nodal officer to deal with cases
- g) Provision for compulsory orientation and awareness programme for domestic maids and other women hailing from sections of Indian society with low awareness levels proceeding abroad for employment, regarding their legal rights, contact numbers of officers of Indian embassies, helpline Numbers etc
- h) Adequate publicity by means of print and electronic media and organization of grievance redressal camps

Legal Framework and Law Enforcement

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation. Moreover, a strong legal framework would also ensure an effective law enforcement response. As of now, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures therefore need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked victims. The Government of India having ratified the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the two Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts; and on the Sale of Children, Child Prostitution and Child Pornography and having signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, 2000, should consider:

1. Amending or adopting national legislation in accordance with international standards in order to address all forms of trafficking and these should also be criminalized. Along with this, the content of domestic trafficking legislation should also strictly criminalize traffickers, including agents or middlemen, brothel owners and managers, as well as institutional networks that are used in the crime of trafficking.
2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons

for trafficking offences in addition to the liability of natural persons. The Government should also review current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.

3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.
4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking would be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a Compensation Fund for victims of trafficking and the use of confiscated assets should finance such a fund.
5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for they are victims of situation beyond their control. Likewise, it should be ensured that protection of trafficked victims is built into the anti-trafficking legislation itself. The protection offered in no way should be made conditional upon the willingness of the trafficked victim to cooperate in the legal proceedings.
6. Providing legislative protection for trafficked victims who voluntarily agree to cooperate with law enforcement authorities.
7. Legal reform should also incorporate a gender and rights-based perspective, having regard to the fact that women are, in most cases, marginalized. For example, property and inheritance laws and procedures should be reviewed and adjusted to ensure that they do not include provisions which

have a discriminatory impact on women and their livelihood options.

8. Making effective provision for trafficked victims whereby they are given legal information and assistance in a language they understand as well as appropriate other supportive measures. The Government should ensure that entitlement to such information, assistance and support is not discretionary but is available as a right for all persons who have been identified as trafficked.
9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.
10. The services of nodal officers – one representing the police department dealing with investigation, detection, prosecution and prevention of trafficking and the other representing the welfare agencies dealing with rescue, rehabilitation and economic/social empowerment of the victims and those at risk – appointed by the State Governments/Union Territories at the behest of NHRC should be utilized for all purposes.
11. Ensuring that law enforcement personnel of all ranks are provided with adequate training in the investigation and prosecution of cases of trafficking.
12. Establishing specialist Anti-Trafficking Units (comprising both women and men) in order to promote competence and professionalism. Besides, law enforcement authorities should be provided with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers.
13. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked victims at risk of being punished for offences committed as a consequence of their situation.
14. Encouraging law enforcement authorities to work in partnership with non-governmental organizations and the community at large in order to ensure that trafficked victims receive necessary support and assistance. For very little can be achieved without the involvement of the community in fighting trafficking.

Recommendation with respect to Legal Framework and Law Enforcement

1. Setting up of crime injuries, compensation fund; the model of compensation to victims of rape may be adopted /extended to victims of trafficking.
2. Legislation needs to cater to
 - Proceedings in camera.
 - Right to compensation.
 - Right against victimization.
 - Rehabilitation of victims of trafficking including child labour
 - In certain situations/area the civil society organizations will have to be given legal immunities for the actions taken by them to prevent and control re-trafficking.
 - The right to rescue from situation of CSE&T needs to be recognized in the law and liability should be cast upon police officials for not undertaking the immediate rescue of victim when encountered with the situation of CSE&T or when informed about the incident.
 - Legislation should focus on all the traffickers.
3. Definition of trafficking: as per UN Protocol
“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

At a minimum- Creates a baseline or restriction as to the requirement. “At a minimum” may lead to complicated interpretations; therefore, it has to be taken away;

4. The term “sexual exploitation “needs to be clearly defined. Sexual exploitation is an offence when a person-

- *Derives or attempts to derive sexual satisfaction for oneself or some other person by*

a) *Subjecting the body of another person to any form of sexual activity or*

b) *The employment, use, persuasion, inducement, enticement, or coercion of any woman or child to engage in, or assist any other person to engage in, any sexually conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct by means of any electronic/ audio output or advertisement*

“advertisement” includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas or by means of any electronic or print medium ;

Important provision to tackle the issues of advertisements in papers and internet reg massage parlors/escort services etc

c) *Any form of sexual activity that causes or has caused or could or is likely to cause serious emotional injury or*

d) *Any form of indecent representation of woman and child for the purposes of sexual activity*

“indecent representation of women and/or child “ means the depiction in any manner of the figure of a woman and/or child, his/her form or body or any partthereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women and/or child, or is likely to deprave, corrupt or injure the public morality or morals;

d) *Derives or attempts to derive sexual satisfaction in any manner above or*

e) *The forcing of unwanted sexual activity by one person on another, by the use of threats or coercion.*

e) *Commits rape / sexual assault*

Under any of the following circumstances

- o *Against the other persons will*
 - o *without the consent of the other person*
 - *“Commercial sexual exploitation” is sexual exploitation carried out as a commercial activity and need not be carried out for a long time. One single instance may suffice”*
5. As commercial sexual exploitation has become a transnational organized crime and as it is difficult to prove the offence of “running a brothel” or “living on earnings of prostitution” amendments may be brought in the ITPA authorizing a police officer of a rank of SP to tape telephones of the accused under this Act and the evidence may be admissible in the courts thus requiring amendments to the evidence Act. Commercial sexual exploitation is no longer confined to brothels and has moved on to mobile and cellular networks therefore such a provision would be of necessity in tracing out the traffickers
 6. Necessity for taking finger prints / photographs of the pimps/ touts as the accused often change their addressees and names and maintaining of sex offender registers
 7. The anticipatory bail provisions available under section 438 Cr.P.C. should not be made applicable to the accused under section 3, 5, 6 and 9 of ITPA
 8. Kidnapping of children for selling them in brothels should be made a more serious offence
 9. Stringent penalties for any person comprising on safety and security of the victim of CSE&T
 10. Reviewing and modifying policies, existing labour laws, contract labour, labour and child labour Act should be implemented
 11. In certain situations/areas the civil society organizations will have to be given legal immunities for the actions taken by them to prevent and control trafficking. Today they are completely unprotected and vulnerable to legal consequences and physical threats and assaults.

12. The right to rescue from a situation of CSE&T needs to be recognized in the law and liability should be cast upon police officials for not undertaking the immediate rescue of victim when encountered with a situation of CSE&T and/or when informed about the incidence
13. Setting up of crime injuries compensation fund the model of compensation to victims of rape may be adopted /extended to victims of trafficking
14. “Anti-Trafficking Cell” of the police should established at the different levels in the police force, and such Cells be appropriately staffed. In every district a Senior Police Inspector should be designated as head of the “Anti-Trafficking Cell” having jurisdiction all over the district.
15. Data bank of suitable persons in every district who may be associated with the Special Police Officers to advise them in carrying out their functions under ITPA as envisaged under section 13(3)(b) of ITPA.
16. The State Government should associate such persons with the Special Police Officers as a non- official advisory board to advise them on the implementation of ITPA and such list of persons could be circulated amongst Magistrates to enable them to take the assistance of such persons whilst carrying out their functions under section 17(2) of ITPA as envisaged under section 17(5).

Witness Protection and Support to Victims

As mentioned at serial no. IX above, an adequate law enforcement response to trafficking is dependent on the cooperation and support of trafficked victims and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because of the fear that they would not only be harassed but also ill-treated. In order that the trafficked victims and other witnesses shed their fears, the Government should consider:

1. Guaranteeing protection for witnesses and support to victims in law.
2. Making appropriate efforts to protect individual trafficked victims and other witnesses (including their families) during the investigation and trial process and any subsequent period when their safety so requires. Appropriate protection programmes may include some or all of the following elements: access to independent legal counsel; protection of identity during legal proceedings; incamera trials.

Training, Sensitization, Education and Awareness

Training, sensitization, education and awareness on the issue of trafficking, particularly its adverse impact on human beings, is an important element of prevention as well as eradicating trafficking. This being so, all round efforts should be made to train, sensitize, educate and raise awareness among all at all levels. In doing so, focus should be on:

1. Deepening knowledge and understanding through sensitization and training programmes for judicial officers, law enforcement personnel (police, immigration, border control, customs officials, medical professionals/ personnel and labour inspectors) and other concerned government officials on the issue of 'trafficking' as well as 'gender and human rights'. These training and sensitization programmes could be organized in conjunction with the Ministries of Home Affairs, Women and Child Development, Labour, the National Human Rights Commission and the National Commission for Women.
2. Ensuring uniformity and quality in these sensitization and training programmes by developing specialized modules for each category of officials taking into consideration their different roles and responsibilities.
3. The module on anti-trafficking should form a core component of the curriculum of National Police Academy, Hyderabad; Lal Bahadur Shastri National Academy of Administration, Mussoorie and all police training institutes. This would enable all probationers to know about the problem of trafficking and its ramifications.
4. Building up and strengthening the capacity of non-governmental organizations that are currently involved in rescue, rehabilitation, reintegration and repatriation work.
5. Till such time, a new law to deal with the problems of trafficking is framed or amendments are made in the existing law, the police officers, prosecutors and lawyers should be sensitized to invoke provisions of the Immoral Traffic

(Prevention) Act, 1956 in conjunction with the Indian Penal Code, the Juvenile Justice (Care and Protection of Children) Act, 2000 and other laws.

6. Developing training material consisting of good practice models, applicable treaties and laws, important judgments, rescue procedure, case studies on rehabilitation of victims, etc. to ensure that the knowledge, information imparted in various training/sensitization programmes is of uniform nature.
7. Maintaining records regarding the officials/personnel who have been trained and the type of training received, so that later refresher courses could be organized for them to update them on latest information and techniques.
8. Organizing mass scale information campaigns on the issue of trafficking for the general public at large. The tourism industry including airlines, hotels, travel agencies, beer bars, holiday resorts, etc. should also be sensitized to the problem of trafficking.
9. Educating school and college level students on the issue of trafficking as well as human rights and gender sensitive concerns.
10. The media should play an important role in informing and educating the public through newspaper, radio and other modes of communication, and should be targeted as a key partner in preventing and ending trafficking. It would be ideal if media practitioners were first sensitized about the issue of trafficking and its complexities, as this would ensure appropriate reporting on facts rather than sensationalizing the issue.

Recommendations

1. **The publications - judicial handbook on combating trafficking in women and children for commercial sexual exploitation (UNICEF/MWCD and NHRC)**
2. **Manual for medical professionals dealing with child victims of trafficking and commercial sexual exploitation**
3. **Manual for social workers dealing with child victims of trafficking and commercial sexual exploitation**

ANNEXURE A

SUJA ABRAHAM VS. STATE OF MAHARASHTRA - WRIT PETITION 124/1998 (relevant extracts)

The writ petition prayed for directions by the Hon'ble High Court Mumbai to issue a Writ of Mandamus directing M/s. Ravi Fisheries Ltd. to comply with all labour legislation in respect of the workers employed in its establishment, including those migrant workers, and especially with the Minimum Wages Act, 1948, Employees State Insurance Act, 1948, Provident Fund Act, 1996, Factories Act, 1948, Payment of Wages Act, 1936 and Contract Labour (Regulation and Abolition) Act, 1970 and direct the Deputy Labour Commissioner, Thane to randomly visit the factories of Ravi Fisheries Ltd. at least once in a month and check that the M/s. Ravi Fisheries is complying with all labour legislation in respect of the workers and is not maltreating them;

Directions and observations made by the High Court

- The Hon'ble Chief Justice Shri M. B. Shah and Hon'ble Justice Shri R. J. Kochar directed the District Collector, Thane and the Deputy Labour Commissioner to inspect the various factories in the Thane region. Accordingly, on 22 January 1998, the officials visited eight factories in Thane and Navi Mumbai.
- The report submitted by the Collector after conducting the raids revealed serious violations of law. It stated that in seven factories, inter alia:

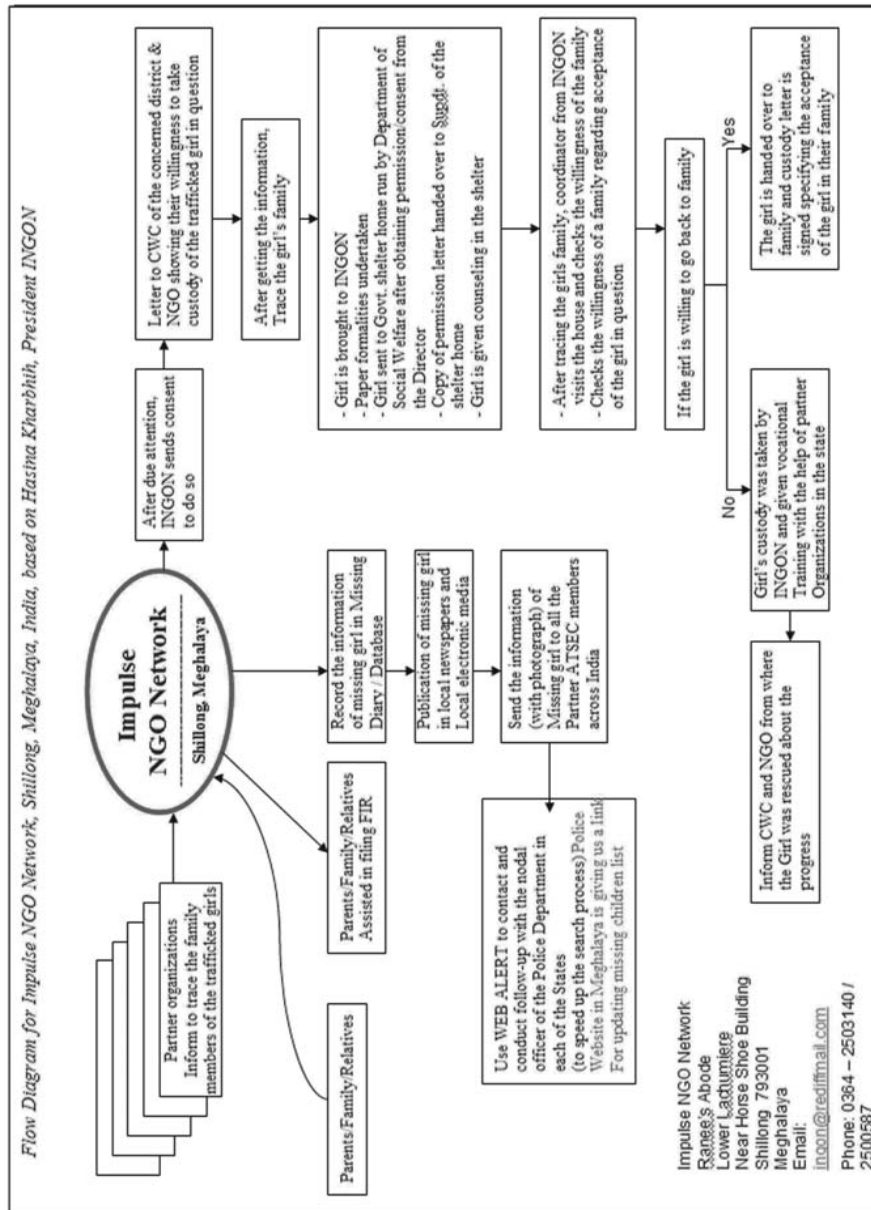
“Female employees were found . . . staying in the factory premises itself. They were not allowed to go out of the premises without the permission of the contractor. If they are required to go out, some gate pass was being issued only on the ground of medical treatment or visiting religious places. Prima facie it appeared to the government authorities that these employees are not allowed to go out of the factory premises. Because of force or fear of the contractors, free movement at will by the employees is not possible. “The places where the workers are living are inadequately ventilated and poorly illuminated. In most cases only one exit is provided. The places for cooking and store are extremely unsatisfactory. Overcrowding was seen in most of these residential premises, and the overall appearance of living condition was inhuman. “Female employees work in factories from 9.00 a.m. onwards and work beyond 7.00 p.m. and the working hours depend upon the time of receipt of the fish consignment in the factory. “Prima facie these can be the cases of **bonded labour** when seen from the angle of spirit of law although workers did not come forward with complaints of forceful confinements,
- The final order of the Hon'ble High Court stated that it stands proved that the labourers are treated brutally and in some cases as bonded labourers and there

are serious breaches of the labour laws. The Authorities enjoined with the duties of enforcement of labour laws have failed to discharge their duties. To our shock and surprise, even in a city like Thane, to some extent, bonded labour system still exists. The respondents no. 3 and 4 (Mr. Dilip Kapoor, Managing Director and Mr. Ambrose Pinto, Manager, Ravi Fisheries) have treated Ms. Suja Abraham as bonded labour and brutal and inhuman treatment was meted out to her by confining her to the factory premises and even dragging her back when she tried to escape, which forced her to attempt to commit suicide.

- ***“We make it clear that it would be open to the Bharatiya Mahila Federation, which is a Non-Governmental Organization, to visit the premises where women employees are working and to find out their grievances. All factory owners, particularly the Respondents, are directed to allow free access to the office bearers of Bharatiya Mahila Federation to places where women employees are working or residing.”***

ANNEXURE B

Meghalaya Model



Developed by Ms. Hasina Kharbhii, President Impulse NGO Network

This model has been presented in the 8 (eight) North Eastern States of Assam, Meghalaya, Tripura, Manipur, Nagaland, Mizoram, Sikkim and Arunachal Pradesh through Impulse NGO Network Program on “**State Consultation on Right Based Anti-Trafficking Programming**” which was attended by the stakeholders such as the law enforcement, social welfare, labour, health and education department etc.

The model seeks to build the capacity of various stakeholders to address the issue collectively and ensure positive networking. Financial and Human Resources are being used systematically allowing the state to prevent human trafficking and at the same time not duplicating the idea which in turn would save resources like finance and manpower.

METHODOLOGY ADOPTED

- (A) Partner organizations all over India whenever they conduct raid in Red Light Areas in any metropolitan cities and when they rescue and find the girls belonging to north eastern states of India they intimate Impulse NGO Network for tracing the family members of the trafficked victims.
- (B) At the same time Media Campaign creates a mass awareness in which parents, family, relatives would also contact Impulse NGO Network to help them in tracing the missing children.
- (C) Impulse NGO Network considers each case and as per the created design format letters is being sent to Child Welfare Committee of the concerned district or NGO's partners showing the willingness of the NGO to take custody of the trafficked girl belonging to the North East of India.
- (D) After receiving the information, with the help of the local State Partners in any of the North Eastern States as well as law enforcement, try to trace the girl family.
- (E) Even if the girl family is not immediately traceable the girl is brought to Impulse NGO Network by the escorted Law Enforcement as per Juvenile Justice Act 2000 guidelines.
 - Custody letters as per design format is taken.
 - The girl is sent to the Government Shelter home run by the Department of Social Welfare, after obtaining permission/consent from the Director, since a prior MOU for this sort of arrangement has already been created. Due to the absent of a proper shelter home the process of MOU is essential.

- (F) After the girl is kept in the Shelter home the extended work of the Impulse NGO Network, is to provide counseling in the shelter home from a mental health perspective, where it also helps the organization to understand the rescue survivors, family details (in order to trace the family) and potential rehabilitation programmes strategy become easy as well.
- (G) Once the family is traced by the networking teams from Impulse NGO Network and partner agency, the Coordinator from INGON visit the house wherever the girl belongs and check the willingness of the family regarding acceptance of the girl keeping her background confidential and then counsel the girl accordingly.
- (H). If the girl is willing to go back to her family then the girl is handed over to the family and custody letter is signed specifying the acceptance of the girl in the family. The monitoring process is for a year to ensure that she does not get re-trafficked. She is also linked for vocational training with other organizations or even seed money for starting up micro credit is being provided based on the need requirements to ensure her long term sustainability.
- (I) In case she says No, Impulse NGO Network is responsible to follow up and networking partners and linked to vocational training support within the state and support from individual, corporate to provide seed money support to set their own business. Impulse NGO Network still monitors the progress of the girls from A to Z financial marketing at least a year.
- (J) Official intimation is being inform to the Child Welfare Committee and NGO's where the girl was rescued on its progress at least twice a year.
- (K) Assist in filing FIR. This networking process strengthen the system of community policing and it has help the state to take up action and the NGOs is like the watch dog, who ensures that the process is being followed up properly and speed up the matters.
- (L) recording of the information of missing children in missing Diary/Database in Impulse NGO Network which is also a systematic recording system which makes information sharing more effective. And this data base at the moment is at the stage which the Meghalaya Police is linking the websites to our data band
- (M) When a missing child is being reported as per B besides filing FIR as per the alert programme through email/net, also send to the entire partner's agency as well as ATSEC partners across India along with photograph of children in tracing the missing children and to speed up the search as well.

ANNEXURE C

PROTOCOL FOR PRE-RESCUE, RESCUE AND POST-RESCUE OPERATIONS OF CHILD VICTIM OF TRAFFICKING FOR COMMERCIAL SEXUAL EXPLOITATION

(BASED ON INPUTS PROVIDED BY MWCD/UNODC)

1. PREAMBLE

- a) Recognize the fact that Trafficking is a borderless and organized crime
- b) Need for a protocols relating to pre-rescue ,post-rescue intra as well as Inter state rescue activities.

2. GENERAL PRINCIPLES

2.1 Human Rights Approach

- 2.2** Jurisdictional limitations not to impede, rescue and post rescue activities **2.3** Create an Anti-Trafficking Cell at the State and District level to co-ordinate with other relevant Departments and NGOs on the issues pertaining to trafficking, especially on the rescue and rehabilitation of victims of trafficking.

2.3 Victim's human rights protected and not further violated

2.4 Care and attention is extended during and post rescue

2.5 No delay in rescue and post rescue activities

2.6 Actions and decisions based on '*the best interest of the victim*'.

2.7 Synergy amongst stakeholders

2.8 Anonymity of victim

2.9 Legal Representation for victim

2.10 Right to be treated with Dignity

2.11 Right to be informed

- 2.12. Database** - Create a Database on traffickers, brothel owners, informants, decoy customers, number of cases registered, status of each case, source and destination areas in the State/District and any other relevant information. The information in the Database should be kept confidential and should be parted only to genuine information seekers.

- 2.13** Assign sufficient number of police personnel especially women Police personnel for the rescue operations.

- 2.14. Declare names of fit people and fit institutions, where victims of trafficking including those mentally challenged /ill can be kept in safe custody and proper medical treatment can be provided.

3. PRE RESCUE PROTOCOL

3.1 STRATEGY FOR PRE-RESCUE OPERATIONS

i. For Rescue of Trafficked Victims

- Cultivate networks of informants who will provide specific information about trafficked under-aged child victims (below 18 years) or woman willing to be rescued from brothels. Specific information may be in the form of letters, emails, photographs, personality traits, identification marks and scars, addresses, physical presence of relatives and people known to child victim, computer graphics generated by the description and mannerisms (e.g. accent, distinctive body language like frequent rubbing of fingers, blinking of eyes or any other). It is desirable, that a small remuneration is paid to the informant, which sustains their motivation.
- Identify the child victim by the use of decoy customers and authenticate the available information. The decoy customer should try to motivate the child to talk on a one-to-one basis and to facilitate further rescue operations.
- Involve an NGOs and Social Workers in Rescue operations carried out by the Police or the Community.
- Prepare a strategic plan for rescue operation with minimum loss of time. The plan should include the following: -
 1. Compilation of all available valid information. For example, physical layout of the brothels and hideouts, specific characteristics of the location, etc. Seek help of key informants people such as petty-shop owners, sweepers, part-time maids, milkmen or any other persons who may provide their service to the brothels/hide-outs, local contractors and builders who would know the layout of the brothels/hide-outs.
 2. Rescue team, preferably trained, should consists of the designated Special Police Officer as defined under Section 13 of Immoral Traffic Prevention Act, 1956, Assistant Commissioner of Police and/or District Commissioner of Police, police personnel including women, NGO representative and social worker. The number of rescue team members should be constituted depending on the size (number of brothels/ victims) of the rescue operation.
 3. Maintain confidentiality and secrecy of the rescue operation, all members of the rescue operation should gather at a commonplace or location at least 2 hours before the actual rescue operation.
 4. To prevent leakage of information, prior to the actual rescue operation, mobile phones and any other mode(s) of communication belonging to

the rescue operation team members should be taken in custody by the rescue team leader.

5. The strategy that would be adopted for the rescue operations and its various steps should be explained at this time. To each team member, explain his/her role in the rescue operation and clear any doubts that she/he may have.
6. Preparing key players: Formation of teams would depend upon the situation and targeted number of brothels to be covered and expected number of minors to be recovered.
7. Under no circumstances should the decoy customer(s) be exposed before, during and after the rescue operations.
8. Under no circumstances should the rescue operation be revealed to any person (s) other than those directly involved". If by any chance, the media does happen to get word of it, they should not be allowed to cover the rescue operation.
9. Check /verify vacancies available in Government and other certified Homes, so that the rescued victims can be taken to the appropriate Homes for safe custody. This should be done in total confidentiality, so that any information on the rescue operation is not leaked.
10. Before conducting rescue operations, all police formalities should be completed.
11. During the rescue operations, the rescue team members should not physically touch the girls, women, or their belongings. Only female members of the rescue team should deal with the victims.
12. During the rescue operations, no rescue team members should use abusive language towards the girls and women.

4. STRATEGY FOR RESCUE OPERATIONS

1. Planned rescue operations should be carried out on brothel communities.
2. Place the rescue team members in strategic location as pre-planned for the rescue operation, before entering the brothel/community,
3. Immediately go to the place/area where the child is being kept/confined.
4. Remove the Child from the brothel/community as quickly as possible. He/She should collect all his/her belongings. In case, she has a child or children of her own, make sure that she is not separated from them.
5. Treat the child victim with sympathy and not as a criminal.

6. Remove any mentally-challenged or ill child victim or woman in the brothel, irrespective of their age.
7. Be aware of your body language and do not make any unnecessary contact, unwelcome gesture, use physical force, cause physical harm, use vulgar or inappropriate language to any inmates of the brothel.
8. Seize/collect all records showing expenses/income/payment/financial transactions and any other important document from the brothel owners, as they would form important piece of material evidence in the Court.
9. Identification of the victims should be kept confidential, her name, address, photograph or any other information should not be published in any newspaper, magazine, news-sheet or visual media. This is mandatory as per Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
10. Identity and location of decoy customer should be kept confidential.
11. The rescue team members should be accountable to the rescue team leader and any violation of the rights of the victim should be dealt in appropriate manner.
12. Segregation of offenders from victims and retrieval of personal belongings
13. Collection of evidence - Materials, exhibits, documents collected and preserved, Videography / photography – scene of crime, offenders, witnesses (if willing)

5. STRATEGY FOR POST-RESCUE OPERATIONS

1. Separate the victims by sight and sound from the accused. While taking the child victim to the Police Station, the child and brothel owners/traffickers should be taken in a separate vehicle. If this is not possible, they should be kept separate from each other. This is to prevent the accused from threatening or intimidating the child.
2. Do not keep the child in the lock-up under any circumstances. The victim should be immediately taken to a certified place of safety after the raid. The victim is not an accused person and should not receive the same treatment as the accused. Keep her separately from the brothel owners/traffickers.
3. Document the rescue operation in the diary, in presence of two independent reliable witnesses and get it signed by them for authentication.
4. The First Information Report (FIR) should be immediately registered by the victims or NGO in the Police Station and it should contains details of location of crime, description of offence, victim and accused, chronology of crime right from the time the child was trafficked. The FIR should be as detailed as possible. The child should receive a copy of the FIR and it should be kept in safe custody of the NGO/Protective/children Home, where the child is kept.

5. Invoke all relevant Sections of Indian Penal Code, 1860 and Immoral Traffic Prevention Act, 1956 and Juvenile Justice (Care and Protection of Children) Act, 2000 against the trafficker and brothel owners.
6. Hand over the Child to a representative from the Protective/Children Home run by either the Government or NGO. The child should be counseled about her stay in protective custody and that she has been kept there for her safety and well being.
7. It is important to ensure the following: -
 - Only Plain-clothes police accompany the child to the Protective/Children Home.
 - The functionaries of the Protective/Children Home should ensure that the child does not come in contact with its traffickers, pimps, brothel owners or any such persons, who may have bad influence on him/her.
 - The medical examination, including age verification test is carried out properly and scientifically. The age verification test is mandatory as per Section 15 b (5A) of Immoral Traffic Prevention Act, 1956 and Section 49 of Juvenile Justice (Care and Protection of Children) Act, 2000.
 - The child victim is produced before the Child Welfare Committee within 24 hrs of taking him/her into custody. In case, the Child Welfare Committee is not available, then he/she should be produced before concerned Magistrate for relief.
 - The child has immediate access to standardized counseling, health care and legal aid. On behalf of the victim, the Personnel from the NGO, including Social Worker or Protective/Children Home should sign the *vakalatnama* (or the consent for a lawyer's representation).
 - A social worker accompanies the child whenever he/she leaves the place of safety.
 - A counselor is present whenever a child is giving testimony in the Court.
 - The concerned Magistrate or the members of the competent authority as the case may be, visits the rescue home once in every fifteen days to conduct legal proceedings.
 - The child is prepared by explaining to him/her about court proceedings, so that he/she is aware of the procedures and is mentally well prepared. After every hearing of the case, the child should be informed about the court order, if any, so that he/she is kept fully updated on his/her case.
 - It is recommended that trafficking cases be fast tracked under Speedy Trial to reduce the trauma and suffering of the child.

6. STRATEGY FOR REHABILITATION (for functionaries in the Protective/Children Home)

1. Ensure that the child is informally welcomed and is introduced to other residents and shown around. She should be shown to her room and her locker where she can keep her personal belongings. It is advisable that for the first few days, she should be given space for privacy and if possible kept separately from the others or with those who have been rescued like her.
2. Provide a welcome kit that includes a change of clothes, towel, undergarments, chappals/slippers and toiletries (soap, oil, hair brush/comb, tooth brush, paste, powder, rubber band, shampoo, sanitary napkins etc.), to the child on arrival.
3. Explain to him/her the rules and regulation of the Protective/Children Homes and their objectives, once he/she settles down. This will make him/her feel comfortable and secure in his/her new environment. Also, explain to the child his/her responsibilities and duties during his/her stay in the Home.
4. A registered medical doctor should examine the child for any ailments, allergies, skin rashes and psychological disorders or problems. Routine blood, urine, lung X-rays and stool tests should be carried out. In case, the child is suffering from any ailment, she should be given appropriate medication as prescribed by the doctor and there should be continuous follow-up on her condition.
5. Talk to the child and find out whether he/she is interested in continuing with her education and accordingly, admit him/her to a regular school or make arrangements for non-formal education or tutoring so that she can catch up with his/her studies. In any case, the child should be given some basic education which will help his/her to be independent when he/she leaves the Home.
6. Provide the child with vocational training, including marketing strategies that are marketable, sustainable and practical. (Please check that providing a child with vocational training and marketing strategies is not contravening any child rights or child labor laws).
7. Prepare the Child for his/her repatriation/integration with his/her family. No rescued child should be sent back to his/her family without ensuring social acceptance, family support, to prevent re-trafficking and further exploitation.

ANNEXURES

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 17th October, 2006

G.S.R. 644(E) – In exercise of the powers conferred by section 37 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005), the Central Government hereby makes the following rules, namely

1. Short title and commencement

- (1) These rules may be called the Protection of Women from Domestic Violence Rules, 2006.
- (2) They shall come into force on the 26th day of October, 2006.

2. Definitions - In these rules, unless the context otherwise requires

- (a) “Act” means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
- (b) “complaint” means any allegation made orally or in writing by any person to the Protection Officer;
- (c) “Counsellor” means a member of a service provider competent to give counselling under sub-section (1) of section 14;
- (d) “Form” means a form appended to these rules;
- (e) “section” means a section of the Act;
- (f) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Qualifications and experience of Protection Officers

- (1) The Protection Officers appointed by the State Government may be of the Government or members of non-governmental organizations:

Provided that preference shall be given to women.
- (2) every person appointed as Protection Officer under the Act shall have at least three years’ experience in social sector.

- (3) The tenure of a Protection Officer shall be a minimum period of three years.
- (4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act and these rules.

4. Information to Protection Officers

- (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.
- (2) In case the information is given to the Protection Officer under sub-rule (1) orally, he or she shall cause it to be reduced to writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.
- (3) The Protection Officer shall give a copy of the information recorded by him immediately to the informant free of cost.

5. Domestic incident reports

- (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.
- (2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate

- (1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.
- (2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

- (3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.
- (4) The affidavit to be filed under sub-section (2) of section 23 shall be filed in Form III.
- (5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 or 1974).

7. Affidavit for obtaining *ex-parte* orders of Magistrate

Every affidavit for obtaining *ex-parte* order under sub-section (2) of section 23 shall be filed in Form III.

8. Duties and functions of Protection Officers

- (1) It shall be the duty of the Protection Officer –
 - (i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;
 - (ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;
 - (iii) to assist the person in making any application under 12, or sub-section (2) of section 23 or any other provision of the Act or the rules made thereunder;
 - (iv) to prepare a “Safety Plan: including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under section 12.
 - (v) To provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;
 - (vi) To assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transporting to get the medical facility;
 - (vii) To assist in obtaining transportation for the aggrieved person and any child to the shelter;
 - (viii) To inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to

invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;

- (ix) To scrutinize the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;
 - (x) To revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;
 - (xi) To maintain a record and copies of the report and documents forwarded under sections 9, 12, 20, 21, 22, 23 or any other provisions of the Act or these rules;
 - (xii) To provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidents of domestic violence;
 - (xiii) To liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;
 - (xiv) To maintain proper records of the service providers, medical facility and shelter homes in the areas of his jurisdiction.
- (2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section (1) of section 9, it shall be the duty of every Protection Officer –
- (a) to protect the aggrieved persons from domestic violence, in accordance with the provision of the Act and these rules;
 - (b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

9. Action to be taken in cases of emergency

If the Protection Officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the Protection Officer or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider, as the

case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

10. Certain other duties of the Protection Officers

- (1) The Protection Officer, if directed to do so in writing by the Magistrate, shall:
 - (a) conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting *ex-parte* interim relief to the aggrieved person under the Act and pass an order for such home visit;
 - (b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the court;
 - (c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;
 - (d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the court.
 - (e) assist the court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 1, section 19, section 20, section 21 or section 23 in such manner as may be directed by the court.
 - (f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.
- (2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate, in giving effects to the provision of the Act and these rules from time to time.
- (3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating to general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

11. Registration of service providers

(1) Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance and desirous of providing service as a service provider under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.

(2) The State Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration:

Provided that no such application shall be rejected without giving the applicant an opportunity of being heard.

(3) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely,

(a) It should have been rendering the kind of services it is offering under the Act for at least three years before the date of application for registration under the Act and these rules as a service provider.

(b) In case an applicant for registration is running a medical facility, or a psychiatric counselling center, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions.

(c) In case an applicant for registration is running a shelter home, the State Government shall, through an officer or any authority or agency authorized by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that –

(i) the maximum capacity of such shelter home for intake of persons seeking shelter;

(ii) the place is secure for running a shelter home for women and that adequate security arrangements can be put in place for the shelter home;

- (iii) the shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates.
- (4) The State Government shall provide a list of service providers in various localities to the concerned Protection Officers and also publish such list of newspapers or on its website.
- (5) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

12. Means of service of notices

- (1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned.
- (2) The service of notices shall be made in the following manner, namely,
 - (a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case may be.
 - (b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.
 - (c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.
 - (d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 or Chapter VI of the Code of Criminal Procedure, 1973 respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the

Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

- (3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorized to serve the notices under the Act, that service has been effected appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.
- (4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner; no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.

13. Appointment of Counsellors

- (1) A person from the list of available Counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor, under intimation to the aggrieved person.
- (2) The following persons shall not be eligible to be appointed as Counsellors in any proceedings, namely,
 - (i) any person who is interested or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing.
 - (ii) Any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.
- (3) The Counsellors shall as far as possible be women.

14. Procedure to be followed by Counsellors

- (1) The Counsellor shall work under the general supervision of the court or the Protection Officer or both.
- (2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.

- (3) The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counselling proceedings before the Counsellor as permissible by law or order of a court of competent jurisdiction.
- (4) The Counsellor shall conduct the counselling proceedings bearing in mind that the counselling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.
- (5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic violence in counselling the fact that and any justification for the act of domestic violence by the respondent is not allowed to be a part of the counselling proceedings should be made known to the respondent, before the proceedings begin.
- (6) The respondent shall furnish an undertaking to the Counsellor that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counselling proceedings before the Counsellor.
- (7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.
- (8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.
- (9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement, wherever required.
- (10) The Counsellor shall not be bound by the provisions of the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1973, and his action shall be guided by the principles of fairness and justice and aimed at finding ways to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

- (11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.
- (12) In the event the Counsellor arrives at a resolution of the dispute, he shall record the terms of settlement and get the same endorsed by the parties.
- (13) The court may, on being satisfied about the efficacy of the solution and after making a preliminary enquiry from the parties and after recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence, admitted to have been committed by the respondents, accept the terms with or without conditions.
- (14) The court shall, on being so satisfied with the report of counselling, pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person, with the consent of the parties.
- (15) In cases, where a settlement cannot be arrived at in the counselling proceedings, the Counsellor shall report the failure of such proceedings to the court and the court shall proceed with the case in accordance with the provisions of the Act.
- (16) The record of proceedings shall not be deemed to be material on record in the case on the basis of which any inference may be drawn or an order may be passed solely based on it.
- (17) The court shall pass an order under section 25, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor and the reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

15. Breach of Protection Orders

- (1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.
- (2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.
- (3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.
- (4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim order directly to the Magistrate or the police, if she so chooses.

- (5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.
- (6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.
- (8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.
- (9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include:
 - (a) an order restraining the accused from threatening to commit or committing an act of domestic violence;
 - (b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;
 - (c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;
 - (d) an order prohibiting the possession or use of firearm or any other dangerous weapon;
 - (e) an order prohibiting the consumption of alcohol or other drugs;
 - (f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person

- (1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.
- (2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered under section 9 or under section 10;

Provided that the shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.
- (3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical facility to the aggrieved person

- (1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.
- (2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report;

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.
- (3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.
- (4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.

4. THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2005

In exercise of the powers conferred by Section 37 (1) of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005) the Central Government hereby makes the following rules for carrying out the provisions of the Act.

1. Short Title and commencement

- a) These rules may be called “The Protection of Women from Domestic Violence Rules, 2005”.
- b) They shall come into force on the date of their publication in the official Gazette.

2. Definitions

In these rules unless the context otherwise requires

- a) “Act” means “The Protection of Women from Domestic Violence Act, 2005” (43 of 2005).
- b) Government includes the Governments of Union Territories, States and the Central Government.

3. Qualifications and experience of a protection officer and the terms and conditions of service of the protection officers under Section 37(2) (a) and (b) of the Act

The state government shall by notification nominate/appoint/re-designate all/any of the following persons as protection officer and notify the area or areas within which the protection officer shall exercise powers and perform the duties conferred upon him under the Act.

- i) The Protection Officer shall be an officer of the State Government not below the rank of Deputy Tehsildar or a Block Development Officer or
- ii) Any representative of a non-governmental organization or a representative of the service provider registered under the Act, may be appointed, on such terms and conditions as may be prescribed by the State Government, as a protection officer provided that such a person has been serving in the organization for at least 2 years and has been working in the area of empowerment of women.
- iii) The terms and conditions of service of a Protection Officer may be such as may be prescribed by the State Government.
- iv) Not less than one Protection Officer shall be appointed for the area of a judicial magistrate. The State Government may, however, appoint more than one Protection Officer having regard to the area and volume of work involved.

- v) The state government shall provide the Protection Officer the necessary infrastructural facilities for the running of his office and the financial provisions for the same shall be made by the respective governments in the same manner, as for the office of the assistant public prosecutor, which shall include clerical, transport and other facilities and reimbursements for the performance of the duties as assigned to the Protection Officer.
- vi) For the effective implementation of the Act, the Stage Government shall designate a Nodal Ministry to oversee, supervise and monitor the effective implementation of the Act.

4. Form and manner of domestic incident report – a domestic incidental report under Section 37 (2) (c)

- (a) On receipt of a complaint or information, the Protection Officer or a service provider shall record domestic incident report under Section 9 (1) (b) or Section 10 (2) (a) of the Act, in the form prescribed in Form I of Schedule I.
- (b) Such domestic incident report shall be signed by the aggrieved person or by any person giving such information.
- (c) Information under Section 4 (1) of the Act shall be either conveyed orally or in writing to the Protection Officer. Oral information shall be reduced to writing as aforesaid, shall be signed by the person giving it. A copy of the information as recorded under (c) shall be given forthwith, free of cost, to the informant.
- (d) Copy of Domestic Incident Report shall be provided to the aggrieved person free of cost.

5. Application to the Magistrate

- (1) Application to the magistrate under Sec 37 (2) (d) and Sec 12 for protection, residence orders and other reliefs as provided under the Act shall be made in the manner prescribed in Form II of Schedule I.
- (2) In case the person giving any information or aggrieved person is illiterate, the contents of the application shall be read over and explained to her, by the Protection Officer, bearing a thumb impression of the aggrieved person, and shall be forwarded to the concerned police station.
- (3) The application under Section 12 of the Act shall be dealt with and the orders enforced in the manner prescribed under Section 125 of the CrPC.

6. Application under Section 9 (1) (d) for legal aid

Application for legal aid and services shall be made in the manner prescribed in Form III of Schedule I.

7. Other duties to be performed by the Protection Officer

- (1) The Protection Officer shall, in addition to the duties assigned to him under the Act,
 - (a) Give the aggrieved person immediate and adequate notice of her rights and of the remedies and services available by ensuring that the information and the contents of the Act are adequately explained to the aggrieved person, in the manner prescribed in Form IV of Schedule I.
 - (b) Maintain a record and copies of the report or documents forwarded under Sections 9, 12, 20, 21, 22, 23 or any other provisions of the Act or the Rules.
 - (c) Provide all possible assistance to the aggrieved person and the child to ensure that she is not victimised or pressurised as a consequence of reporting the incident of domestic violence.
 - (d) Take any action necessary to provide for the safety of the aggrieved person and any family or household member.
 - (e) Liaison between the aggrieved person(s), police, service provider in the manner prescribed under the Act and the Rules.
 - (f) Maintain proper records of the service providers, medical facility, shelter homes in the area.
 - (g) The Protection Officer shall scrutinize the applications and maintain a list of the counsellors which shall be made available to the Magistrate.
 - (h) Action to be taken in cases of emergency – If the protection officer or a service provider receives a telephone call either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such emergency situation the protection officer or the service provider shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider to the place of occurrence and record the Domestic Incident Report and

the same be presented to the Magistrate at the earliest without any delay for seeking appropriate orders under the Act.

- (2) Duties to be performed on the orders of the court – The Protection Officer, when directed to do so, in writing, by the magistrate shall –
- (i) Conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting *ex-parte* interim relief to the complainant/aggrieved person under the Act and passes an order for such home visit.
 - (ii) After making appropriate inquiry, file a report on the salary, emoluments, assets, bank accounts or any other documents as may be directed by the court.
 - (iii) Restore the possession of the personal effects including jewellery of the aggrieved person and the shared household to the aggrieved person.
 - (iv) Assist the aggrieved person to regain custody of children or secure visitation rights under supervision as directed by the court.
 - (v) Assist the court in enforcement of orders in the proceedings under the act in the manner directed by the magistrate, including orders under Sections 12, 18, 19, 20, 21 or 23 in such manner as directed by the court.
 - (vi) Take the assistance of the police in confiscating any weapon involved in the alleged domestic violence.
- (3) The Protection Officer shall also perform any other duties prescribed by the government or the magistrate from time to time. The magistrate may, in addition to orders for effective relief in any cases, also issue general practice directions for better handling of the cases, to the Protection Officer within his jurisdiction.

8. Registration of service provider – (Under Section 37 (2) (g) read with Section 10 (1):

- (1) The service providers to be registered under Section 10 (1) of the Act shall apply for registration to the Protection Officer, as per the format in Form V in Schedule I, and the Protection Officer, in whose area the service providers want to extend their facilities, shall maintain the list of such registered service providers.

- (2) The service provider to be registered under Section 10 (1) of the Act shall possess the following minimum qualifications:
- (a) The service provider should have been rendering the kind of services it is offering under the Act for at least two years before applying for registration under the Act.
 - (b) In case of service providers running a medical facility, or a psychiatric counselling centre, or a vocational training institution, the registering authority shall ensure that the applicant fulfils the requirements for running such a facility or the institutions.
 - (c) In case of Service Providers running shelter homes, or any other facility the registering authority shall inspect the shelter home, prepare a report and record a finding on the report, detailing that adequate space and other facility for the person seeking shelter is available.
 - (d) Fulfill all the requirements as prescribed in Form V of Schedule 1.
 - (e) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

9. Means of service of notices under Section 13 (1) –

- (1) The notice/summon for appearance under Sec 13 (1) of the Act shall be as prescribed under the CrPC.
- (2) The service of notice/summons shall be made as prescribed in Chapter VI of the CrPC.
- (3) Any order, service of notice or summon shall entail the same consequences, as an order passed under Chapter VI of The Code of Criminal Procedure, 1973.
- (4) The Declaration of Service by the Protection Officer under Section 13 (2) of the Act, shall be made by countersigning the copy of the notice/summon along with the signatures of the person who received the summon/notice.

10. Counselling – a counsellor appointed by the magistrate under Section 14 (1) shall possess the following qualifications and experiences:

- (a) An order for appointment of counsellor under Section 14 (1) of the Act shall be made only after passing orders for interim relief under Sections 12, 18, 19, 20, 21, 22 or 23 of the Act.
- (b) The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and, in appropriate cases, an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail or through any medium except in the counselling proceedings before the counsellor.
- (c) The counsellor shall as far as possible be a woman.
- (d) Possessing any of the following qualifications/experiences:
 - (i) Any person who is related to any one of the parties and not connected either directly or indirectly with the issue/dispute provided that both the aggrieved person and the respondent consent to appointment of such a person as a counsellor; or
 - (ii) At least 2 years' experience of counselling in any Government or Non-Government organization; or
 - (iii) Any legal practitioner having experience in handling cases relating to deprivation of women's rights or with at least 2 years' experience with the legal services authorities constituted under Legal Service Authorities Act, 1987.
- (e) The Protection Officer shall assist the magistrate in the appointment of a counsellor.

11. Procedure to be followed by a counsellor

- (a) The counsellor shall work under the general supervision of the court and/or Protection Officer.
- (b) The counsellor shall convene a meeting at a place convenient to aggrieved woman/both the parties.
- (c) The counsellor shall assist the parties to reconciliation and shall obtain a written statement from the respondent that the incident of domestic violence shall not be repeated and in general strive to arrive at the understanding and redressal of aggrieved woman's grievances and reformulating the terms for settlement wherever required.
- (d) The respondent shall not be allowed to plead any justification for the alleged act of domestic violence in counselling. Any justification for

the act of domestic violence by the respondent is not allowed to be a part of the counselling proceedings, should be made clear to the respondent, before the proceedings start.

- (e) The respondent shall furnish an undertaking to the respondent that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counselling proceedings before the counsellor.
- (f) If the aggrieved person so desires, the counsellor shall make efforts of arriving at a settlement of the matter. The limited scope of such efforts shall be to arrive at the understanding of the grievances of the aggrieved person and redressal of her grievances. The efforts shall focus on evolving remedies or measures for such redressal. The counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the complainant by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement wherever required.
- (g) The counsellor shall not be bound by the provisions of the Evidence Act, 1872, or the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1973, and his action shall be guided by the principles of fairness and justice and aimed at finding ways to bring an end to domestic violence to the satisfaction of the aggrieved person. In making such an effort the counsellor shall seek guidance from the wishes and the sensibilities of the aggrieved person.
- (h) The report of the counsellor shall be submitted to the Magistrate for appropriate action.
- (i) On arriving at a settlement, the counsellor shall report the terms of the settlement of the parties, after explaining the terms to the parties in the language of the parties and getting it endorsed by the parties. The court may accept the terms, after a preliminary enquiry from the parties, recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence. The court shall on being so satisfied pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person with the consent of the parties.
- (j) In cases, where a settlement cannot be arrived at in counsellor proceedings, the conciliator shall report the failure of such proceedings and the court shall proceed with the case under the Act. The record of

proceedings shall not be deemed to be material on record in the case on the basis of which any inference may be drawn or an order may be passed. The court shall pass an order under Section 25 (2) of the Act, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor. The reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

12. Shelter and medical assistance to the aggrieved person

- (a) If the aggrieved person so desires, the shelter home shall not disclose the identify of the aggrieved person in the shelter home or communicate the same to person complained against.
- (b) The shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report prior to making request for shelter.

13. Medical facility

- (a) The medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report prior to making request for medical assistance or examination.
- (b) A copy of the medical examination report shall be provided to the aggrieved person by the medical facility free of cost.

14. Breach of protection orders

- (a) An aggrieved person may report a breach of protection order to the Protection Officer. The report shall be in writing by the informant and duly signed by her. The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to the concerned magistrate for appropriate orders.
- (b) When charges are framed under Section 31 of the Act and offences under Section 498A of Indian Penal Code, 1860, or any other offences not summarily triable, the court may separate the proceedings for such offences to be tried in the manner prescribed under the Code of Criminal Procedure and proceed to summarily try the offence of the breach of Protection Order under Section 31 of the Act, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973.
- (c) The provisions of the Code of Criminal Procedure, 1973, regarding arrest, compelling appearance, summary trial, sentence and conviction shall apply to any offence under Section 31 of the Act.

- (d) Any resistance to the enforcement of the orders of the court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under Section 31 (1) of the Act.
- (e) Each breach of protection order shall be a separate offence warranting separate charges under the Act.
- (f) Without prejudice to the provisions of the Code of Criminal Procedure, 1973, a breach of the protection order under Section 31 (1) of the Act, may immediately be reported to the local police station and shall be dealt with as cognizable offence as provided under Section 31 of the Act.
- (g) While enlarging the person on bail arrested under the Act, the court may impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include:
 - (i) An order restraining the accused from threatening to commit or committing an act of domestic violence.
 - (ii) An order preventing the accused from harassing, telephoning or making any contact with the aggrieved person.
 - (iii) An order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit.
 - (iv) An order prohibiting the possession or use of firearm or any other dangerous weapon.
 - (v) Any other order required for protection, safety and adequate relief to the aggrieved person.
 - (vi) Violation of conditions of bail shall attract the issuance of a Non-Bailable Warrant and immediate arrest of the accused.

SCHEDULE – I

FORM NO. I

Form and manner – Domestic Incident Report under Sections 9 (b) and 37 (2) (c)

1. Name of the complainant/aggrieved person
2. Address
3. Mode of transmission of complaint
Oral/verbal
Writing
4. Nature of complaint (brief gist)
(Enclosed copy of the complaint)
5. Name/address of the respondent
6. Person to whom information first communicated
7. Report recorded by:
Protection Officer/Service Provider _____
8. Designation/address

(Signature/thumb impression of complainant)

(Counter signature of SP/PO)

Complaint received by:

1. Name/designation of Protection Officer
2. Address
3. Whether the complaint is covered under
Section 3 (a), (b), (c), (d) of the Act. Yes No.

Signature of Protection Officer

Copy forwarded to:

1. Local police station
2. Service provider
3. Complainant
4. Magistrate

SCHEDULE – II

FORM NO. II

Petition/Application to the Magistrate under Section 9 (1) read with Section 12 of the Act and Section 37 (2) (d), (e) and (h) of the Act

To
The Learned Magistrate
.....
.....

Application under the..... Act

SHEWETH:

1. That the application under Section..... of.....Act is being filed along with copy of Domestic Incident Report by the:
 - a) Aggrieved person
 - b) Protection Officer
 - c) Any person on behalf of the aggrieved person
(tick whichever is applicable)

2. It is prayed that the Hon'ble Court may take cognizance of the complaint/ Domestic Incident Report and pass all/any of the orders, as deemed fit, in the circumstances of the case:
 - a) Pass protection order under Section 18 of the Act and/or
 - b) Pass residence orders under Section 19 of the Act and/or
 - c) Direct the respondent to pay monetary relief under Section 20 of the Act and/or
 - d) Pass orders under Section 21 of the Act and/or
 - e) Pass such interim orders as the court deems just and proper and/or
 - f) Pass any orders as deemed fit in the circumstances of the case.

(Signature)

Aggrieved Person
Protection Officer


भारत का राजपत्र
The Gazette of India

EXTRAORDINARY
PART II - Section 1
PUBLISHED BY AUTHORITY

No. 39 NEW DELHI, WEDNESDAY, AUGUST 23,
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MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 23rd August, 2006 / Bhadra 1, 1928
(Saka)

The following Act of Parliament received the assent of
the President on the 22nd August, 2006, and is hereby
published for general information

**THE JUVENILE JUSTICE (CARE AND
PROTECTION OF CHILDREN)
AMENDMENT ACT, 2006**

(No. 33 of 2006)

[22nd August, 2006]

An Act to amend the Juvenile Justice (Care and Protection
of Children) Act, 2000.

Be it enacted by Parliament in the Fifty-seventh Year of the
Republic of India as follows:

1. This Act may be called the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Short title.

56 of 2000. 2. In the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the principal Act), in the long title, for the words "through various" Amendment of long title.

institutions established under this enactment”, the words “and for matters connected therewith or incidental thereto” shall be substituted.

3. In section 1 of the principal Act,

Amendment
of Section 1

(i) in the marginal heading, for the words “and commencement”, the words “commencement and application” shall be substituted;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:

Amendment
of section 2.

“(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”

4. In section 2 of the principal Act, -

(i) after clause (a), the following clause shall be inserted, namely:

“(aa) “adoption” means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship;”

(ii) in clause (d), -

(i) after sub-clause (i), the following sub-clause shall be inserted, namely:

“(ia) who is found begging, or who is either a street child or a working child;”

(ii) in sub-clause (v), after the word ‘abandoned’, the words ‘or surrendered’ shall be inserted;

(iii) in clause (h), for the words “competent authority”, the words “State Government on the recommendation of the competent authority” shall be substituted;

(iv) for clause (l), the following clause shall be substituted, namely –

1) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence’;

(v) clause (m) shall be omitted.

Omission of certain expressions. 5. Throughout the principal Act, the words “local authority”, “or local authority” and “or the local authority”, wherever they occur, shall be omitted.

Amendment of section 4. 6. In section 4 of the principal Act, in sub-section (1), for the words “by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification”, the words “within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district” shall be substituted.

Amendment of section 6. 7. In section 6 of the principal Act, in sub-section (1), the words “or a group of districts” shall be omitted.

Insertion of new section 7A. 8. After section 7 of the principal Act, the following section shall be inserted, namely:

Procedure to be followed when claim of juvenility is raised before any court. “7A. (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be;

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.”.

Amendment
of section
10.

9. In section 10 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:

“(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail.”

10. In section 12 of the principal Act, in sub-section (1), after the words “with or without surety”, the words “or placed under the supervision of Probation Officer or under the care of any fit institution or fit person” shall be inserted.

Amendment
of section
12.

11. Section 14 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:

Amendment
of section
14.

“(2) The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.”.

12. In section 15 of the principal Act, in sub-section (I), for clause (g), the following clause shall be substituted, namely:

Amendment
of section
15.

“(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.”

13. In section 16 of the principal Act,

Amendment
of section
16.

(i) in sub-section (1), for the words “or life imprisonment”, the words “or imprisonment for any term which may extend to imprisonment for life’ shall be substituted;

(ii) in sub-section (2), for the proviso, the following

proviso shall be substituted, namely:

“Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under section 15 of this Act.”

14. In section 20 of the principal Act, the following proviso and Explanation shall be inserted, namely:

Amendment of section 20.

“Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation - In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section (2), even if the juvenile ceases to be so on or before the date of commencement of this Act, and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

15. For section 21 of the principal Act, the following section shall be substituted, namely:-

Substitution of new section for Section 21 Prohibition of publication of name, etc. of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act.

“21. (1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published:

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.”

Amendment of section 29.

16. In section 29 of the principal Act, in sub-section (1), for the words “by notification in Official Gazette, constitute for every district, or group of districts specified in the notification”, the words “within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by

notification in the Official Gazette, constitute for every district” shall be substituted.

Amendment
of section
32.

17. In section 32 of the principal Act,

(a) in sub-section (1),

(i) in clause (iv), the words “authorised by the State Government” shall be omitted;

(ii) the following proviso shall be inserted at the end, namely:

“Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.”

(b) in sub-section (2), the words “to the police and” shall be omitted.

Amendment
of section
33.

18. In section 33 of the principal Act,

(a) in sub-section (1), the words “or any police officer or special juvenile police unit or the designated police officer” shall be omitted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely:-

“(3) The State Government shall review the pendency of cases of the Committee at every six months, and shall direct the Committee to increase the frequency of its sittings or may cause the constitution of additional Committees.

(4) After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the children’s home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.”.

Amendment
of section
34.

19. In section 34 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:

“(3) Without prejudice to anything contained in any other law for the time being in force, all institutions, whether State Government run or those run by voluntary organizations for children in need of care and protection shall, within a period of six months from the date of

commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be registered under this Act in such manner as may be prescribed”.

Amendment
of section
39.

20. In section 39 of the principal Act, for the Explanation, the following Explanation shall be substituted, namely:

Explanation — For the purposes of this section “restoration of and protection of a child” means restoration to –

- (a) parents;
- (b) adopted parents;
- (c) foster parents;
- (d) guardian;
- (e) fit person;
- (f) fit institution’.

Amendment
of section
41.

21. In section 41 of the principal Act,

(1) for sub-sections (2), (3) and (4), the following sub-sections shall be substituted, namely:

“(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption.

(4) The State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3):

Provided that the children’s homes and the institutions run by the State Government or a voluntary organization for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all

such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3);”;

(ii) for sub-section (6), the following sub-section shall be substituted, namely:

“(6) The court may allow a child to be given in adoption—

- (a) to a person irrespective of marital status; or
- (b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or
- (c) to childless couples.”

22. For section 57 of the principal Act, the following section shall be substituted, namely:

Substitution of new section for section 57. Transfer between children’s homes under the Act, and juvenile home of like nature in different parts of India.

“57. The State Government may direct any child or the juvenile to be transferred from any children’s home or special home within the State to any other children’s home, special home or institution of a like nature or to such institutions outside the State in consultation with the concerned State Government and with the prior intimation to the Committee or the Board, as the case may be, and such order shall be deemed to be operative for the competent authority of the area to which the child or the juvenile is sent.”.

23. In section 59 of the principal Act, in sub-section (2), for the words “for maximum seven days”, the words “for a period generally not exceeding seven days” shall be substituted.

Amendment of section 59.

24. After section 62 of the principal Act, the following section shall be inserted, namely:-

Insertion of new section 62A.

“62A. Every State Government shall constitute a Child Protection Unit for the State and, such Units for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children in need of care and protection and juveniles in conflict with law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and co-ordination with various official and non-official agencies concerned.”

Constitution of Child Protection Unit responsible for implementation of the Act.

Amendment
of section
64.

25. In section 64 of the principal Act,—

(i) for the words “may direct”, the words “shall direct” shall be substituted;

(ii) the following proviso and Explanation shall be inserted, namely:-

“Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation – In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause 1(1) of section (2) and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.”.

Amendment
of section
68.

26. In section 68 of the principal Act,-

(a) in sub-section (1), the following proviso shall be inserted, namely:-

“Provided that the Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.”;

(b) in sub-section (2),-

(i) in clause (x), after the words, letter and brackets “sub-

section (2)”, the following words, letter and brackets shall be inserted, namely:-

“and the manner of registration of institutions under sub-section (3)”;

(ii) after clause (xi), the following clause shall be inserted, namely:-

“(xiiia) rehabilitation mechanism to be resorted to in adoption under sub-section (2), notification of guidelines under sub-section (3) and the manner of recognition of specialized adoption agencies under sub-section (4) of section 41;”;

(c) sub-section (3) shall be re-numbered as sub-section (4) thereof, and before sub-section (4) as so re-numbered, the following sub-section shall be inserted namely:-

“(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

K.N. CHATURVEDI

Secy. to the Govt. of India

**MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
NOTIFICATION**

New Delhi, the 22nd June 2001

**Rules under the Juvenile Justice (Care and Protection of Children) Act, 2000
(56 of 2000)**

**[For better implementation and administration of the provisions of the said
Act in its true spirit and substance]**

F. No.1-3/2001-SD. – Whereas the Constitution of India has, in several provisions, including clause (3) of article 15, clauses (e) and (f) of article 39, articles 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

AND WHEREAS, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989;

AND WHEREAS, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child;

AND WHEREAS, the Convention on the Rights of the Child emphasizes social reintegration of child victims, to the extent possible, without resorting to judicial proceedings;

AND WHEREAS, the Government of India has ratified the Convention on the 11th December, 1992;

AND WHEREAS, it was considered expedient to re-enact the Juvenile Justice Act, 1986 bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments;

AND WHEREAS, to give effect to the provisions of the Constitution and Convention, the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinunder referred to as the said Act) was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under that Act.

NOW, THEREFORE, in pursuance of the above said provisions and all other enabling powers in this behalf, the Central Government hereby lays down the principles and makes the following Rules (model) to be applied until new rules are

framed by the State Government in this regard to provide for better implementation and administration of the provisions of the said act in its true spirit and substance, namely:-

PRINCIPLES

The following principles shall, *inter alia*, be fundamental to the development of strategies, interpretation and implementation of the said Act.

This enumeration does not preclude resorting to any higher measures possible or evolved in consonance with the Constitution.

1. Principle of right to innocence

The juvenile or child's right to innocence and presumption of innocence up to the age of seven years (or up to the age of twelve years, as under) be respected throughout the process from the initial contact to aftercare.

The basic components of the right to and presumption of innocence are:

(i) Age of innocence

- (a) A juvenile or child is presumed to be innocent of any mala fide or criminal intent up to the age of seven years in all cases and up to twelve years in the cases wherein he is unable to understand the consequences of his action on account of immaturity of understanding.
- (b) Unlawful conduct which is done for survival, or is due to environmental or situational factors or is done under control of adults, or peer groups, is ought to be covered by the principles of innocence.
- (c) The idea is to allow certain benefits to a juvenile in conflict with law vis-a-vis his mental development assessed by the experts in the field throughout the world as of eighteen years being the time of demarcation and with this end in view the yardstick can only be the date of occurrence because the whole spirit is to impart benefit to such juvenile on grounds of lesser development of his mental faculty.

(ii) Procedural protection of innocence

Procedural safeguards shall be guaranteed to protect the presumption of innocence.

(iii) Provisions of legal aid and guardian ad litem

To protect the juvenile's or child's right to and the presumption of innocence, provision must be made when needed, for free legal aid and guardian ad litem.

(iv) Avoidance of harm

At all stages, from the initial contact till disposition, extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or child.

2. Principle of best interest

This principle seeks to ensure physical, emotional, intellectual, social and moral development of juvenile or child, so as to make him a useful and good citizen by ameliorating the impediments to healthy development.

3. Principle of family cushion

The family, biological, adoptive or foster (in that order), must be involved in the processes, preferred as placement cushion and strengthened as the base unit for care, protection and redirection of the juvenile or child under the said Act unless the best interest measures or mandates dictate otherwise.

4. Principle of no harm, no maltreatment

The juvenile or child who is placed in any institution under the said Act or under any placement cushion, shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary confinement.

5. Principle of non-stigmatizing semantics, decisions and actions

The non-stigmatizing semantics of the said Act must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody, etc., is prohibited in the processes pertaining to the juvenile or child under the said Act.

6. Principle of balancing

This principle aims at striking a balance between the provisions of the said Act on one hand and constitutional safeguards and social ethos on the other, in the dispensation of matters pertaining to juvenile or child.

7. Principle of non-waiver of rights

No waiver of rights of the juvenile or child, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the juvenile or child, is either permissible or valid.

Non-exercise of a fundamental right does not amount to waiver.

8. Principle of equality

Equality of access, equality of opportunity, equality under the said Act, is guaranteed to the juvenile or child; and as such there shall be no discrimination on the basis of age, sex, place of birth, disability, race, ethnicity, status, caste, cultural practices, work, activity or behaviour of the juvenile or child or that of his parents or guardians, or the civil and political status of the juvenile or child.

9. Principle of right to privacy and confidentiality

The juvenile's or child's right to privacy and confidentiality shall be protected by all means and through all the stages of the proceedings.

10. Principle of fresh start

The principle of fresh start promotes new beginning for the juvenile or child by ensuring erasure of his past records.

11. Principle of last resort

Institutionalization of juvenile or child will be a step of the last resort after reasonable enquiry and that too for the minimum possible duration.

12. Principle of repatriation

Any juvenile or child, who is a foreign national and who has lost contact with his family, shall also be eligible for protection under the said Act and he shall be repatriated, at the earliest, to his country.

The (name of State/UT) Juvenile Justice (Care and Protection of Children) Rules, 2001

In exercise of the powers conferred by section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (No. 56 of 2000), the State Government/Administrator _____ hereby makes the following rules, namely:

**CHAPTER – 1
PRELIMINARY**

1. Short title and commencement

- (1) These rules may be called the (name of the State/UT) Juvenile Justice (Care and Protection of Children) Rules, 2001.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition

In these rules, unless the context otherwise requires

- (a) “Act” means the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000);
- (b) “adoption” means taking permanent custody and responsibility of a juvenile or a child covered under this Act, who shall have *pari passu* rights of natural born child;
- (c) “Form” means the form annexed to these rules;
- (d) “institution” for the purposes of these rules, means an observation home, or a special home, or a children’s home or a shelter home, set up, certified or recognized under sections 8, 9, 34 and 37 of the Act respectively.
- (e) “Officer-in-charge” (nomenclature as used by the State Government) means a person appointed for the control and management of the institution;
- (f) “State Government” in relation to a Union Territory, means the Administrator of that Union Territory appointed by the President under article 239 of the Constitution;
- (g) all words and expressions defined in the Act and used, but not defined in these rules, shall have the same meaning as assigned to them in the Act.

CHAPTER – II

JUVENILE IN CONFLICT WITH LAW

3. Juvenile Justice Board

- (1) The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a bench.
- (2) Every such bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974).
- (3)
 - (a) A Magistrate with special knowledge or training in child psychology or child welfare shall be designated as the principal Magistrate of the Board.
 - (b) In case the principal Magistrate with such special knowledge or training is not available, then, the State Government shall provide for such

short-term training in child psychology or child welfare as it considers necessary.

- (4) The two social workers, of whom at least one shall be a woman, shall be appointed by the State Government on the recommendation of the Selection Committee set up under sub-rule (2) of rule 24 of these rules.
- (5) The Selection Committee shall take into consideration the panels of names recommended by the local authority while considering the selection of social workers for the Board and shall prepare a panel of names for each Board including a panel of names to fill in vacancies, which may arise during the tenure of the Board.
- (6) The social worker to be appointed as a member of the Board shall be a person who has been actively involved and engaged in planning, implementing and administering measures relating to health, education or other welfare activities pertaining to children for at least seven years.
- (7) The Board shall have a tenure of three years and the appointment of members shall be co-terminus with the tenure of the Board.
- (8) A social worker being a member of the Board shall be eligible for appointment for a maximum of two terms.
- (9) The Board shall hold its sittings in the premises of an Observation Home and shall meet on all the working days of a week.
- (10) A member may resign any time, by giving one month's advance notice in writing or may be removed from his office as provided in sub-section (5) of Section 4 of the Act.
- (11) The social worker members of the Board shall be paid such travelling or meeting allowance or honorarium, as the State Government may decide from time to time.

4. Institutional management for juveniles in conflict with law

- (1) The State Government or the voluntary organization certified by that State Government shall set up separate observation homes for boys and girls.
- (2) The State Government or the Voluntary Organisation certified by that Government shall set up separate special homes for girls above the age of 10 years and boys in the age groups of 11 to 15 and 16 to 18 years as and when required.
- (3) The following procedure shall be followed in respect of the newly-admitted juveniles, namely

- (a) receiving and search;
 - (b) hair-cut (unless prohibited by religion), issue of toiletry items;
 - (c) disinfection and storing of juvenile's personal belongings and other valuables;
 - (d) bath;
 - (e) issue of new set of clothes, bedding and other outfit and equipment (as per scales);
 - (f) medical examination and treatment, where necessary and in case of any juvenile suspected to be suffering from contagious or infectious diseases, mental ailments, addiction, etc., he shall be immediately segregated in specially earmarked dormitories or wards or hospitals;
 - (g) attending to immediately and urgent needs of the juvenile's like appearing in examinations, interview letter to parents(s), personal problems, etc; and
 - (h) verification by the Officer-in-charge of the order of the Board, identification marks, register entries, cash, other valuables, etc.
- (4) Every institution shall follow a schedule of orientation by the newly-admitted juvenile covering the following aspects, namely
- a) health, sanitation, hygiene;
 - b) institutional discipline and standards of behaviour, respect for elders, teachers, etc.;
 - c) self-improvement opportunities; and
 - d) responsibilities and obligations
- (5) A case history of the juvenile or the child admitted to an institution shall be maintained which may contain information regarding his socio-cultural and economic background and this information may invariably be collected through all possible and available sources, including home, parents or guardians, employer, school, friends and community.
- (6) The educational level and vocational aptitude of the juvenile admitted, may be assessed on the basis of test and interview conducted by the teacher, the workshop supervisor and other technical staff and necessary linkages may also be established with outside specialists and community-based welfare agencies, psychologist, psychiatrist, child guidance clinic, hospital and local doctors, open school, Jan Sikshan Sansthan, etc.
- (7) All residents in the institution shall be given work like-

- (a) self-help in maintaining their own establishment;
 - (b) cleaning of open spaces, gardening, etc.;
 - (c) preliminary operations for crafts.
- (8) A well conceived programme of pre-release planning and follow up of cases discharged from special homes shall be organized in all institutions in close collaboration with existing governmental and voluntary welfare organizations.

5. Daily routine

Every institution shall have a well regulated daily routine for the juveniles, which shall be displayed and provide, *inter alia*, for regulated and disciplined life, personal hygiene and cleanliness, physical exercise, educational classes, vocational training, organized recreation and games, moral education, group activities, prayer and community singing and special programmes for Sundays and holidays.

6. Diet scale

The State Government shall prepare a diet scale, to be strictly adhered to by the institutions, for juveniles in consultation with nutrition experts so that the diet becomes balanced, nutritious and varied, with a special diet which may be provided on holidays, festivals and to the sick juveniles as required.

7. Issue of clothing, bedding and other articles

Each juvenile shall be provided with clothing and bedding, including customary under-garments, towel, jersey for winter, school uniform for juveniles attending outside schools, durry, bed-sheets, blanket, pillow, chappal or shoes, utensils as required; and tooth powder, soap, oil, etc. as per the scale laid down by the State Government from time to time.

8. Sanitation and Hygiene

Every institution shall have the following facilities, namely

- (a) sufficient treated drinking water;
- (b) sufficient water for bathing and washing clothes, maintenance and cleanliness of the premises;
- (c) proper drainage system;
- (d) arrangements for disposal of garbage;
- (e) protection from mosquitos;
- (f) sufficient number of latrines in the proportion of at least one latrine for seven children;

- (g) sufficient number of bathrooms in the proportion of at least one bath room for ten children;
- (h) sufficient space for washing;
- (i) clean and fly-proof kitchen;
- (j) sunning of bedding and clothing; and
- (k) maintenance of cleanliness in the Medical Centre.

9. Accommodation

The minimum standard of accommodation, to the extent possible, shall be as follows:

- (a)

Dormitory	-	40 square feet per juvenile
Classroom	-	Sufficient accommodation
Workshop	-	Sufficient work space
Play ground	-	Sufficient play ground area

shall be provided in every institution according to the total number of juveniles in the institution.

- (b) The dormitories, classrooms and workshops shall have sufficient cross ventilation and light.

10. Medical care

- (1) Every institution shall provide for the necessary medical facilities so as to ensure that
 - (a) regular facilities are available for the medical treatment;
 - (b) arrangements are made for the immunization coverage, and
 - (c) a system is evolved for referral of cases with deteriorating health or serious cases to the nearest civil hospital or recognized treatment centres.
- (2) Each juvenile admitted in an observation home shall be medically examined by the Medical Officer within 24 hours and in special cases within 48 hours giving the reasons therefor, and also at the time of transfer of the juvenile to a special home, within a similar period before transfer and further at any other time that may be considered necessary by the Medical Officer or the Officer-in-Charge.

- (3) No surgical treatment shall be carried out on any juvenile without the previous consent of his parent or guardian, unless either the parent or guardian cannot be found and the condition of the juvenile is such that any delay shall, in the opinion of the medical officer, involve unnecessary suffering or injury to the health of the juvenile, or without obtaining a direction to this effect from the Board.
- (4) A health record of each juvenile in the institution shall be maintained on the basis of quarterly medical check-up.

11. Monitoring and evaluation of juveniles

- (1) A juvenile shall be grouped on the basis of the age, physical and mental health, length of stay order, degree of delinquency and the character.
- (2) For the purposes of sub-rule (1), a monitoring and evaluation committee shall be constituted in each institution consisting of the following personnel, namely:

Officer-in-Charge	- Chairperson
Child Welfare Officer/Psychologist	- Member-Secretary
Medical Officer	- Member
Workshop Supervisor/Instructor in Vocation	- Member
Teacher	- Member

- (3) The committee shall meet periodically to consider and review:
 - (a) custodial care, housing, place of work, area of activity and type of supervision required;
 - (b) individual problems of juveniles, family contacts and adjustment, economic problems, and institutional adjustment, etc;
 - (c) vocational training and opportunities for employment;
 - (d) education, i.e. health education, social education, academic education, vocational education and moral education;
 - (e) social adjustment, recreation, group work activities, guidance and counselling;
 - (f) special instructions, collecting moral information, and special precautions to be taken, etc.;

- (g) review of progress and adjusting institutional programmes to the needs of the inmates;
- (h) planning post-release rehabilitation programmes and follow up for a period of two years in collaboration with aftercare service;
- (i) pre-release preparation;
- (j) release; and
- (k) any other matter which the Officer-in-Charge may like to bring up.

12. Rewards and earnings

Rewards to the juveniles, at such rates as may be fixed by the management of the institution from time to time, may be granted by the Officer-in-Charge as an encouragement to steady work and good behaviour; and at the time of release, the reward shall be handed over after obtaining a receipt from the parent of the guardian who comes to take charge of the juvenile.

13. Visits to and communication with inmates

- (1) The parents and relations of the juveniles shall be allowed to visit once in a month or in a special cases, more frequently at the discretion of the Officer-in-Charge as per the visiting hours laid down by him.
- (2) The receipt of letters by the juveniles of the institution shall not be restricted and they shall have freedom to write as many letters as they like at all reasonable times, and the institution shall ensure that where parents, guardians or relatives are known, at least one letter is written by the juvenile every month for which the postage shall be provided.
- (3) The Officer-in-Charge may peruse any letter written by or to the juvenile, and may for the reasons that he considers sufficient to refuse to deliver or issue the letter, may destroy the same after recording his reasons in a book maintained for the purpose.

14. Prohibited articles

No person shall bring into the institution the following prohibited articles, namely:

- (a) fire-arms or other weapons, whether requiring licence or not (like lathi, spears, swords, etc.);
- (b) alcohol and spirit of every description;

- (c) bhang, ganja, opium and other narcotic or psychotropic substances;
- (d) tobacco, or
- (e) any other article specified in this behalf by the State Government by a general or special order.

15. Articles found on search and inspection

- (1) The Officer-in-Charge shall see that every juvenile received in the institution is searched, his personal effects inspected and any money or valuable found with or on the person of the juvenile is kept in the safe custody of the Officer-in-Charge.
- (2) Girls shall be searched by a female member of the staff with due regard to decency.
- (3) In every institution, a register of money, valuables and other articles found with or on the person of a juvenile received therein shall be maintained which may be called the "Personal Belonging Register".
- (4) The entries made in the Personal Belonging Register, relating to each juvenile, shall be read over to juvenile in the presence of a witness whose signature shall be obtained in token of the correctness of such entries and it shall be countersigned by the Officer-in-Charge.

16. Disposal of articles

The money or valuables belonging to a juvenile received or retained in an institution shall be disposed of in the following manner:

- (a) On an order made by the competent authority in respect of any juvenile, directing the juvenile to be sent to an institution, the Officer-in-Charge shall deposit such juvenile's money together with the sale proceeds in the manner laid down from time to time in the name of the juvenile.
- (b) The juvenile's money shall be kept with the Officer-in-Charge and valuables, clothing, bedding and other articles, if any, shall be kept in safe custody.
- (c) When such juvenile is transferred from one institution to another, all his money, valuables and other articles, shall be sent along with the juvenile to the Officer-in-Charge of the institution to which he has been transferred together with a full and correct statement of the description and estimated value thereof.

- (d) At the time of release of such juvenile, the valuables and other articles kept in safe custody and the money deposited in the name of the juvenile shall be handed over to the parent or guardian, as the case may be, with an entry made in this behalf in the register and signed by the Officer-in-Charge.
- (e) When a juvenile of an institution dies, the valuable and other articles left by the deceased and the money deposited in the name of the juvenile shall be handed over by Officer-in-Charge to any person who establishes his claim thereto and executes an indemnity bond.
- (f) A receipt shall be obtained from such person for having received such valuables and other articles and the amount.
- (g) If no claimant appears within a period of six months from the date of death or escape of such juvenile, the valuables and other articles and amount shall be disposed of as per the decision taken by monitoring and evaluation committee.

17. Duties of the Officer-in-Charge

- (1) The Officer-in-Charge shall be responsible for the following, namely:
 - (a) security measures and periodical inspection thereof;
 - (b) proper maintenance of buildings and premises;
 - (c) prompt, firm and considerate handling of all disciplinary matters;
 - (d) careful handling of plant and equipment;
 - (e) accident preventive measures;
 - (f) fire preventive measures;
 - (g) segregation of juvenile or child suffering from contagious or infectious diseases;
 - (h) proper storage and inspection of food stuffs;
 - (i) stand-by arrangements for water storage, power plant, emergency lighting, etc.
- (2) In the event of an escape of a juvenile or a child, the following action shall be taken, namely:
 - (a) The Officer-in-Charge shall immediately send the guards in search of the juvenile, at places like railway stations, bus stands and other places where the juvenile is likely to go;

- (b) The parents or guardians shall be informed immediately about such escape;
 - (c) A report shall be sent to the area Police Station along with the details and description of the juvenile or the child, with identification marks and a photograph, with a copy to the Board and the authorities concerned.
 - (d) The Officer-in-Charge shall hold an inquiry about such escape and send his report to the Board and the authorities concerned.
- (3) On the occurrence of any case of death or suicide, the procedure to be adopted shall be as under:
- (a) If a juvenile or child dies within twenty four hours of his admission to the institution, an inquest and post-mortem examination shall be held at the earliest.
 - (b) Whenever a sudden or violent death, or death from suicide or accident takes place, immediate information shall be given to the Officer-in-Charge and the Medical Officer.
 - (c) The Officer-in-Charge and the Medical Officer shall examine and inspect the dead body and in case a juvenile dies due to causes other than natural causes, or if the cause of death is not known, or if the death has occurred due to suicide, violence or accident or whenever there is any doubt or complaint or question concerning the cause of death of any juvenile, the Officer-in-Charge shall inform the Officer-in-Charge of the Police Station having jurisdiction.
 - (d) The Officer-in-Charge shall also immediately give intimation to nearest Magistrate empowered to hold inquests.
 - (e) The Medical Officer shall report to the Officer-in-Charge about the happening of the natural death of a juvenile and see that the body is decently removed to the mortuary.
 - (f) In case of natural death or due to illness of a juvenile or child of an observation home or special home, the Officer-in-Charge shall obtain a report from the Medical Officer stating the cause of death and a written intimation about the death shall be given immediately to the nearest Police Station, the Board, the National Human Rights Commission and the authorities concerned.
 - (g) The parents or guardians of the deceased juvenile shall be contacted and the Officer-in-Charge shall wait for twenty-four hours for the arrival of relatives.

- (h) As soon as the inquest is held, the body shall be disposed of in accordance with the known religion of the juvenile.
- (4) In the event of any custodial rape or sexual abuse, the following action shall be taken, namely:
 - (a) In case a resident makes any complaint, or occurrence of such rape or abuse comes to the knowledge of the Officer-in-Charge, a report shall be placed before the Board, who shall order for special investigation and direct the local police station to register case against the person(s) found guilty under the relevant provisions of the Indian Penal Code, 1860 (45 of 1860).
 - (b) The Special Juvenile Police Unit shall also take due cognizance of such occurrences and conduct necessary investigations.
- (5) In the event of any other offence committed in respect of residents, the Board shall take cognizance and arrange for necessary investigation to be carried out by Special Juvenile Police Unit.

18. Leave of absence of a juvenile or child

- (1) The juvenile or child of an institution may be allowed to go on leave of absence or released on licence and stay with his family during examination, emergencies or special occasions like marriage in the family.
- (2) While the leave of absence for short period not exceeding seven days excluding the journey time may be recommended by the Officer-in-Charge, but granting of such leave shall be by the Board.
- (3) The parents or guardian of the juvenile or child may submit an application to the Officer-in-Charge requesting for release of the juvenile or child on leave, stating clearly the purpose for the leave and the period of leave.
- (4) If the Officer-in-Charge considers that granting of such leave is in the interest of the juvenile or child, he shall call for a report of the Probation Officer on the advisability or otherwise and forward the case to the Board.
- (5) While issuing orders sanctioning the leave of absence or release on licence in Form VII, as the case may be, the competent authority shall mention the period of leave and the conditions attached to the leave order, and if any of these conditions are not complied with during the leave period, the juvenile or child may be called back to the institution.
- (6) The parent or guardian shall arrange to escort the juvenile or child from and to the institution and bear the traveling expenses; whereas, in exceptional cases or

during an emergency, the Officer-in-Charge may arrange to escort the juvenile or child to the place of the family and back.

- (7) If the juvenile or child runs away from the family during the leave period, the parent or guardian is required to inform the Officer-in-Charge of the institution within the stipulated period, such leave may be refused on later occasions.
- (8) If the juvenile or child does not return to the institution on expiry of the sanctioned leave, the Board shall refer the case to police for taking charge of the juvenile or child and bring him back to the institution.
- (9) The period of such leave shall be counted as part of the period of stay in the institution and the time which elapses after the failure of a juvenile or child to return to the institution within the stipulated period, shall be excluded while computing the period of his stay in the institution.

19. Release

- (1) The Officer-in-Charge shall maintain a roster of the cases of juvenile or child to be released on the expiry of the period of stay as ordered by the Board.
- (2) Each case shall be placed before the Classification Committee for proper mainstreaming and with regard to cases in which the juvenile or child is kept for the maximum period, action may be initiated six months before they attain the age of eighteen years.
- (3) A timely information of the release of a juvenile or child and of the exact date of release shall be given to the parent or guardian and the parent or guardian shall be invited to come to the institution to take charge of the juvenile or child on that date.
- (4) If necessary, the actual expenses of the parent's or guardian's journey both ways and of the juvenile's or child's journey from the institution shall be paid to the parent or guardian by the Officer-in-Charge at the time of the release of the juvenile or child.
- (5) If the parent or guardian, as the case may be, fails to come and take charge of the juvenile or child on the appointed date, the juvenile or child shall be taken by the escort of the institution; and in case of a girl, she shall be escorted by a female escort.
- (6) At the time of release or discharge, a juvenile or child may be provided with a set of summer or winter clothing, if the Officer-in-Charge deems it necessary.
- (7) If the juvenile or child has no parent or guardian, he may be sent to an aftercare organization, or in the event of employment to the person who has undertaken to employ the juvenile or child.

- (8) The Officer-in-Charge of a girls' institution, subject to the approval of the competent authority, may get suitable girls above the age of eighteen years married according to the procedure laid down by that authority from time to time.
- (9) The Officer-in-Charge shall order the discharge of any juvenile or child, the period of whose detention has expired and inform the competent authority within seven days of the action taken; and if the date of release falls on a Sunday or another public holiday, the juvenile or child may be released on the preceding day with an entry to that effect being made in the register of discharge.
- (10) The Officer-in-Charge shall in appropriate cases, order the payment of subsistence money, at such rates as may be fixed from time to time and the railway or road, or both, fare, as the case may be.
- (11) In deserving cases, the Officer-in-Charge may provide the juvenile with such small tools, as may be necessary, to start a work or business subject to such maximum cost as may be fixed by the institution.
- (12) The Officer-in-Charge may, subject to the approval of the competent authority, allow at their own request such girls as have no place to go, to stay in the institution after the period of their stay is over, till the time some other suitable arrangements are made.

20. Maintenance of case file

- (1) The case file of each juvenile or child shall be maintained in the institution containing the following information, so far as applicable:
 - (a) report of the person or agency who produced the juvenile or child before the Board;
 - (b) probation officer's report;
 - (c) information from previous institution;
 - (d) initial interview material, information from family members, relatives, community, friends and miscellaneous information;
 - (e) source of further information;
 - (f) observation reports from staff members;
 - (g) reports from Medical Officer, Intelligence Quotient (I.Q) testing, aptitude testing, educational or vocational tests;
 - (h) social history;
 - (i) summary and analysis by Officer-in-Charge;

- (j) initial classification sheet;
 - (k) instruction regarding training and treatment programme and about special precautions to be taken;
 - (l) leave and other privileges granted;
 - (m) violation of rules, if any, and special achievements;
 - (n) quarterly progress report from various sections;
 - (o) review sheet;
 - (p) Monthly Cycle (m.c) report (in case of girls);
 - (q) pre-release programme;
 - (r) final progress report;
 - (u) follow-up reports;
 - (v) central index number;
 - (w) annual photograph; and
 - (x) remarks.
- (2) All the case files maintained by the institutions and the Board shall, as far as practicable, be computerized and networked so that the data is centrally available.

21. Production of a juvenile

- (a) As soon as a juvenile in conflict with the law is apprehended by the police, the police shall place the juvenile under the charge of the special juvenile police unit, or the designated police officer.
- (b) The special juvenile police unit to which the juvenile is brought, shall inform the probation officer concerned of such apprehension, to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.
- (c) Prior to production of a juvenile before the Board, the juvenile may be placed in a safe place within the Police Station, (which shall not be a lock up), or in a place of safety.
- (d) The special juvenile police or the designated police officer shall produce the juvenile before the Magistrate or a member of the Board within twenty four hours of his apprehension (excluding the time taken to

bring the juvenile from the Police Station or place of safety to the Board).

- (e) In case of delay in production before the Magistrate or the Board, the details of not doing so be recorded in the police daily or general diary.
- (f) In case a recognized voluntary organization takes a juvenile to the Board, the voluntary organization shall also inform the concerned Police Station.
- (g) The State Government shall recognize only those registered voluntary organizations which can provide the service of probation, counselling, case work, a place of safety and also associate with the Special Juvenile Police Unit and are willing and have the capacity, facilities and expertise to do so.
- (h) The registered voluntary organization shall prepare a report narrating the circumstances of apprehension and offence committed and produce the juvenile before the Board or Police with the report.
- (i) When a juvenile is produced before an individual member of the Board, the order given by the member shall be ratified in the next meeting of the Board.
- (j) The police or the recognized voluntary organization shall be responsible for the safety and basic amenities to the juveniles apprehended or kept under their charge during the period they are with them.

22. Procedure to be followed by a Board in holding inquiries and the determination of age

- (1) In all cases under the Act, the proceedings shall be conducted in as simple a manner as possible and care shall be taken to ensure that the juvenile or child against whom the proceedings have been instituted is given home-like atmosphere during the proceedings.
- (2) When witnesses are produced for examination, the Board shall be free to use the power under section 165 of the Indian Evidence Act, 1872 (1 of 1872), to question them so as to bring out any point that may go in favour of the juvenile or the child.
- (3) While examining a juvenile or child and recording his statement, the competent authority shall be free to address the juvenile or child in any manner that may seem suitable, in order to put the juvenile or child at ease and to elicit the true facts, not only in respect of the offence of which the juvenile or child is accused, but also in respect of the home and social surroundings and the influence to which the juvenile or child might have been subjected.

- (4) The record of the examination shall be in such form as the Board may consider suitable having regard to the contents of the statements and circumstances in which it was made.
- (5) In every case concerning a juvenile or a child, the Board shall either obtain –
- (i) a birth certificate given by a corporation or a municipal authority; or
 - (ii) a date of birth certificate from the school first attended; or
 - (iii) matriculation or equivalent certificates, if available; and
 - (iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board.
- regarding his age; and, when passing orders in such case shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be, record a finding in respect of his age.
- (6) The State Government shall recognize registered voluntary organizations, to supervise and submit periodical reports, as directed by the Board regarding to the orders passed under clauses (b) and (c) of sub-section (1) of section 15 of the Act.
- (7) In accordance with the rules made under sub-section (2) of section 10 of the Act, the Board shall, in Form-I, order a Probation Officer, or otherwise to conduct a social investigation, reporting on the character and antecedents of the juvenile or child with a view to assessing the best possible mode for placement, such as, with the family, in institution or otherwise permissible under the Act.
- (8) When a juvenile or child is placed under the care of a parent or a guardian and the Board considers it expedient to place the juvenile or child under the supervision of a probation officer, it shall issue a supervision order in Form-II.
- (9) The competent authority may, while making an order placing a juvenile under the care of a parent, guardian or fit person, as the case may be, direct such parent, guardian or fit person to enter into a bond in Form-IV with or without sureties.
- (10) Whenever the Board orders a juvenile or child to be kept in an institution, it shall forward to the Officer-in-Charge of such institution a copy of its order; in Form III with particulars of the home and parents or guardian and previous record.
- (11) The juvenile or child shall be lodged in a home closest to where he belongs.

- (12) The Officer-in-Charge of an institution, certified as special home under sub-section (2) of section 9 of the Act, shall be informed in advance by the Board before any juvenile or child is committed to it.
- (13) The Officer-in-Charge of the said institution may, on receipt of the information, intimate in writing objections, if any, to the committal of the juvenile or child and the objections shall be taken into consideration by the Board before the juvenile or child is committed to the said institution.
- (14) In case the Board orders the parent of the juvenile or child, or the juvenile or child to pay a fine and the amount realized shall be deposited in the government treasury.

23. Procedure in respect of Sections 23, 24, 25 and 26 of the Act

The offences against the juvenile or child specified in sections 23, 24, 25 and 26 shall be either bailable or non-bailable besides being cognizable under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of bail or otherwise, shall apply on the Police, the Board and the concerned accordingly.

**CHAPTER III
CHILD IN NEED OF CARE AND PROTECTION**

24. Child Welfare Committee

- (1) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.
- (2) The Chairperson and members of the Committee shall be appointed on the recommendation of a Selection Committee set up by the State Government for the purpose.
- (3) The Selection Committee shall consist of following seven members, namely:
 - (i) a retired Judge of the High Court or retired Secretary to the State Government having experience in social welfare shall be the Chairperson of the Selection Committee;
 - (ii) two representatives of reputed non-governmental organizations working in the area of child welfare;
 - (iii) a representative from an academic body;
 - (iv) two representatives of the concerned department of the State Government; and

- (v) a representative of the State Human Rights Commission or such recognized agency or a retired special Judicial Magistrate.
- (4) The Selection Committee shall take into consideration the panel of names recommended by the concerned local authority, who could be considered for selection of members of the Committee.
- (5) The Selection Committee shall also prepare a list of names for each committee to fill in vacancies, which may arise during the tenure of the Committee.
- (6) A person to be selected as a member of the Committee shall have either of the following qualifications, in addition to five years' experience in their respective fields, namely:
 - (a) a respectable, well educated citizen with the background of special knowledge of social work, child psychology, education, sociology or home science; or
 - (b) a teacher or a doctor or a senior retired public servant who has been involved in work concerning child welfare; or
 - (c) a social worker of repute, who has been directly engaged in child welfare.
- (7) The Chairperson of the Committee shall be at least a graduate with either of the qualifications given in sub-rule (6)
- (8) The Committee shall have a tenure of three years and the appointment of members shall be co-terminus with the tenure of the Committee.
- (9) A member of the Committee shall be eligible for appointment for a maximum of two terms;
- (10) A member may resign at any time by giving one month's notice in writing.
- (11) Any casual vacancy on the Committee may be filled by appointment of another person from the list or panel prepared by the Selection Committee, and shall hold office for the remaining term of the Committee.
- (12) The members of the Committee shall be paid such travelling or meeting allowance or honorarium as the State Government may decide from time to time.

25. Procedure etc. in relation to Committee

- (1) The Committee shall hold its sittings in the premises of a children's home and shall meet at least three days a week.

- (2) The quorum for the meeting shall be three members attending, which may include the Chairperson.
- (3) Any decision taken by an individual member, when the Committee is not sitting, shall require ratification by the Committee in its next sitting.
- (4) The final disposal of cases relating to children in need of care and protection, shall take place from the office of the Committee, by the order of at least two members.
- (5) The Committee shall take into consideration the age, physical and mental health background, opinion of the child and the recommendation of the case worker, prior to disposal of such cases.

26. Production of a Child before the Committee

- (1) Any child of need of care and protection shall be produced before the Committee by one of the following persons:
 - (i) any police officer or Special Juvenile Police Unit or a designated police officer;
 - (ii) any public servant;
 - (iii) Childline, a registered voluntary organization, or by such other voluntary organization or an agency as may be recognized by the State Government;
 - (iv) any social worker or a public spirited citizen authorized by the State Government; or
 - (v) by the child himself;
- (2) When any person or organization authorized under sub-rule (1) receives a child in need of care and protection, he may produce the child before the Committee with the report of the circumstances under which the child came to his notice.
- (3) A child above two years of age, shall be produced before the Committee within forty eight hours of such admission, excluding the journey time taken by the person or the organization; and for children under two years of age, the person or the organization shall send a written report along with the photograph, within forty eight hours of admission, excluding the journey time.
- (4) In case the Committee is not sitting, the child shall be kept in a place of safety and provided with all basic facilities and adequate protection.
- (5) Every possible effort shall be made to trace and associate the family and assistance of recognized voluntary organizations or Childline may also be taken.

- (6) In case a recognized voluntary organization takes a child to the Committee, they shall also submit a report on the circumstances under which the child came to their notice, and efforts shall be made by them for tracing the family.
- (7) The Committee shall make arrangements to send the child to the designated place of safety, with age and sex appropriate facilities, pending the inquiry.
- (8) The child may be escorted by the police officer or representative of the voluntary organization or by any other arrangement as considered appropriate by the Committee.
- (9) A list of the names and addresses of all recognized children's homes along with its capacity, appropriate facilities as prescribed under section 34 of the Act, shall be listed with the Committee.
- (10) The competent authority may, while making an order placing a child under the care of a parent, guardian or fit person, as the case may be, direct such parent, guardian or fit person to enter into a bond in Form-IV with or without sureties.
- (11) Whenever the Committee orders a child to be kept in an institution, it shall forward to the Officer-in-Charge of such institution a copy of its order, in Form-III with particulars of the home and parents or guardian and previous record.
- (12) The child shall be lodged in a home closest to where he belongs.

27. Procedure for inquiry

- (1) When a child is brought before the Committee, the Committee shall assign the case to a social worker or case worker or child welfare officer or Officer-in-Charge, as the case may be, of the home or any recognized agency for conducting the inquiry.
- (2) The direction for the inquiry under sub-rule (1) shall be given in Form-I.
- (3) The Committee shall direct the concerned person or organization about the details or particulars to be enquired into for suitable rehabilitation.
- (4) The inquiry must be completed within four months unless special circumstances do not permit to do so in the interest of the child, and for which a written extension must be taken by the inquiring officer or the agency under sub-section (2) of section 33 of the Act.
- (5) After completion of the inquiry, if the child is under order to continue in the children's home, the Committee shall carry out an annual review of the progress of the child in the home.

28. Children's home

- (1) The State Government itself or in association with voluntary organizations, shall set up separate homes for children in need of care and protection, in the manner specified below-
 - (a) while children of both sexes below ten years, may be kept in the same home but separate facilities shall be maintained for boys and girls in the age group 5 to 10 years;
 - (b) separate children's homes shall be set up for boys and girls in the age group 10 to 18 years.
- (2) Each children's home shall be a comprehensive child care centre with the primary objective to promote an integrated approach to child care by involving the community and local Non-Government Organisations (NGOs).
- (3) The activities of such centres shall focus on:
 - (a) family based services, such as, foster family care, adoption and sponsorship;
 - (b) specialized services in conflict or disaster affected areas to prevent neglect by providing family counselling, sponsorship, play groups, etc.;
 - (c) provision of Childline and emergency outreach service through 1098, a free phone facility for children;
 - (d) linking up with Integrated Child Development Services (ICDS) to cater to the needs of children below six years;
 - (e) to establish linkages with organizations and individuals who can provide support services to children; and
 - (f) to encourage volunteers to provide for various services for children and families to become guardian.
- (4) Every children's home shall have the following facilities, namely:
 - (a) Physical infrastructure
 - (i) It shall include separate facilities for children in the age group of 0-5 years with appropriate facilities for the infants.
 - (ii) The facilities of accommodation as specified in rule 9 shall apply.
 - (iii) There shall be adequate lighting, ventilation, heating and cooling arrangements, drinking water and toilets, in terms of age appropriateness and hygiene.

- (b) The clothing and bedding shall be according to season and age appropriate as per scale mentioned in rule 7 of these rules.
- (c) Nutrition
 - (i) The children shall be provided 4 meals including breakfast in a day.
 - (ii) The menu shall be prepared with the help of a nutritional expert or doctor to ensure balanced diet and variety in taste.
 - (iii) Children may be provided special meals on holidays.
 - (iv) The diet of infants and sick children shall be according to the requirements.
 - (v) The normal dietary scale for children up to 18 years shall be according to scale mentioned in rule 6 of these rules.
- (d) Medical –
 - (i) The children’s home shall have arrangement for the medical facility preferably with doctor and nurse.
 - (ii) All children brought into the home shall be medically examined initially within 24 hours of arrival.
 - (iii) The routine medical checkup of the children must be done on a monthly basis.
 - (iv) The sick children shall constantly be under medical supervision.
 - (v) In the event of break out of contagious or infectious diseases, segregation must be ensured.
 - (vi) The medical service shall include immunization facility as specified under the National Immunization Schedule.
 - (vii) The home shall have networking with local doctors and hospitals for referral cases.
 - (viii) The medical record of each child shall be meticulously maintained in the file of the child which shall also include weight and height record, any sickness and treatment, and other physical or mental problem, if any.
- (e) Education – The children’s home shall provide education to all children according to the age and ability, either both inside the home or outside, as per the requirement.
- (f) Vocational training

- (i) Every children's home shall facilitate for useful vocational training under the guidance of trained instructors.
- (ii) The home shall develop networking with Institute of Technical Instruction (ITI), Jan Shikshan Sansthan, government and private organization or enterprises, agencies or non-government organizations (NGOs) with expertise, or placement agencies.
- (iii) The focus shall be on providing family and community based re-integration programmes.
- (iv) Children shall be consulted while determining their care plan.
- (j) Intake procedure
 - (i) Every new child who is brought to home, shall immediately be taken charge of by the counsellor or child welfare officer or designated officer, as the case may be.
 - (ii) The child shall be received with due care as provided under these rules, with dignity and love.
 - (iii) A brief orientation shall be given to the child on induction, to remove any inhibition from the mind of the child.
 - (iv) The child shall be immediately given bath, clothing, food, etc. and medically examined.
 - (v) The designated officer shall enter the name of the child in the Admission Register and allocate appropriate accommodation facility.
 - (vi) The photograph shall also be taken immediately for records and the case worker shall begin the investigation and correspondence with the person, the child might have named.
 - (vii) The Officer-in-Charge shall see that the personal belongings of every child received by the home is kept in safe custody and recorded in the Personal Belonging Register and the item must be returned to the child when he leaves the home.

- (viii) The girl child shall be searched by a female member of the staff, and with due regard to decency.
- (ix) The articles mentioned under rule 14 of these rules shall also be prohibited in case of children's homes.
- (k) In the event of a child leaving the home without permission, the information shall be sent to the police and the family, if known; and the detailed report along with the efforts to trace the child shall be sent to the Committee for information in the subsequent sitting of the Committee.
- (l) Death of a child
 - (i) In the event of death of a child, the circumstances of the death shall be recorded in the case file of the child, by the case worker giving the cause of death and the death certificate shall be obtained from the attending doctor or hospital, as the case may be.
 - (ii) The information shall be sent to the Committee and District Level Inspection Team, Registrar of Births and Deaths, and the relative, if known.
 - (iii) The last rites shall be performed according to the known religion of the child.
- (m) In the event of custodial rape or sexual abuse, the action to be taken shall be as follows:
 - (i) In case any resident makes any complaint, or a occurrence of such nature comes to the knowledge of the Officer-in-Charge, a report shall be placed before the Committee, who is turn, shall order for special investigation.
 - (ii) The Committee shall direct the local police station to register case against the person found guilty under the relevant provisions of the Indian Penal Code, 1860 (45 of 1860).
 - (iii) The Special Juvenile Police Unit shall also take due cognizance of such occurrences and conduct necessary investigations.
- (n) In the event of any other crime committed in respect of residents, the Committee shall take cognizance and arrange for necessary investigation to be carried out by the Special Juvenile Police Unit.
- (o) Record keeping – All the case files of the children maintained by the institutions and the Committee shall be computerized and networked so that the data is centrally available.

29. Inspection

- (1) The State Government shall constitute State, District or city level inspection teams on the recommendation of Selection Committee, constituted under sub-rule (3) of rule 24, for a period of 3 years to visit and oversee the day-to-day functioning of the homes and give suitable directions to be followed by them.
- (2) The team shall also make suggestions for the improvement and development of the institution.
- (3) The team shall consist of a minimum of five members from the representatives of the State Government, local authority, the Committee, medical and other experts, voluntary organizations and reputed social workers.
- (4) The inspection visit shall be carried out by not less than three members.
- (5) The team may visit the homes either by prior intimation or by surprise.
- (6) The team shall interact with the children during the visits to the institution, to determine their well-being and uninhibited feedback.
- (7) The follow-up action on the findings and suggestions of the children shall be taken by all concerned authorities.

30. Social auditing – The Central Government or the State Government shall monitor and evaluate the functioning of the children’s homes annually with the help of organizations working with the children and autonomous bodies like the National Institute of Public Co-operation and Child Development, Indian Council for Child Welfare, Indian Council for Social Welfare, Indian Social Institute, Childline India Foundation, National Institute of Social Defence, Central and State level Social Welfare Boards and School of Social Work.

31. Shelter homes

- (1) For the children in urgent need of care and protection, such as destitutes, street children and run-away children, the State Government shall support creation of the requisite number of shelter homes or drop-in-centres through the voluntary organizations.
- (2) The shelter homes or drop-in-centres shall have the minimum facilities of boarding and lodging, besides the provision for fulfillment of basic needs in terms of clothing, food, health care and nutrition.
- (3) Such children in crisis situations may live in short-stay homes which may have the requisite facilities for education, vocational training and recreation as well.
- (4) The Committee, Special Juvenile Police Units, public servants, Childline,

voluntary organizations, social workers and the children themselves may refer a child to such shelter homes.

- (5) The requirements of investigation and disposal shall not apply in cases of children residing in the shelter home, except giving information to the Committee and the police about the missing or homeless children, besides initiating legal action in the interest of the child in terms of the Act or other child-related laws.
- (6) The services of Officer-in-Charge, child welfare officer, social worker shall be provided for the proper care, protection, development, rehabilitation and reintegration needs of such children.
- (7) No child shall ordinarily stay in the Government-funded shelter home or drop-in-centre for more than a year.

32. Transfer

- (1) During the enquiry, if it is found that the child hails from a place outside the jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child.
- (2) No child shall be transferred or proposed to be transferred only on the ground that the child has created problems or has become difficult to be managed in the existing institution.
- (3) The transfer for restoration or enquiry for all proceedings in respect of a child from one State institution to other may also be ordered by the local authority, after obtaining concurrence from the Committee.
- (4) No child shall be transferred out of the district or city for the purposes of adoption without the concurrence of the Committee.
- (5) On receipt of transfer order from the local authority, the Officer-in-charge shall arrange to escort the child at the Government expense to the place or person as specified in the order.
- (6) On such transfer, the child case file and records shall be sent along with the child.

CHAPTER IV

REHABILITATION AND SOCIAL REINTEGRATION

33. Adoption

- (1) As the family is the best option to provide care and protection for children, adoption shall be the first alternative for rehabilitation and social reintegration of children who are orphaned, abandoned, neglected and abused.

- (2) The guidelines on adoption, issued by a State Government under sub-section (3) of section 41 of the Act, the Supreme Court and the Central Adoption Resource Agency (CARA) from time to time, shall apply.
- (3) The State Government shall recognize children's homes or State-run homes for orphans, as adoption agencies both for scrutiny and placement of such children for in-country adoption.
- (4) In the case of inter-country adoption, the procedure laid down by the CARA shall apply.
- (5) The scrutiny shall be done independently by an agency recognized for this purpose.
- (6) The scrutinizing agency shall examine all available information and verify the background of the child before making a recommendation to the Board for adoption of the child.
- (7) Any child who is eligible for adoption and residing in an unrecognized home, shall, for the purpose of adoption, be transferred to a recognized home.
- (8) An abandoned child can be given in adoption only when the Committee declares such a child to be legally free for adoption and an order to that effect is signed by at least two members of the Committee.
- (9) Before declaring the child as abandoned and certifying him as legally free for adoption, the Committee shall institute a process of enquiry, which shall include –
 - (a) A thorough enquiry by the probation officer or case worker or police, as the case may be, shall be conducted and a report containing findings submitted within a maximum period of one month;
 - (b) Declaration by the placement agency, stating that there has been no claimant for the child even after making notification in at least one leading newspaper including a regional language newspaper, Television and Radio announcement and after waiting for a period of one month, the time which shall run concurrently to the inquiry to be conducted and report submitted under clause (a) of this sub-rule;
 - (c) The Committee shall make a release order declaring the child legally free for adoption within the period of six weeks from the date of application in the case of children below the age of two years, and three months in the case of children above that age;
 - (d) No child above seven years who can understand and express his opinion shall be placed in adoption without his consent.

(10) **Role of licensed or recognised Government and non-government agencies for adoption**

- (a) In the case of an abandoned child the recognized agency shall within forty eight hours report to the Committee along with the copy of the report filed with the police station in whose jurisdiction the child was found abandoned.
- (b) The adoption agency may initiate the process of clearance at the earliest, in the case of abandoned children, for the purpose of adoption within a period of two months and for placing application before the Committee for declaring the child legally free for adoption.
- (c) In case of a child surrendered by his biological parent or parents by executing a document of surrender, the adoption agency shall make an application directly to the Board for giving the child in adoption.
- (d) The adoption agencies shall wait for completion of two months' reconsideration time given to the biological parent or parents.
- (e) Serious efforts shall be made for counselling the parents, so as to persuade them to retain the child and if the parents are still unwilling to retain, then, such children shall be kept initially in foster care or arranged for their sponsorship.
- (f) In the case of a surrendered or abandoned child who is legally free for adoption, the licensed agency shall have discretion to place the child in pre-adoption foster care under intimation to the Board, within one week of its placement pending the final order.

(11) **Role of Juvenile Justice Board**

- (a) After receiving an application from a recognized agency for adoption, the Board shall call for an independent enquiry by a recognized scrutiny agency, which shall submit its report within a period of two weeks.
- (b) The Board shall undertake a process of enquiry which shall include interviewing the prospective parents, verifying the documents and scrutiny reports.
- (c) If the Board is satisfied that the placement is in the best interest of the child, it shall pass a final order giving permanent custody of the child to the adoptive parent or parents.
- (d) The order of adoption shall be signed by the principal Magistrate besides at least one of the two members of the Board.
- (e) The Board shall determine and fix the date of birth, in the best interest of the child and shall pass order to the appropriate authority to issue a regular birth certificate for the child giving the name(s) of the adoptive parents(s) as if in the case of natural born children.

- (f) As far as practicable, the time taken for passing an adoption order, shall not exceed two months from the date of filing of application.
- (g) The order shall also include provision for a periodic follow-up report either by the probation officer or case worker or adoption agency to ensure the well-being of the child and the period of such follow-up shall be three years, six monthly in the first year and annually for the subsequently two years.

34. Foster care

- (1) A child shall be placed under short-term foster care according to the procedure laid down in clause (f) of sub-rule (10) of rule 33, and the short-term foster care period shall not exceed four months.
- (2) The temporary foster care shall be carried out, as given in sub-section (2) of section 42 of the Act, by the competent authority under the supervision of a probation officer or case worker or social worker, as the case may be, in Form II and the total period of temporary foster care shall not exceed five years.
- (3) The following criteria shall be applied for selection of families for temporary foster care:
 - (a) foster parent(s) should have stable emotional adjustment within the family;
 - (b) foster parent(s) have an income to meet their needs and not dependent on the foster care maintenance payment;
 - (c) the monthly family income shall not be less than rupees five thousand per month;
 - (d) medical reports of all the members of the family residing in the premises should be obtained including checks on Human Immuno Deficiency Virus (HIV), Tuberculosis (TB) and Hepatitis B to determine that they are medically fit;
 - (e) an update should be done at regular intervals of not less than once in a calendar year;
 - (f) the foster mother should be experience in child caring and the capacity to provide good child care;
 - (g) the foster mother should physically, mentally and emotionally stable;
 - (h) the home should have adequate space and physical facilities;
 - (i) the foster care family should be willing to follow rules laid down including regular visits to pediatrician, maintenance of child health record, etc.;

- (j) the family should be willing to sign an agreement and to return the child to the agency whenever called to do so;
 - (k) the foster mother should be willing to attend training or orientation programmes;
 - (l) the foster parents(s) should be willing to take the child for regular (at least once a month in the case of infants) checkups to a pediatrician approved by the agency.
- (4) There shall be regular monitoring and supervision carried out by the Probation Officer or the Child Welfare Officer, as the case may be.

35. Sponsorship

- (1) The children's homes and special homes shall promote sponsorship programmes as laid down in section 43 of the Act.
- (2) The homes receiving sponsorship shall maintain proper and separate accounts of all the receipts and payments for the programme.

36. After care organization

- (1) The after care organization, as outlined in the Act, are to take care of juveniles or children after they leave special homes and children's home.
- (2) These after care organizations are essential for all children or youth between the age of 18 to 20 years; and as such, this age group is most vulnerable and need care, guidance and protection.
- (3) The objective of these homes shall be to enable such children to adapt to the society and during their stay in these transitional homes these children will be encouraged to move away from an institution-based life to a normal one.
- (4) The target groups will include juveniles or children who have left either special homes or children's homes.
- (5) The key components of the model include setting up of temporary homes for a group of youths, who can be encouraged to learn a trade and contribute towards the rent as well as the running of the home.
- (6) There shall also be provision for a peer counsellor, who will be in regular contact with these youths to discuss their rehabilitation plans and provide creative outlets for their energy and to tide over crisis periods in their life.
- (7) The programme under the scheme shall include:
 - i) Facilitating employment generation for these youths will be a key programme.

- ii) After a youth has saved a sufficient amount, he can be encouraged to stay in a place of his own and move out of the group home.
 - iii) The youth may continue staying in the home and return the deposit to the Non-Governmental Organizations (NGOs).
 - iv) The youth learning a vocational trade can be given a stipend, which may be stopped once the youth gets a job.
 - v) Loans to these youth to set up entrepreneurial activities may also be arranged.
 - vi) A peer counselor shall also be made available for youth at these homes, as, at this stage of life, they can be lured into crime or drug dependence and such other habits or deviant behaviour.
- (8) The strategy for children who have been juveniles or have left special homes shall be to help them to return to normal life and adjust and adapt to their environment.
- (9) There shall be provision for vocational training of these children to enable them to sustain themselves through their own efforts;
- (10) **Structure** – One peer counsellor can be made in-charge of a cluster of five homes and each home may house 6 to 8 youths who may opt to stay together on their own.

CHAPTER V

MISCELLANEOUS

37. Recognition of fit person or fit institution

- (1) Any individual or a suitable place or institution, the occupier or manager of which is willing temporarily to receive a juvenile or child in need of care, protection or treatment for a period as may be necessary, may be recognized by the competent authority as a fit person or a fit institution.
- (2) Any association or body of individuals, whether incorporated or not, established for or having for its object the reception or protection of juveniles or children, or the prevention of cruelty to juvenile; and which undertakes to bring or to give facilities for bringing up any juvenile entrusted to its care in conformity with the religion of his birth, may be included within the meaning of fit institution.
- (3) A list of names and the addresses of fit persons and fit institutions approved by the competent authority shall be kept in the office of the Board and the Committee and shall be used when necessary.

- (4) After committal of a juvenile or a child by the competent authority to an institution recognized as a fit institution with collateral branches, the manager of such institution may send the juvenile to any of the branches of such institution after giving an information to the competent authority under whose orders the juveniles or the child was committed.
- (5) Before declaring any person or institution as a fit person or a fit institution, the competent authority shall hold due enquiry and only on being satisfied, recognition shall be given.

38. Certification or recognition and transfer of management or institutions

- (1) If the management of any organization desires that its organization may be certified or recognized under the Act, the same shall make an application together with a copy each of the rules, bye-laws, articles of association, list of members of the society or the association running the organization, office bearers and a statement showing the status and past record of social or public service provided by the organization, to the State Government, who shall after verifying the provisions made in the organization for the boarding and lodging, general health, educational facilities, vocational training and treatment services may grant certification or recognition under sections 8, 9, 34, 37 and 44 of the Act, as the case may be, on the condition that the organization shall comply with the standards or services as laid down under the act and the rules framed thereunder, from time to time and to ensure an all-round growth and development of juvenile or child placed under its charge.
- (2) The State Government may transfer the management of any State-run institution under the Act to a voluntary organization of repute, who has the capacity to run such an institution; and certify the said voluntary organization as a fit institution to own the requisite responsibilities under a Memorandum of Understanding for a specified period of time.
- (3) The institution and the infrastructure already available with the State Government in relation to the Juvenile Justice Act, 1986 shall be suitably used for implementing the Act.
- (4) The State Government may, if dissatisfied with the conditions, rules, management of the organization certified or recognized under the Act, at any time, by notice served on the manager of the organization, declare that the certificate or recognition of the organization, as the case may be, shall stand withdrawn as from a date specified in the notice and from the said date, the organization shall cease to be an organization certified or recognized under sections 8, 9, 34, 37 or 44 of the Act, as the case may be:

Provided that the concerned organization shall be given an opportunity of making a representation in writing, within a period of thirty days, against the grounds of withdrawal of certificate or recognition of that organization.

- (5) The decision to withdraw or to restore the certificate, or recognition of the organization may be taken, on the basis of a thorough investigation by a specially constituted advisory board under section 62 of the Act.
- (6) On the report of the advisory board, the Officer-in-Charge of the home shall be asked to show cause so as to give an explanation within thirty days.
- (7) When an organization ceases to be an organization, certified or recognized under sections 8, 9, 34, 37 or 44 of the Act, the juvenile or the child kept therein shall, under the orders of the designated officer empowered in this behalf by the State Government, be either –
 - (a) discharged absolutely or on such conditions as the officer may impose; or
 - (b) transferred to some other institution established, certified or recognized under sections 8, 9, 34, 37 or 44 of the Act, in accordance with the provisions of the Act and the rules relating to their discharge and transfer by giving intimation of such discharge or transfer to the Board or the Committee, as the case may be.

39. Grant-in-aid to certified or recognized organization

- (1) An organization certified or recognized under sections 8, 9, 34, 37 or 44 of the Act, may during the period when certification or recognition is in force, may apply for grants-in-aid by the State Government, for the maintenance of juveniles or children received by them under the provisions of the Act; and for expenses incurred on their education, treatment, vocational training, development and rehabilitation.
- (2) The grants-in-aid may be admissible, at such rates, which shall be sufficient to meet the prescribed norms, in such manner and subject to such conditions as may be mutually agreed to by both the parties.
- (3) In case of transfer of management of government-run homes under sections 8, 9, 34, and 37 of the Act to a voluntary organization, the same budget which the Government was spending on that home, shall be given to the voluntary organization as grant-in-aid under the Memorandum of Understanding signed between both the parties describing their role and obligations.

40. Admission of outsiders.- No stranger shall be admitted to the premises of the institution, except with the permission of the Chief Inspector or Officer-in-Charge.

41. Identity photos

- (1) On admission to a home established under the Act, every juvenile or the child shall be photographed and three copies of the photograph shall be obtained.

- (2) One photograph shall be kept in the case file of the juvenile or the child, one shall be fixed with the index card and the third copy shall be kept in an album serially with the negative in another album.
42. **Police officers to be In plain clothes** - While dealing with a juvenile or a child under the provisions of the Act and the rules made thereunder, except at the time of arrest, the Police Officer shall wear plain clothes and not the police uniform.
43. **Prohibition on the use of handcuffs and fetters** - No juvenile or the child dealt with under the provisions of the Act and the rules made thereunder shall be handcuffed or fettered.
44. **Visitor's book**
- (1) A Visitor's Book shall be maintained in every institution, in which the person visiting the home shall record the date of his visit with remarks or suggestions, which he may think proper.
- (2) The Officer-in-Charge shall forward a copy of every such entry to the designated authority, and the local authority, with such remarks as he may desire to offer in explanation or otherwise; and thereon, the designated authority shall issue such orders as he may consider necessary.
45. **Maintenance of registers** - The Officer- in-Charge shall maintain in his office, such registers and forms, as required by the Act and as specified by the rules made thereunder.
46. **Procedure for sending a juvenile or child outside the jurisdiction of the competent authority**
- 1) In the case of a juvenile or a child whose ordinary place of residence lies outside the jurisdiction of the competent authority, and if the competent authority considers it necessary to take action under section 50 of the Act, it shall direct a probation officer to make enquiries as to the fitness and willingness of the relative or other person to receive the juvenile or the child at the ordinary place of residence, and whether such relative or other fit person can exercise proper care and control over the juvenile or the child.
- 2) Any juvenile or a child, who is a foreign national and who has lost contact with his family shall also be entitled for protection.
- 3) The juvenile or the child, who is a foreign national, shall be repatriated. at the earliest, to the country of his origin in co-ordination with the Ministry of External Affairs and respective Embassy or High Commission.

- 4) On being satisfied with the report of the probation officer or case worker or child welfare officer, as the case may be, the competent authority may send the juvenile or the child, if necessary, on execution of a bond by the juvenile, as nearly as in Form V, to the said relative or fit person on giving an undertaking by the said relative or fit person in Form VI.
- 5) A copy of the order passed by the competent authority under section 50 shall be sent to-
 - (a) the probation officer who was directed to submit a report under sub-rule (1);
 - (b) the probation officer, if any, having jurisdiction over the place where the juvenile or the child is to be sent;
 - (c) the competent authority having jurisdiction over the place where the juvenile or the child is to be sent; and
 - (d) the relative or the person who is to receive the juvenile or the child.
- (6) Any breach of a bond or undertaking or of both given under sub-rule (4), shall render the juvenile or the child liable to be brought before the competent authority, who may make an order directing the juvenile or the child to be sent to a home.
- (7) During the pendency of the order under sub-rule (4), the juvenile or the child shall be sent by the competent authority to an observation home or children home.
- (8) Where in the case of a juvenile or a child, the competent authority considers it expedient to send the juvenile or the child back to his ordinary place of residence under section 50, the competent authority shall inform the relative or the fit person, who is to receive the juvenile or the child accordingly; and shall invite the said relative or fit person to come to the home, to take charge of the juvenile or the child on such date, as may be specified by the competent authority.
- (9) The competent authority inviting the said relative or fit person under sub-rule (8) may also direct, if necessary, the payment to be made by the Officer-in-Charge of the home, of the actual expenses of the relative or fit person's journey both ways, by the appropriate class and the juvenile's or child's journey from the home to his ordinary place of residence, at the time of sending the juvenile or the child.
- (10) If the relative or the fit person fails to come to take charge of the juvenile or the child on the specified date, the juvenile or the child shall be taken to his ordinary place of residence by the escort of the observation home and in the case of a girl at least one escort shall be a female.

47. Mode of dealing with juvenile or child suffering from dangerous diseases or mental complaint

- (1) When a juvenile or a child kept in a home under the provisions of the Act, or placed under the care of a fit person or a fit institution, is found to be suffering from a disease, requiring prolonged medical treatment or physical or mental complaint, which will respond to treatment or is found addicted to a narcotic drug or psychotropic substance; the juvenile or the child may be removed by an order of the authority empowered in this behalf to an approved place set up for such purpose for the remainder of the term for which he has to stay, under the order of the competent authority or for such period as may be certified by medical officer to be necessary for the proper treatment of the juvenile or the child.
- (2) Where it appears to the authority ordering the removal of the juvenile or the child under sub-rule (1), that the juvenile or the child is cured of the disease or physical or mental complaint, he may, if the juvenile or the child is still liable to stay, order the person having in charge, to send the juvenile or the child to the home or fit person from which or from whom he was removed, or if the juvenile or the child is no longer liable to be kept in home, order him to be discharged.
- (3) Where action has been taken under sub-rule (1), in the case of a juvenile or a child suffering from an infectious or contagious disease, the authority empowered under the sub-rule (1), before restoring the said juvenile or child to his partner in marriage or to the guardian, as the case may be, shall, where it is satisfied that such action shall be in the interest of the said juvenile or child, call upon the partner in marriage or the guardian, as the case may be, to satisfy it that such partner or guardian will not re-infect the juvenile or child.
- (4) If there is no organization either within the jurisdiction of the competent authority, or nearby State for sending the juvenile or child suffering from dangerous diseases, as required under section 58 of the Act, necessary organization shall be set up by the State Government at such places, as it may deem fit.

48. Personnel/staff of a home

- (1) The personnel strength of a home shall be determined according to the duty, posts, hours of duty per day as the base for each category of staff.
- (2) The institutional organizational set up shall be fixed in accordance with the size of the home, the capacity, workload, distribution of functions and requirements of programmes.

- (3) The whole-time staff in a home may consist of Superintendent/Project Manager, Probation Officer (in case of Observation home or Special home), Case Workers (in case of Children's home or shelter home or after care organization), Child Welfare Officers, Counsellor, Educator, Vocational Training Instructor, Medical Staff, Administrative staff, Care Takers, house father and house mother, store keeper, cook, helper, washerman, karamchari, gardener, as required.
- (4) The part-time staff shall include Psychiatrist, Psychologist, Occupational therapist and other professionals as may be required from time to time.
- (5) The staff of the home shall be subject to control and overall supervision of the Superintendent or Project Manager, who by order, shall determine their specific responsibilities and shall keep the concerned authority informed of such orders made by him from time to time.
- (6) The duties and responsibilities of the staff under the Superintendent or the Project Manager shall be fixed in keeping with the statutory requirements of the Act.
- (7) The Superintendent or the Project Manager and such other staff who may be required, shall live in the quarters provided for them within the premises of the home.
- (8) The number of posts in each category of staff shall be fixed on the basis of capacity of the institution; and the staff shall be appointed in accordance with the educational qualifications, training and experience required for each category.
- (9) The suggested staffing pattern for an institution with a capacity of 100 juveniles or children could be as mentioned below:

Sl. No.	Designation	Number of Posts
1	Superintendent or Project Manger	1
2	Counsellor	2
3	Case Worker or Probation Officer	3
4	House Mother or House Father	4
5.	Educator	2 (voluntary or part-time)
6	Vocational Instructor	1
7	Doctor	1 (part-time)
8	Paramedical staff	1

9	Store-keeper cum Accountant	1
10	Driver	1
11	Cook	1
12	Helper	2
13	Sweeper	2
14	Art & Craft cum Music Teacher	1 (part-time)
15	Gardner	1 (part-time)
	Total	25

- (10) The number of posts in the category of counsellor, case worker or probation officer, house father or house mother, educator, and vocational instructor shall proportionally increase with the increase in the capacity of the institution.

49. Special Juvenile Police Unit and Juvenile or the Child Welfare Officer

- (1) The State Government shall appoint Special Juvenile Police Unit at the district and a juvenile or a child welfare officer shall be designated in term of section 63 of the Act, at the level of police station.
- (2) The Special Juvenile Police Unit at the district level shall function under a juvenile police officer (of the rank of Inspector of Police) and two paid social workers of whom one shall be a woman and another preferably child expert or having relevant experience.
- (3) The Special Juvenile Police Unit at other places shall be aided by two or more honorary social workers.
- (4) The Special Juvenile Police Unit shall be assisted by recognized voluntary organizations, who will help them in identifying Juveniles and helping the juveniles or children under the Act.

50. Honorary/Voluntary Probation Officers

To augment the existing probation service, honorary or voluntary probation officers may be appointed from the voluntary organization and social workers found fit for the purpose by the competent authority and their probation services may also be co-opted into the implementation machinery by the orders of the competent authority.

51. Responsibilities of the local authorities

The State Government may delegate powers to local authority under section 66 of the Act, to carry out the following responsibilities, namely:

- (a) recommending the panel of names., to the Selection Committee for appointment of social workers to the Board, Chairperson and members of the Committee, district and city advisory boards under rule 24;
- (b) to designate its responsibilities for the inspection committee under sub-section (2) of section 35 of the Act;
- (c) to visit the institution and make suggestions for the improvement and development of institutions under sub-section (2) of section 35 of this Act;
- (d) to give order for inter-state transfer of a juvenile or child with prior intimation to the Board and the Committee under section 57 of the Act;
- (e) create a Fund for the welfare and rehabilitation of the juvenile or child dealt with under the Act.

52. Protection of action taken in good faith

No suit or legal proceedings shall lie against any functionary under the Act including the members of the voluntary organization and social worker, in respect of anything which is in good faith done or intended to be done in pursuance of the Act during the performance of the duties assigned to them.

53. Duties of the Officer-in-Charge of homes

The general duties, functions and responsibilities of the Officer-in-Charge shall be as follows:

- (a) Providing homely atmosphere of love, affection, care, development and welfare of juveniles or children,
- (b) Planning, implementing and coordinating all institutional activities, programmes and operations;
- (c) Maintaining minimum standards in the home;
- (d) Monitoring of juveniles or children, as the case may be, training and treatment programmes and correctional activities;
- (e) Supervision over juveniles' or children's discipline and moral well-being;
- (f) Allocation of duties to personnel;
- (g) Attending to personnel welfare and staff discipline;
- (h) Preparation of budget and control over financial matters;
- (i) Supervision over office administration;

- (j) Monthly office inspection;
- (k) Daily inspections and round of institution;
- (l) Inspecting and tasting food prepared for juvenile or child;
- (m) Take prompt action to meet emergencies;
- (n) To take appropriate rehabilitation measures.

54. Duties of a Probation Officer

- (1) On receipt of information from the Officer-in-Charge, the Special Juvenile Police Unit under clause (b) of section 13 of the Act, the probation officer shall inquire into the antecedents and family history of the juvenile or child and such other material circumstances, as may be necessary and submit a social investigation report as early as possible, in Form VIII, to the Board.
- (2) Every probation officer shall carry out all directions given by the Board or the Committee or concerned authority and shall perform the following duties, namely:
 - (a) to make inquiries regarding the home and school conditions, conduct, character and health of juvenile or child under their supervision;
 - (b) to attend regularly the proceedings of the Board and submit reports;
 - (c) to maintain diary, case file and such register as may be specified from time to time;
 - (d) to visit regularly the residence of the juvenile or the child under their supervision and also places of employment or school attended by such juvenile or child and to submit fortnightly reports as prescribed in Form IX;
 - (e) to accompany juveniles or children where ever possible, from the office of the Board to observation home, special home, children's home or fit person, as the case may be;
 - (f) to bring before the Board or the Committee, immediately juveniles or children who have not been of good behaviour during the period of supervision;
 - (g) follow-up of juveniles or children after their release from the organizations and extending help and guidance to them;
 - (h) establishing linkages with voluntary workers and organizations to facilitate rehabilitation and social reintegration of juveniles or children and to ensure the necessary follow-up;

- (i) ensuring that the children's need of food and clothes are met as per the specified standard;
 - (j) to ensure the cleanliness of the premises and maintainance of physical infrastructure including provision of water and electricity.
- (3) The probation officer shall not employ a juvenile or child under their supervision for their own purposes or take any private service from them.

55. Duties of Case Workers/Child Welfare Officer: The general duties, functions and responsibilities of Case Worker or Child Welfare Officer shall be as follows:

- (a) Making social investigation of the juvenile or the child through personal interview and from the family, social agencies and other sources;
- (b) Clarifying problems of the juvenile or the child and dealing with their difficulties in institutional life;
- (c) Participating in the orientation, monitoring, education, vocational and rehabilitation programmes;
- (d) Establishing co-operation and understanding between the juvenile or the child and the Officer-in-Charge;
- (e) Assisting the juvenile or the child to develop contacts with family and also providing assistance to family members;
- (f) Participating in the pre-release programme and helping the juvenile or the child to establish contacts which can provide emotional and social support to juvenile or child after their release;
- (g) Ensuring that the children's need of food and cloth are met as per the specified standard;
- (h) Ensure the cleanliness of the premises and maintenance of physical infrastructure including provision of water and electricity.

56. Duties of House Father/House Mother

The general duties, functions and responsibilities of a house father, house mother and other care taker shall be as follows:

- (a) Handling juvenile or child with love and affection;
- (b) Taking proper care and welfare of juvenile or child;
- (c) Maintaining discipline among the juveniles or children;

- (d) Maintenance, sanitation and hygiene;
- (e) Implementing daily routine in an effective manner and ensuring children's involvement;
- (f) Looking after the security and safety arrangements of the home;
- (g) Escorting juveniles or children, whenever they go out of the home.

57. Training of Personnel

- (1) The State Government or the Officer-in-Charge shall provide for training of personnel of each category of staff, in keeping with their statutory responsibilities and specific job requirements.
- (2) The training programme shall include:
 - (a) orientation and training of the newly recruited staff,
 - (b) refresher training courses for every staff member at least once in every five years, and
 - (c) staff conferences, seminars, workshops, along with the various components or functionaries of the Juvenile Justice System and the State Government at various levels of the personnel organisation.

58. Advisory Boards

- (1) The Central Government and the State Government shall constitute advisory boards at various levels for a period of three years.
- (2) The Central advisory board shall be constituted through the Ministry of Social Justice and Empowerment.
- (3) The State Government shall constitute the State advisory board, district advisory board and the city advisory board.
- (4) All the boards shall hold at least two meetings in a year.
- (5) These advisory boards shall also inspect the various institutional or non-institutional services in their respective jurisdictions; and the recommendations made by them shall be acted upon by the Central Government, the State Government and the local authorities.
- (6) The Central Government through the Ministry of Social Justice and Empowerment shall set up the Central advisory board to be headed by the Minister concerned and shall consist of the Secretary of the Ministry aforesaid, representatives from State Governments, leading Non-Governmental Organisations, children's institutions and academic institutions as members.

- (7) A designated official of the Ministry of Social Justice and Empowerment shall function as the Member-secretary of the Central advisory board.
- (8) The State Government, through the Selection Committee constituted under sub-rule (2) of rule 24 of these rules, shall set up State, district and city level advisory boards, which shall consist of members of the competent authority, academic institutions, locally respectable and spirited citizens, representatives of Non-Governmental Organizations and the representative of local authority, who shall act as its secretary.
- (9) The inspection committee constituted under section 35 of the Act shall function as district or city advisory board in terms of sub-section (3) of section 62 of the Act.
- (10) The termination, resignation, or other vacancy caused in an advisory board and appointment of new members therein shall be done in the same manner as is done in case of the Committee.

59. Openness and Transparency

- (1) All Children's Homes shall be open to visitors with the permission of the Superintendent or the Project Manager, particularly the representatives of local self government, voluntary organizations, social workers, researchers, medicos, academicians, prominent personalities, media and any other person, as the Superintendent or the Project Manager considers appropriate keeping in view the security, welfare and the interest of the child.
- (2) The Superintendent of the home shall encourage active involvement of local community in improving the conditions in the homes, if the members of the community want to serve the institution or want to contribute through their expertise.
- (3) The Superintendent or the Project Manager shall maintain a visitors' book and the remarks of the visitors given therein shall be considered by the advisory inspecting authority.
- (4) While visiting an institution, the visitors will not say or do anything that undermines the authority of the Superintendent or the Project Manager or is in contravention of the Act or rules or impinges on the dignity of the child.
- (5) The visitors may be allowed to visit observation homes and special homes with the permission of the competent authority.

60. Juvenile Justice Fund

- (1) The State Government shall create a Fund at the State level under section 61 of the Act to be called the 'Juvenile Justice Fund' (hereinunder referred to as the

Fund) for the welfare and rehabilitation of the juvenile or child dealt with under the provisions of the Act.

- (2) In addition to donations, contributions or subscriptions coming under Sub-Section (2) of Section 61, the Central Government shall also make contribution to the Fund.
- (3) The Fund shall be applied:
 - (a) to implement programmes for the welfare and rehabilitation of juveniles or children;
 - (b) to pay grant-in-aid to non-governmental organizations;
 - (c) to meet the expenses of State advisory board and its purpose;
 - (d) to do all other things that are incidental and conducive to the above purposes.
- (4) The management and administration of the Fund shall be under the control of the State advisory board under sub-section (3) of section 61 of the Act.
- (5) The assets of the Fund shall include all such grants and contributions, recurring or non-recurring, from the Central Government and State Government or any other statutory or non-statutory bodies set up by the Central or State Government as well as the voluntary donations from any individual or organization.
- (6) All withdrawals shall be made by cheques or requisitions, as the case may be, signed by the secretary-cum-treasurer in the case of amounts not exceeding rupees one thousand and signed duly by the secretary-cum-treasurer and other member of the board of management to be nominated by the State advisory board.
- (7) The regular accounts shall be kept of all money and properties, and all incomes and expenditure of the Fund and shall be audited by a notified firm of Chartered Accountants, or any other recognized authorities as may be appointed by the Board.
- (8) The auditors shall also certify the expenditure from the Fund made by the secretary-cum-treasurer.
- (9) All contracts and other assurances shall be in the name of the board of management and signed on their behalf by the secretary-cum-treasurer and one member of the board of the management authorized by it for the purpose.
- (10) The board of management shall invest the proceeds of sale or other disposal of the property, as well as any money or property not immediately required to be used to serve the objective of the Fund, in any one or more of the modes

of investment for the time being authorized by law for the investment of trust moneys as the board of management may think proper.

- (11) The board of management may delegate to one or more of the members such of its powers, which in its opinion are merely a procedural arrangement.

61. Temporary application of model rules

It is hereby declared that until the new rules are framed by the State Government concerned under section 68 of the Act, these rules shall *mutatis mutandis* apply in that State.

62. Pending Cases

- (1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.
- (2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.
- (3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1), and it is hereby clarified that such benefits shall be made available not only to those accused who was juvenile or a child at the time of commission of an offence, but also to those who ceased to be a juvenile or a child during the pendency of any enquiry or trial.
- (4) While computing the period of detention or stay of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention or stay shall be counted as a part of the period of stay or detention contained in the final order of the competent authority.

63. Disposal of records/documents – The records or documents in respect of a juvenile or a child shall be kept in a safe place for a period of seven years and no longer and thereafter, be destroyed with the help of the Board or the Committee.

64. Repeal and Saving – The Juvenile Justice (_____) Rules, 20___, as in force within the State/UT of _____ shall stand repealed immediately on the publication of these rules:

Provided that any thing done or omitted to be done or order issued, shall, in so far as it is not inconsistent with the provisions of these rules, be construed to have been done or issued under the relevant provisions of these rules.

FORM I

(See sub-rule (7) of rule 22, sub-rule (2) of rule 27)

To

Probation Officer/Person in-charge Voluntary Organization/Social Worker/Case Worker

Whereas (1) a report/complaint under section _____ of the Juvenile Justice (Care and Protection of Children) Act, 2000 has been received from _____ in respect of (name of the juvenile/child) son/daughter of _____ residing at _____.

(2) _____ son/daughter of _____ residing at _____ has been produced before the Board/Committee under section _____ of the Juvenile Justice (Care and Protection of Children) Act, 2000.

You are hereby directed to enquire into the character and social antecedents of the said juvenile and submit your social investigation report on or before _____ or within such time allowed to you by the Board/Committee.

Dated this _____ day of _____ 20____

(Signature)

Principal Magistrate, Juvenile Justice Board/
Chairperson, Child Welfare Committee

SEAL

FORM II

(See sub-rule (8) of rule 22, sub-rule (2) of rule 34)

SUPERVISION ORDER

When the Juvenile is placed under the care of a parent, guardian or other fit person

Profile No. _____ of _____ 20 ____.

Whereas (name of the juvenile/child) has this day found to have committed an offence and has been placed under the care of (name) _____ (address) _____ on executing a bond by the said _____ and the court is satisfied that it is expedient to deal with the said juvenile or child by making an order placing him/her under supervision.

It is hereby ordered that the said juvenile be placed under the supervision of _____ probation officer/case worker, for a period of _____ subject to the following conditions:

1. that the juvenile/child along with the copies of the order and the bond executed by the said _____ shall be produced before the probation officer/case worker named therein _____.
2. that the juvenile/child shall be submitted to the supervision of the probation officer.
3. that the juvenile/child reside at _____ for a period of _____
4. that the juvenile/child shall not be allowed to quit the district jurisdiction of _____ without the permission of the probation officer/case worker.
5. that the juvenile/child shall not be allowed to associate with bad characters.
6. that the juvenile/child shall live honestly and peacefully; and will go to school regularly/endeavour to earn an honest livelihood.
7. that the juvenile/child shall attend the attendance centre regularly.
8. that the person under whose care the juvenile/child is placed shall arrange for the proper care, education and welfare of the juvenile/child.
9. that the preventive measures will be taken by the person under whose care the juvenile/child is placed to see that the child does not commit any offence punishable by any law in force in India.

10. that the juvenile/child shall be prevented from taking narcotic drugs of psychotropic substances or any other intoxicants.
11. that the directions given by the probation officer/case worker from time to time, for the due observance of the conditions mentioned above, shall be carried out.

Dated this _____ day of _____ 20 ____.

(Signature)

Principal Magistrate, Juvenile Justice Board/
Chairperson, Child Welfare Committee

- Additional conditions, if any, may be inserted by the Juvenile Justice Board/Child Welfare Committee.

FORM III

(See sub-rule (10) of rule 22, sub-rule (11) of rule 26)

Order of detention under Sub-Section _____ of Section _____, Sub-Section _____ of Section _____ and Sub-Section _____ of Section _____.

To

The Officer-in-Charge/Project Manager

Whereas on the _____ day of _____ 20 ____ (name of the juvenile/child) son/daughter of _____ aged _____ residing at _____ being found in Profile No. _____ to be juvenile in conflict with law/child in need of care and protection under section _____ is ordered by me _____ Principal magistrate, Juvenile Justice Board / Chairperson Child Welfare Committee, under section _____ of Juvenile Justice Act, 2000 to be kept in the Special Home/Children Home/Shelter Home _____ for a period of _____.

This is to authorise and require you to receive the said juvenile/child into your charge, and to keep him/her in the Special Home/Children Home/Shelter Home _____ for the aforesaid order to be there carried into execution according to law.

Given under my hand and the seal of Juvenile Justice Board/Child Welfare Committee.

This _____ day of _____ 20____.

(Signature)

Principal Magistrate, Juvenile Justice Board/
Chairperson, Child Welfare Committee

Encl: Copy of the judgement, if any, of orders, particulars of home and previous record.

Strike which is not required.

Previous history under the Juvenile Justice (Care and Protection of Children) Act, 2000

Human Rights Manual for District Magistrate

FORM IV

(See sub-rule (9) of rule 22, sub-rule (10) of rule 26)

Bond to be executed by a Parent/Guardian/Relative or fit person in whose care a child is placed under Clause (e), Sub-Section (1) of Section 15/Sub-Section (3) of Section 39

Whereas I _____ being the parent, guardian, relative or fit person under whose care (name of the juvenile/child) has been ordered to be placed by the Juvenile Justice board/Child Welfare Committee _____ have been directed by the said Juvenile Justice Board/Child Welfare Committee to execute a bond in the sum of Rs. _____ (Rupees _____) with one surety*/two sureties. I hereby bind myself on the said _____ being placed under my care. I shall have the said _____ properly taken care of and I do further bind myself to be responsible for the good behaviour of the said _____ and to observe the following conditions for a period of _____ years commencing from _____.

1. that I shall not change my place of residence without giving previous intimation in writing to the Juvenile Justice Board/Child Welfare Committee through the Probation Officer/Child Welfare Officer.
2. that I shall not remove the said _____ from the limits of the jurisdiction of the Juvenile Justice board/Child Welfare Committee without previously obtaining the written permission of the Board/Committee.
3. that I shall send the said _____ daily to school/to such daily work as is approved by the Board/Committee unless prevented from so doing by circumstances beyond my control;
4. that I shall send the said _____ to an Attendance Centre regularly unless prevented from so doing by circumstances beyond my control;
5. that I shall report immediately to the Board/Committee whenever so required by it;
6. that I shall produce the said _____ misbehaves or absconds from my care;
7. that I shall render all necessary assistance to the Probation Officer/Case Worker to enable him to carry out the duties of supervision;
8. in the event of my making default herein, I bind myself to forfeit to Government the sum of Rs. _____ (Rupees _____).

Dated this _____ day of _____ 20____.

Before me signed

Signature of person executing the bond.

Additional conditions, if any, by the Juvenile justice Board/Child Welfare Committee may be entered numbering them properly;

(Where a bond with sureties is to be executed, add)

I/We _____ of _____ (place of residence with full particulars) _____ hereby declare myself surety/ourselves sureties for the aforesaid _____ (name of the person executing the bond) _____ do and perform and in case of his making fault therein; I/We hereby bind myself/ourselves jointly and severally to forfeit to Government the sum of Rs. _____ dated this the _____ day of _____ 20 ____ in the presence of

(Signed)

FORM V

(See sub-rule (4) of rule 46)

Bond to be signed by juvenile/child who has been ordered under Clause _____ of Sub-Section _____ of Section _____ of the Act.

Whereas, I _____ inhabitant of _____ (give full particulars such as house number, road, village/town, tehsil, district, state _____) have been ordered to be sent back to my native place by the Juvenile Justice Board/Child Welfare Committee _____ under section _____ of the Juvenile Justice (Care and Protection of Children) Act, 2000, on my entering into a bond under sub-rule _____ of rule _____ of the Juvenile Justice (Care and Protection of Children) Rules, 2001, to observe the conditions mentioned herein below. Now, therefore, I do solemnly promise to abide by these conditions during the period _____.

I hereby bind myself as follows:

1. That during the period _____ I shall not ordinarily leave the village/town/district to which I am sent and shall not ordinarily return to _____ or go anywhere also beyond the said district without the prior permission of the Board/Committee;
2. That during the said period I shall attend work/school in the village/town or in the said district to which I am sent;
3. That in case of my attending work/school at any other place in the said district I shall keep the Board/Committee informed of my ordinary place of residence.

FORM VI

(See sub-rule (4) of rule 46)

I, _____ resident of _____ give full particulars such as house no./ road, village/town, district, state _____ do hereby declare that I am willing to take charge of _____ aged _____ under the orders of the Juvenile Justice board/Child Welfare Committee _____ subject to the following terms and conditions:

(I) If his/her conduct is unsatisfactory I shall at once inform the 'competent authority'.

(II) I shall do my best for the welfare and education of the said _____ as long as he/she remains in my charge and shall make proper provision for his/her maintenance.

(III) In the event of his/her illness, he/she shall have proper medical attention in the nearest hospital.

(IV) I undertake to produce him/her before the 'competent authority' when so required.

Dated this _____ day of _____ 20____.

Signature

Signature and address of witness(es):

FORM VII

(See sub-rule (5) of rule 18)

I, _____ (name and designation of the releasing authority) _____ State Government/Union Territory Administration, do by this order permit _____ son/daughter of _____ cast _____ residence _____ number _____ who was ordered to be detained in a observation home, special home, children home, shelter home, after care home by the Juvenile Justice board/Child Welfare Committee _____ under section ____ of the Juvenile Justice (Care and Protection of Children) Act, 2000, for a term of _____ on the _____ day of _____ 2 _____ and who is now in the _____ home, at _____ to be discharged from the said _____ on condition that he/she be placed under the supervision and the authority of _____ during the remaining position of the aforesaid period of stay.

This order is granted subject to the conditions endorsed hereon, upon the breach of any which it shall be liable to be revoked.

Date:
Place:

Signature and Designation of
Releasing Authority

Conditions:

1. The released person shall proceed to _____ and live under the supervision and authority of _____ until the expiry of the period of his/her detention unless the remission is sooner cancelled.
2. He/she shall not, without the consent of the _____ remove himself/herself from that place or any other place, which may be named by the said _____
3. He/She shall obey such instructions as he/she may receive from the said _____ with regard to punctual and regular attendance at employment or otherwise.
4. He/She shall abstain from committing any offense and shall lead a sober and industrious life to the satisfaction of _____.
5. He/She shall abstain from committing any offense and shall lead a sober and industrious life to the satisfaction of _____.
6. In the event of his/her committing a breach of any of the above conditions the remission of the period of detention hereby granted shall be liable to be cancelled and on such cancellation he/she shall be dealt under sub section (3) of section 59 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

I hereby acknowledge that I am aware of the above conditions which have been read over/explained to me and that I accept the same.

(Signature of mark of the released person)

Certified that the conditions specified in the above order have been read over/explained to (Name) _____ and that he/she has accepted them as the conditions upon which the remission of the period of detention has been granted to him/her and that he/she has been realized accordingly on the _____

(Signature and Designation of the certifying authority)

(i.e. Officer-in-Charge of the Institution)

FORM VIII
(See sub-rule (1) of rule 54)

Social Investigation Report

Sl. No. _____

Submitted to the Juvenile Justice Board/Child Welfare Committee
_____ (address).

Profile No.

Probation Department
Profile No.
Under Section

Title of Profile
Police Station

Nature of offence charge
(In the case of delinquent juvenile)

Name	Religion
Father's Name	Caste
Permanent Address	Year of birth
Last address before arrest	Age
	Sex

Previous institutional history, if any

FAMILY

Members of Family	Name	Age	Health	Occupation or School	Wages, if any
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Father

Step Father

Mother

Step Mother

Sub-mother

Siblings

If married, relevant particulars

Other near relatives or agencies interested

Attitude towards religion, normal and ethical code of the home, etc.

Social and economic status

Delinquency record of members of family

Present living conditions

Relationship between parents/ parent and children especially with the child under investigation

Other facts of importance, if any

JUVENILE'S/CHILD'S HISTORY

Mental condition present and past

Physical condition present and past

Habits, interests
(moral, recreational, etc.)

Outstanding characteristics and
personality traits

Companions and their influence

Truancy from home, if any

School (attitude towards school,
teachers, classmates and vice versa)

Work record (jobs held, reasons for leaving,
vocational interests, attitude towards job or employers)

Neighbourhood and neighbours' report

Parent attitude towards discipline
in the home and child's reaction

Any other remarks

RESULT OF INQUIRY

Emotional factors
Physical condition
Intelligence
Social and economic factors
Religious factors
Suggested causes of the problems
Analysis of the case giving an idea
as to how the delinquency developed

Recommendation regarding treatment and its
Plan by Probation Officer/Child Welfare Officer

Signature of the Probation Officer/Case Worker

FORM IX
(See sub-rule (d) of rule (2) of rule 54)
Fortnightly Progress Report of Probationer

Part I

Name of the Probation Officer/Case Worker
For the month of _____
Register No. _____
Competent Authority _____
Profile No. _____
Name of the Child _____
Date of Supervision Order _____
Address of the Child _____
Period of Supervision _____

Part II

Places of interview	Dates
_____	_____
_____	_____
_____	_____

1. Where the child is residing ?
2. Progress made in any educational/training course
3. What work he/she is doing and his/her monthly average earning, if employed.
4. Savings kept in the Post Office
5. Savings Bank Account in his/her name
6. Remarks on his/her general conduct and progress
7. Whether properly cared for?

Part III

8. Any proceedings before the competent authority of or
 - a) Variation of conditions of bond
 - b) Change of residence
 - c) Other matters
9. Period of supervision completed on _____
10. Result of supervision with remarks (if any)
11. Name and addresses of the parent or guardian or fit person under whose care the juvenile is to live after the supervision is over.

Date of report _____

Signature of the Probation Officer/Case Worker _____

DHARMENDRA DEO, Jt. Secy.



MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, 20th January, 2006/Pausa 30, 1927 (Saka)

The following Act of Parliament received the assent of the President on the 20th January, 2006 and is hereby published for general information:-

THE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS ACT, 2005
No. 4 of 2006

(20th January, 2006)

An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

Whereas India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children;

And Whereas India has also acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1992;

And Whereas CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's rights enumerated in the Convention;

And Whereas in order to ensure protection of rights of children one of the recent initiatives that the government has taken for Children is the adoption of National Charter for Children, 2003;

4. The Central Government shall, by notification, appoint the Chairperson and other Members:

Appointment of Chairperson and Members.

Provided that the Chairperson shall be appointed on the recommendation of a three member Selection Committee constituted by the Central Government under the Chairmanship of the Minister in-charge of the Ministry of Human Resource Development.

5. (1) The Chairperson and every Member shall hold office as such for a term of three years from the date on which he assumes office:

Term of office and conditions of service of Chairperson and Members.

Provided that no Chairperson or a Member shall hold the office for more than two terms:

Provided further that no Chairperson or any other Member shall hold office as such after he has attained-

(a) in the case of the Chairperson, the age of sixty-five years; and

(b) in the case of a Member, the age of sixty years.

(2) The Chairperson or a Member may, by writing under his hand addressed to the Central Government, resign his office at any time.

6. The salary and allowances payable to, and other terms and conditions of service of, the Chairperson and Members, shall be such as may be prescribed by the Central Government:

Salary and allowances of Chairperson and Members.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member, as the case may be, shall be varied to his disadvantage after his appointment.

7. (1) Subject to the provisions of sub-section (2), the Chairperson may be removed from his office by an order of the Central government on the ground of proved misbehaviour or incapacity.

Removal from office.

(2) Notwithstanding anything contained in sub-section (1), The Central Government may by order remove from office the Chairperson or any other Member, if the Chairperson or, as the case may be, such other Member-

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) refuses to act or becomes incapable of acting; or

(d) is of unsound mind and stands so declared by a competent court; or

	<p>(e) has so abused his office as to render his continuance in office detrimental to the public interest; or</p> <p>(f) is convicted and sentenced to imprisonment for an offence, which in the opinion of the Central Government involves moral turpitude; or</p> <p>(g) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.</p> <p>(3) No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.</p>
Vacation of office by Chairperson or Member.	<p>8. (1) If the Chairperson or, as the case may be, a Member-</p> <p>(a) becomes subject to any of the disqualifications mentioned in section 7; or</p> <p>(d) tenders his resignation under sub-section (2) of section 5,</p> <p>his seat shall thereupon become vacant.</p> <p>(2) If a casual vacancy occurs in the office of the Chairperson or a Member, whether by reason of his death, resignation or otherwise, such vacancy shall be filled within a period of ninety days by making a fresh appointment in accordance with the provisions of section 4 and the person so appointed shall hold office for the remainder of the term of office for which the Chairperson, or a Member, as the case may be, in whose place he is so appointed would have held that office.</p>
Vacancies, etc., not to invalidate proceedings of Commission.	<p>9. No act or proceeding of the Commission shall be invalid merely by reason of-</p> <p>(a) any vacancy in, or any defect in the constitution of, the Commission; or</p> <p>(b) any defect in the appointment of a person as the Chairperson or a Member; or</p> <p>(c) any irregularity in the procedure of the Commission not affecting the merits of the case.</p>
Procedure for transaction of business.	<p>10. (1) The Commission shall meet regularly at its office at such time as the Chairperson thinks fit, but three months shall not intervene between its last and the next meetings.</p> <p>(2) All decisions at a meeting shall be taken by majority:</p> <p>Provided that in the case of equality of votes, the Chairperson, or in his absence the person presiding, shall have and exercise as second or casting vote.</p>

(3) If for any reason, the Chairperson, is unable to attend the meeting of the Commission, any Member chosen by the Members present from amongst themselves at the meeting, shall preside.

(4) The commission shall observe such rules of procedure in the transaction of its business at a meeting, including the quorum at such meeting, as may be prescribed by the Central Government.

(5) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorised by member-Secretary in this behalf.

11. (1) The Central Government shall, by notification, appoint an officer not below the rank of the Joint Secretary or the Additional Secretary to the Government of India as a Member-Secretary of the Commission and shall make available to the Commission such other officers and employees as may be necessary for the efficient performance of its functions.

Member Secretary, officers and other employees of Commission

(2) The Member-Secretary shall be responsible for the proper administration of the affairs of the Commission and its day-to-day management and shall exercise and discharge such other powers and perform such other duties as may be prescribed by the Central Government.

(3) The salary and allowances payable to, and the other terms and conditions of service of the Member-Secretary, other officers and employees, appointed for the purpose of the Commission shall be such as may be prescribed by the Central Government.

12. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Member-Secretary, other officers and employees referred to in section 11, shall be paid out of the grants referred to in sub-section (1) of section 27.

Salaries and allowances to be paid out of grants.

CHAPTER III FUNCTIONS AND POWERS OF THE COMMISSION

13. (1) The Commission shall perform all or any of the following functions, namely:

Functions of Commission.

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases;

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;

(e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;

(g) undertake and promote research in the field of child rights;

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

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(j) inquire into complaints and take *suo motu* notice of matters relating to-

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children,

or take up the issues arising out of such matters with appropriate authorities; and

(k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

14. (1) The Commission shall, while inquiring into any matter referred to in clause (j) of sub-section (1) of section 13 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and, in particular, in respect of the following matters, namely:

Powers relating to inquiries.

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court of office; and

(e) issuing commissions for the examination of witnesses or documents.

(2) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 364 of the Code of Criminal Procedure, 1973.

15. The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:

Steps after inquiry.

(i) where the inquiry discloses the commission of violation of child rights of a serious nature or contravention of provisions of any law for the time being in force, 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;

(ii) approach the Supreme Court or the High Court concerned for such directions, orders or writs as the court may deem necessary;

(iii) recommend to the concerned Government or authority for the grant of such interim relief to the victim or the members of his family as the Commission may consider necessary.

16. (1) The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

Annual and special reports of Commission.

(2) The Central Government and the State Government concerned, as the case may be, shall cause the annual and special reports of the Commission to be laid before each house of Parliament or the State Legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any, within a period of one year from the date of receipt of such report.

(3) The annual report shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.

CHAPTER IV STATE COMMISSIONS FOR PROTECTION OF CHILD RIGHTS

Constitution of State Commission for Protection of Child Rights. 17. (1) A State Government may constitute a body to be known as the (name of the State) Commission for Protection of Child Rights to exercise the powers conferred upon, and to perform the functions assigned to a State Commission under this Chapter.

(2) The State Commission shall consist of the following Members, namely:

(a) a Chairperson who is a person of eminence and has done outstanding work for promoting the welfare of children; and

(b) six Members, out of which at least two shall be women, from the following fields, to be appointed by the State Government from amongst persons of eminence, ability, integrity, standing and experience in-

(i) education;

(ii) child health, care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children or children with disabilities;

(iv) elimination of child labour or children in distress;

(v) child psychology or sociology; and

(vi) laws relating to children.

(3) The headquarter of the State Commission shall be at such place as the State Government may, by notification, specify.

Appointment of Chairperson and other Members. 18. The State Government shall, by notification, appoint the chairperson and other Members:

Provided that the Chairperson shall be appointed on the recommendation of a three member Selection Committee constituted by the State Government under the Chairmanship of the minister in-charge of the Department dealing with children.

19. (1) The Chairperson and every Member shall hold office as such for a term of three years from the date on which he assumes office:

Term of office and conditions of service of Chairperson and Members.

Provided that no Chairperson or a Member shall hold the office for more than two terms:

Provided further that no Chairperson or any other Member shall hold office as such after he has attained

- (a) in the case of Chairperson, the age of sixty-five years; and
- (b) in the case of a Member, the age of sixty years.

(2) The Chairperson or a Member may, by writing under his hand addressed to the State Government resign his office at any time.

20. The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

Salary and allowances of Chairperson and Members.

The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the State Government:

21. (1) The State Government shall, by notification, appoint an officer not below the rank of the Secretary to the State Government as the Secretary of the State Commission and shall make available to the State Commission such other officers and employees as may be necessary for the efficient performance of its functions.

Secretary, officers and other employees of the State Commission.

(2) The Secretary shall be responsible for the proper administration of the affairs of the State Commission and its day-to-day management and shall exercise and discharge such other powers and perform such other duties as may be prescribed by the State Government.

(3) The salary and allowances payable to, and the other terms and conditions of service of the Secretary, other officers and employees, appointed for the purpose of the State Commission shall be such as may be prescribed by the State Government.

22. The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the Secretary, other officers and employees referred to in section 21, shall be paid out of the grants referred to in sub-section (1) or section 28.

Salaries and allowances to be paid out of grants.

Annual and special reports of State Commission.

23. (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report.

(2) The State Government shall cause all the reports referred to in sub-section (1) to be laid before each House of State Legislature, where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum explaining the reasons for the non-acceptance, if any, of any of such recommendations.

(3) the annual report shall be prepared in such form, manner and contain such details as may be prescribed by the State Government.

Application of certain provisions relating to National Commission for Protection of Child Rights to State Commissions.

24. The provisions of sections 7, 8, 9, 10, sub-section (1) of section 13 and sections 14 and 15 shall apply to a State Commission and shall have effect, subject to the following modifications, namely:

(a) references to “Commission” shall be construed as references to “State Commission”

(b) reference to “Central Government” shall be construed as references to “State Government”; and

(c) reference to “Member-Secretary” shall be construed as references to “Secretary”.

CHAPTER V CHILDREN’S COURTS

Children’s Courts.

25. For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children’s Court to try the said offences:

Provided that nothing in this section shall apply if-

(a) a Court of Session is already specified as a special court;

or

(b) a special court is already constituted,

for such offences under any other law for the time being in force.

Special Public Prosecutor.

26. For every Children’s Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER VI
FINANCE, ACCOUNTS AND AUDIT

27. (1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government.

(2) The Commission may spend such sums of money as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

28. (1) The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

Grants by State
Government.

(2) The State Commission may spend such sums of money as it thinks fit for performing the functions under Chapter III of this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

29. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and
audit of
Commission.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Commission and the Central Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament.

Accounts and
audit of State
Commission.

30. (1) The State Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.

(4) The accounts of the State Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

CHAPTER VII MISCELLANEOUS

Protection of
action taken in
good faith.

31. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Commission, the State Commission, or any Member thereof or any person acting under the direction either of the Central Government, State Government, Commission or the State Commission, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder or in respect of the publication by or under the authority of the Central Government, State Government, Commission, or the State Commission of any report or paper.

Chairperson,
Members and
other officers
to be public
servant.

32. Every member of the Commission, State Commission and every officer appointed in the Commission or the State Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Directions by
Central
Government.

33. (1) In the discharge of its functions under this Act, the Commission shall be guided by such directions on questions of policy

relating to national purposes, the decision of the Central Government thereon shall be final.

34. The Commission shall furnish to the Central Government such returns or other information with respect to its activities as the Central Government may, from time to time, require.

Returns or information.

35. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) terms and conditions of service of the Chairperson and Members of the Commission and their salaries and allowances under section 6;

(b) the procedure to be followed by the Commission in the transaction of its business at a meeting under sub-section (4) of section 10;

(c) the powers and duties which may be exercised and performed by the Member-Secretary of the Commission under sub-section (2) of section 11;

(d) the salary and allowances and other terms and conditions of service of officers and other employees of the Commission under sub-section (3) of section 11; and

(e) form of the statement of accounts and other records to be prepared by the Commission under sub-section (1) of section 29.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

36. (1) The State Government may, by notification, make rules to carry out the provisions of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) terms and conditions of service of the Chairperson and Members of the State Commission and their salaries and allowances under section 20;

(b) the procedure to be followed by the State Commission in the transaction of its business at a meeting under sub-section (4) of section 10 read with section 24;

(c) the powers and duties which may be exercised and performed by the Secretary of the State Commission under sub-section (2) of section 21;

(d) the salary and allowances and other terms and conditions of service of officers and other employees of the State Commission under sub-section (3) of section 21; and

(e) form of the statement of accounts and other records to be prepared by the State Commission under sub-section (1) of section 30.

(3) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

Power to
remove
difficulties.

37. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

T.K. VISWANATHAN,

Secy, to the Govt. of India.



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