

CHRI
2006

HUMAN RIGHTS COMMISSIONS

A Citizen's Handbook



COMMONWEALTH HUMAN RIGHTS INITIATIVE

Revised Edition 2006

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations* allows for a national presence and an international network. These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy makers, highlight issues, and act in concert to promote human rights.

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Human Rights Commissions : A Citizen's Handbook, IInd Edition, June 2006

ISBN: 81-88205-31-1

Material from this publication may be used, duly acknowledging the source.

Layout/Print by: Matrix, New Delhi



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Human Rights Commissions: A Citizen's Handbook

“The destiny of human rights is in the hands of all our citizens in all our communities”.

— Eleanor Roosevelt

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Justice A.S. Anand
Chairperson
(Former Chief Justice of India)



Foreword*

Human rights are relevant to all of humanity in every sphere of life. Their protection and promotion is guaranteed by the Constitution and by various international treaties and covenants agreed to and ratified by India. The National Human Rights Commission and the State Human Rights Commissions share a common purpose in protecting the legal and political foundations of human rights and promoting them as core values in public and private spheres.

Many times, ordinary citizens find themselves at the receiving end of State action or inaction— not knowing which forum, if any, they can take their complaints to or what remedies are available to them when their human rights are violated. Human Rights Commissions have been set up under the Protection of Human Rights Act, 1993 for “better protection of Human Rights” so as to assure citizens that they live in a just and humane society. Their primary aim is to restore the faith of victims of human rights abuses in the Rule of Law. The Commissions do so by taking steps to see that such violations do not go unchecked and those responsible for human rights abuses are made to account for their actions or inaction.

This handbook, prepared by the Commonwealth Human Rights Initiative [CHRI] is designed to inform citizens about the existence human rights commissions; the type of complaints they take up; the procedure they follow; and the remedies they can provide. The information contained in this handbook also seeks to enable citizens to effectively make use of the Human Rights Commissions in the event of their own human rights or the rights of their loved ones being violated. Equally the handbook is intended to be a guide to NGOs and civil society activists, informing them about the role and functions of Human Rights Commissions, so that they in turn can assist the public, especially those who belong to vulnerable sections of society in getting their complaints filed before the Commissions.

I am sure that the efforts made by the Commonwealth Human Rights Initiative [CHRI] in the production of this handbook will go a long way in promoting human rights awareness amongst all sections of society.

New Delhi-110001
Dated: 21.10.2004


(A.S. Anand)

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* To the first edition published in 2004.

CHRI would like to thank the National Human Rights Commission for its support in bringing out this handbook.

The handbook and the accompanying research, advocacy and dissemination have been made possible with the financial support of the Ford Foundation.

1. Human Rights Commissions An Overview

The realisation of human rights lies at the heart of democracy, development and good governance. More and more nations as they seek to make human rights a reality for even their poorest citizens have established human rights commissions or similar institutions to ensure that these rights are protected, promoted and not violated by the State.

In 1993, India created its first human rights commission, under the *Protection of Human Rights Act* - the National Human Rights Commission [NHRC]. Fifteen states¹ have also set up their own human rights commissions to deal with violations from within their states. The National Commission is responsible for seeing that everyone, whoever they are, wherever they are living in the country and whatever they are doing, are able to enjoy and exercise their human rights. State commissions play the same role in their own states. The Chairperson and members of a commission have the responsibility to ensure that those who violate human rights are made accountable for their actions and do not escape justice. Apart from pursuing complaints, human rights commissions are also expected to actively contribute towards creating a culture where there is respect and understanding of human rights.

The Chairperson of the National Human Rights Commission is always a former Chief Justice of India and the Chairperson of a state commission must be a former Chief Justice of the High Court. Up to four other persons can be appointed as members and must include at least two former judges and two others who have knowledge and experience of human rights issues. Members or commissioners are appointed by the President in case of the National Commission and Governor of the state in case of state commissions. A committee that includes leaders of both the ruling and opposition parties in Parliament or the State Legislature recommends their appointment to the President or the Governor, as

¹ In March 2006: Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.

the case may be. Appointment is for a period of five years or till the age of 70, whichever is earlier. In addition to regular commissioners, the chairpersons of the National Commission for Minorities, National Commission for Scheduled Castes and Scheduled Tribes and National Commission for Women are deemed members of the National Human Rights Commission, which means they can help the Commission in exercising all its functions except the conduct of inquiries.

Though human rights commissions are required to have five commissioners, experience has shown that most of the commissions are functioning with less than the prescribed strength.

To enable commissions to function independently, the Chairperson of the National Commission has the same status and perks as the Chief Justice of the Supreme Court. The other members of the National Commission have a status similar to that of Supreme Court judges. The Chairperson of a state commission has the same status as the Chief Justice of the High Court and members have a status similar to that of High Court judges. This means that they can only be removed after a long and cumbersome procedure.

The commissions do not however have an independent cadre of their own. They mostly draw their staff from government departments and from amongst people with experience of administration and the courts. The chief administrative officer or the Secretary General of the National Commission is an IAS [Indian Administrative Service] officer of the rank of Secretary to the Government of India. In case of state commissions, the chief administrative officer is also expected to be an IAS officer but of the rank of Secretary to the State Government.

Because independent investigation is central to the effectiveness of a human rights commission, very senior police officers are expected to head the investigation wing. They must be of the rank of Director General of Police in the case of the National Commission and Inspector General of Police at the very least in case of state commissions. Investigating officers are usually on deputation from the police department, intelligence bureau or central para-military forces.

From time to time, a commission may appoint experts as special rapporteurs to look into specific violations of human rights or even take the help of outside consultants.

Special Rapporteurs

Special Rapporteurs are experts who assist a human rights commission with its more demanding and sensitive responsibilities. They take up special human rights issues or urgent matters, carry out investigations and monitor compliance with Commission recommendations. The National Human Rights Commission has appointed special rapporteurs for protection of people in custody, child labour, bonded labour, communal riots, food scarcity and for disabled persons.

Each year, the government allocates a budget for human rights commissions, which is approved by Parliament or state legislatures. Human rights commissions are also required by law to table their annual reports in the Parliament or the State Legislature.

2. What are Human Rights?

This section discusses:

- human rights
- the universal declaration of human rights
- international covenants
- fundamental rights
- human rights violation

What are human rights?

Human rights are those basic entitlements and freedoms that make our lives satisfying and meaningful. To be free from fear, free from deprivation and to have the opportunity to achieve all that we are capable of is a fundamental human aspiration. That is why human rights are sometimes called “natural rights”.

The international community, including India, have all agreed on what these rights are and what they mean. Human rights include, for example, the right to life, which includes the right to live with dignity, the right to equal treatment and not to be discriminated against, freedom from torture, freedom from forced labour, freedom from wrongful arrest, the right to a fair trial, freedom of information, thought, conscience, religion, the right to privacy, right to free speech and expression, freedom to associate with others and to take part in government, public and community affairs, right to food, housing, health, a clean environment, education, work, equal pay for equal work, strike and the right to preserve one’s culture and way of life.

What are the special qualities of human rights?

They are recognised as birthrights, which all human beings are born with simply because they are human. Because no one gives these rights and no one can legitimately take them away, human rights are said to be **‘inalienable’**.

Human rights are also recognised as being **‘universal’**, which means they belong to and are enforceable by everyone - no matter what their race, religion, caste, sex, social or economic status, disability, age or

place of birth is. They are also called universal because their core ideas are common to all major religions, faiths and moral codes and cross national and cultural boundaries. Another aspect of their being universal is that they belong not only to individuals but also to communities. For example, a community of tribal people has a right to speak its own language and preserve its way of life, provided these don't themselves violate the human rights of others, whether individuals or groups.

Though they are called by various names and sometimes separated into different categories – like civil and political rights, economic, social and cultural rights, every right depends on another for its fulfilment. No right can really be put into practice without other rights. This is why human rights are said to be '**interrelated and indivisible**'. For example, the right to education is classified as a social right but it would be impossible for all people to get that right if there was no right to equality or if there was no court to uphold that right. Without this, only some people would get to school while others could be left out.

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- Civil rights guarantee liberty and equality to all.
 - Political rights guarantee people the right to elect their representatives and participate in governance at the national, state and local or community level.
 - Economic, social and cultural rights guarantee basic conditions for a good and meaningful life. Economic and social rights focus on securing healthy, fair and just conditions at work and in the community, while cultural rights allow communities to safeguard and protect their way of life.
-

Why are human rights important?

They are important because they recognise that each person is special with their own individual talents and abilities and that no one is inferior or superior to another. At the heart of the idea of human rights is the notion that all people are born free and equal. Everyone is **entitled to live with dignity** and no one, neither the State nor the community, nor the family, nor society has any right to discriminate or treat anyone unfairly or unjustly. The international system of human rights and our own Indian Constitution insist that it is the duty of the State to promote respect for all the human rights of all people equally.

What is the Universal Declaration of Human Rights?

The Universal Declaration of Human Rights is a declaration adopted in 1948 by members of the United Nations, including India. It is a statement of principles to base a new world order so that all the death and destruction that took place in the two world wars would never happen again.

The Universal Declaration states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. It therefore casts a duty on each State to protect everyone’s human rights and lays down principles or standards for all nations to follow.

With the passage of time, the ideas in the Universal Declaration are constantly being refined and included in separate documents which guarantee civil and political rights; economic social and cultural rights; women’s rights; the rights of children; rights against torture and more.

There is now wide agreement across the international community about the standards in these documents and most countries have formally signed on to them. These agreements between many countries are called ‘covenants’. Once a country has signed a covenant it becomes the duty of that country to bring its laws in line with the rights guaranteed by the covenant.

Why International Covenants are Important for All

An “**international treaty or covenant**” is an agreement, which has been formally ratified (or approved) by all or many countries. Once a country ratifies a treaty, it becomes binding. This means that the government must ensure that it abides by and fulfils all the requirements in the treaty; that national or domestic laws are not of a lower standard than what the covenant requires; that laws and practices in the country do not conflict with the treaty principles. It also means that the courts must interpret domestic laws in tune with treaty provisions. Every country that has ratified a treaty or covenant must, from time to time, report its progress to the international community through United Nations mechanisms.

Has India signed any of these Covenants?

India has signed and ratified the two main international covenants on human rights - the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** and the **International Covenant on Civil and Political Rights (ICCPR)** which together with the Universal Declaration of Human Rights form the **International Bill of Rights**.

Other major international covenants that India has signed and ratified include:

- International Convention on the Elimination of all forms of Racial Discrimination [ICERD]
- Convention against the Elimination of all Forms of Discrimination against Women [CEDAW]
- Convention on Rights of the Child [CRC]

In 1997, India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) but it has not yet ratified it. This does not mean that the police or security forces or anyone are permitted to beat, torture or humiliate people. Causing of mental or physical harm violates human rights guaranteed by the Constitution and the International Bill of Rights. It is a crime under the Indian Penal Code and anyone indulging in it, is a criminal in the eyes of the law.

Ratifying international treaties establishes a country's credentials as a responsible member of the international community. It also demonstrates the government's commitment to protecting the human rights of its citizens.

Are international human rights principles recognised in India?

The Protection of Human Rights Act, 1993 defines human rights as, "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants² and enforceable by the courts in India".

Yes, internationally recognised human rights principles and standards have a very special place in India. They are protected by the Constitution, which is the highest law of our land. The rights recognised in the Universal Declaration are mirrored in the Indian Constitution. Some rights are covered in the chapter on Fundamental Rights and some are covered under Directive Principles of State Policy.³ Take for example, Article 25 of the Universal Declaration which says that everyone has

² For the purpose of the Protection of Human Rights Act, 1993, "international covenants" are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

³ Annexure I and II are illustrative of the relationship between the Universal Declaration and Fundamental Rights; and the relationship between the Universal Declaration and Directive Principles of State Policy.

the right to a standard of living that is adequate for the health and well being of themselves and their family. This right has been included as a Directive Principle under Article 47 of the Constitution of India, which says that the State shall regard raising of the level of public health, nutrition and standard of living as among its primary duties.

Apart from the Constitution, some human rights are also specifically protected under different laws such as the Protection of Civil Rights Act, 1955; Dowry Prohibition Act, 1961; Bonded Labour System [Abolition] Act, 1976; Child Labour [Prohibition and Regulation Act], 1986; Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989 and more.

The special place of human rights in our Constitution

When the Constitution was written, human rights were included in Part III and Part IV which are the chapters on Fundamental Rights and Directive Principles of State Policy. Together they are said to form the 'conscience of the constitution'. Constitution makers felt that civil and political freedoms must combine with social and economic justice to create a just social order for all. The Directive Principles are meant to guide all policies and law making; indicate the directions of change; and the goals toward which the State must strive. The Directive Principles are not less important than Fundamental Rights but unlike a fundamental right, which allows a person to take the State to court if it is violated, individuals cannot take the State to court if a principle laid down in the Directive Principles is not followed. Nevertheless Directive Principles are not lifeless ideals but have provided the basis from which new rights such as the right to education have evolved and the right to food is being developed.

What are Fundamental Rights?

They are the human rights, assured and protected by Part III of the Indian Constitution. They are so important that the Constitution forbids the Parliament or state legislatures from making any law or the central or state governments from passing any order or doing anything that interferes with their enjoyment.

Fundamental Rights are meant to guard each person from intrusions upon their dignity, security, equality and freedom. Apart from being safeguards designed to prevent violations of human rights by the State or its agents, they also make the State liable for neglecting to protect individuals from rights violations by private persons.

The following rights are guaranteed as Fundamental Rights:

- **Right to Equality** assures everyone equal treatment and equal protection by the State. It means that no citizen can be discriminated against or denied equality of opportunity by the State. For this, the State can make special provisions for vulnerable and marginalised sections of society. It also means that the State will ensure that no one is treated as an untouchable or denied access to public places such as shops, hotels, wells, bathing ghats, roads etc. on grounds of religion, caste, sex and place of birth.
- **Right to Freedom** gives citizens the right to speak freely, write freely, receive information freely; travel to and reside anywhere in the country; choose a business or profession of their choice; form associations or unions; carry out peaceful demonstrations or processions; strike and even peacefully oppose unjust policies of the government.
- **Right to Life and Personal Liberty** assures every individual a life of dignity and physical security. It guarantees justice to all and the right not to be deprived of freedom except by due process of law and through a fair trial. The Right to Life also casts a duty on the State to see that all inhabitants of the country have access to the basic requirements of a good and decent life such as an education, means of livelihood, a clean and healthy environment and so on.
- **Right against Exploitation** protects vulnerable and marginalised people from being trafficked or made to do forced labour. It also protects children under the age of 14 years from being employed in industries and businesses hazardous to their health.
- **Right to Freedom of Religion** assures every individual the right to choose, profess, practise and propagate the religion of their choice. It also guarantees that the State will not discriminate against any religion, and allow religious groups the freedom to set up institutions to promote their religion and also assure them the liberty to manage their affairs without State interference.
- **Cultural and Educational Rights** assure people the right to preserve and protect their language, culture and way of life. They guarantee that minorities - whether religious or linguistic - shall be protected

and not discriminated against by the State and are entitled to set up and administer their own educational institutions.

- **Right to Constitutional Remedies** guarantees every individual whose Fundamental Rights have been violated or not protected by the State, the right to approach the Supreme Court for their protection. It gives the Supreme Court powers to take immediate action to stop a violation of Fundamental Rights and punish the offender.

The overarching reach and position of Fundamental Rights

Every organ of the government, however powerful and every citizen, no matter how rich or poor must respect the provisions of the Constitution. The Constitution requires the State and all its functionaries to protect each person's human rights and not to do anything that will go against these rights or lessen them. In fact, the government is bound by law and is under a duty to do all it can to support, guard and defend each right. All State actions and laws must promote and protect Fundamental Rights.

For example, if the Parliament makes a law that allows the army to torture every person whom they think is a terrorist, such a law will be struck down by the Supreme Court as it violates human dignity and physical security which are guaranteed to every person under the Fundamental Right to Life and Personal Liberty.

What is a human rights violation?

The State is bound by law to protect every person's human rights. If it is unable to do that or if the State or its agents such as a policeman, bureaucrat, forest or armed forces officer, or any person who is acting on behalf of the State like a contractor, working under contract to the State, does anything to reduce, disrespect, or interfere with another person's human rights then it becomes a violation. **Human rights are claimed against the State and not against private persons.** However, if a private person violates someone's rights relating to life, liberty, equality or dignity, the victim can approach the State for taking action against the violator. If the State fails to stop and punish the violator then it becomes a human rights violation.

“State” means the central and state governments and consists of all people, agencies and institutions that assist in running of the country. The Collectorates, the Panchayats, the Courts, the Municipal Corporation, the Postal Department, the Electricity Department, the State Transport Corporation and even companies that are owned and controlled by the government are all part of the State.

Some examples of human rights violations are:

- Failure of the pollution control board to take all precautions to prevent release of poisonous chemicals by industries into people's homes, fields and water sources. This is a violation of the **right to life**.
- Beating, chaining and torture of suspects by the police. This is a violation of the **right to human dignity and physical security**.
- Failure of a magistrate to take action on a prisoner's complaint that she is being harassed by prison wardens. This is a violation of the **right to equal protection of law**.
- Refusal of the collectorate to act against upper caste people who are not allowing Dalits to worship at a temple or drink water from a well. This is a violation of the **right against discrimination**.
- Neglect by the labour department to enforce guidelines for employers to ensure both men and women are provided equal avenues for promotion at the workplace and are given equal pay for equal work. This is violation of the **right to equality of opportunity**.
- Taking over of a shop by security forces for defence purposes without giving compensation to the owner. This is a violation of the **right to livelihood**.
- Ordering the shutting down of a newspaper by the home ministry for publishing articles criticising the chief minister. This is a violation of the **right to freedom of expression**.
- Refusal of the district administration to release details of measures taken to control floods. This is a violation of the **right to information**.
- Stopping religious lessons from being given to children at madararas by the intelligence bureau on the grounds that they may develop anti-national views. This is a violation of the **right to religious freedom**.
- Inability of the forest department to control the timber mafia from illegally felling trees and from destroying protected forests. This is a violation of the **right to a clean and healthy environment**.

3. Role of Human Rights Commissions

This section discusses:

- functions of human rights commissions
- protecting human rights
- promoting human rights

What are the functions performed by human rights commissions?

According to the *Protection of Human Rights Act, 1993*, commissions can:

- a) inquire into complaints concerning:
 - violation of human rights,
 - abetment to violate human rights, or

Abetment to do something means:

Helping a person to do it; or

Inciting a person to do it; or

Engaging in a conspiracy to do it.

- negligence in the prevention of a human rights violation by a *public servant*.
- b) involve themselves in court cases concerning human rights if the court agrees
 - c) visit any jail, hospital, juvenile home, welfare home, school etc. that is run by the government and make recommendations for improvement in living conditions
 - d) study laws and issues which come in the way of enjoyment of human rights
 - e) promote awareness of human rights through research, publications, workshops and seminars
 - f) support non-governmental organisations and institutions working in the field of human rights

How do commissions protect human rights?

Essentially human rights commissions have been created to **protect** and **promote** human rights in the country. While these are two fairly distinct tasks, their combined effect shapes the overall role of human rights commissions.

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

In carrying out an inquiry, human rights commissions have the power of a civil court to summon and examine witnesses on oath; order discovery and production of any document; receive evidence on affidavits; order a public record or copy to be produced from any court or office; and appoint any person to examine witnesses or documents on their behalf.

A large majority of complaints received by human rights commissions are against the police - about the breach of human rights through incidents of police misconduct. Therefore a major thrust of the work of human rights commissions has been to ensure that the police perform their duties only according to the law, do not abuse their powers or overstep their authority.

The National Human Rights Commission has directed the police that they must always:

- On receiving information about an encounter death, record it and subject the police party to a thorough investigation by an independent agency such as the Criminal Investigation Department [CID] to find out whether the killing is justifiable in law;
- Report any death or rape in custody to the Commission within 24 hours; in case of any death in custody – carefully videotape the post-mortem and send the tape to the Commission along with a report so that the Commission can make its own assessment about the true cause of death;
- Conduct searches and arrest, with respect for dignity of the person, strictly according to the procedure laid down in law and by the Supreme Court;
- Register First Information Reports (FIR) promptly and make sure that complainants are informed about the progress of investigation at regular intervals and given a full explanation for delays;
- Ensure lie detector tests are carried out in an independent environment, outside the police station, in the presence of a lawyer and only after a person has given her/his consent, which has been recorded by a magistrate;
- Work to strengthen police-public relations by holding regular community meetings to discuss public grievances and crime control measures.

Human rights commissions also look into a variety of complaints against other State authorities. For example, the National Commission can ask the army and any central para-military force for a report on human rights abuses. Commissions can look into poor living conditions and ill-treatment in prisons; health and working conditions of factory workers; persecution of Dalits; failure of the government to provide adequate staff and equipment in public hospitals; problems caused by polluting industries; and cases of intimidation and misuse of power by highly placed officials.

Human rights commissions have directed governments to improve prison conditions, undertake proper relief and rehabilitation measures in situations of disasters such as earthquakes, floods, starvation deaths, and communal riots. They have drawn attention to large-scale discrimination in the case of women and Dalits and kept the condition of child and bonded labour under review. They have directed government servants not to employ children below 14 in their homes. They have

asked the government to prosecute employers guilty of running unsafe shops, factories or mines and can ask for cases to be registered against those not paying minimum wages to their employees.

Human rights commissions also take up complaints about group violations where people have been targeted just because they belong to a particular caste, tribe, ethnic group, religion or gender or simply because they are in vulnerable positions such as refugees, displaced people and migrant workers.

Despite the fact that human rights commissions can only make recommendations, they have been able to influence government functioning by highlighting pressing human rights concerns in the media and through publication of their reports.

Protecting Human Rights

Commissions look into complaints about human rights violations such as:

- illegal detention, extortion and intimidation by the police, non-registration of cases and failure of the police to protect the life and property of citizens
- proper investigations not being carried out to bring criminals or rioters to book
- people being killed in fake encounters by the police, army or paramilitary forces
- beating, torture or rape in police custody or in jail
- denial of basic facilities such as legal aid, decent food, proper toilets, and adequate space for prison inmates
- people falling ill because the government has failed to ensure supply of clean drinking water
- dalits being denied access to village tanks, wells and water sources
- forced or bonded labour
- failure of district authorities to control pollution caused by hazardous industries

In addition to the above, the National Human Rights Commission studies international covenants and treaties concerning human rights and makes recommendations for their effective implementation.

How do commissions promote human rights?

The promotion of human rights is also a big part of the work of human rights commissions as they have been set up to create a culture of human rights in the country and especially within the government. Human rights commissions support studies on shortcomings in the criminal justice system, its delays and bias against the poor. The National Commission has taken up research projects on the state of human rights in insurgency or terrorist affected areas; domestic violence; female foeticide and infanticide; child labour issues; rights of the disabled; rights of mentally ill persons; conditions of people belonging to de-notified and nomadic tribes; and on environmental issues. Commissions organise human rights training and sensitisation programmes for the police, the army, paramilitary forces, government servants and the general public. Human rights commissions are required to encourage the efforts of non-governmental organisations [NGOs]. In order to enhance its own efforts to promote and protect human rights, the National Commission has formed a core group of select non-governmental organisation representatives and is expected to hold meetings with many NGOs across the country from time to time.

Promoting Human Rights

Commissions also:

- organise workshops on human rights themes and develop human rights curricula.
- carry out training programmes for judicial officers, police and prison staff.
- provide guidance to the media on how to report human rights violations such as child sexual abuse.
- encourage research on issues such as discrimination of women, sexual exploitation, harassment at the workplace, female foeticide and infanticide.
- review existing legislation and recommend changes to the government.
- recommend that the government sign international human rights treaties and protocols.
- support efforts of non-governmental organisations in projects concerning human trafficking and rights of children; women; scheduled castes/tribes; minorities and displaced people.
- spread human rights awareness through seminars, radio and television broadcasts, press releases and by publishing posters, fliers, manuals and handbooks on citizens' rights.

Are not the courts expected to protect human rights of the people?

Yes, law courts are bound to protect human rights. Any one or any group of people who feel that their human rights have been violated can complain directly to the Supreme Court or to the state High Court. In some states there are now human rights courts even at the district level. The national and state human rights commissions have been set up as additional places to get redress for human rights violations because the courts deal with many other issues, are overburdened and busy. By concentrating solely on protecting and promoting human rights, commissions can play a more active role in addressing human rights abuses and educating people about their rights.

Remember, if your human rights have been violated, you must get a criminal case registered against the offender.

- You can complain to the human rights commission if your case is not being registered
- If the police is not investigating your case properly, you can approach the human rights commission for carrying out an impartial inquiry

So how are human rights commissions different from courts?

Courts deal with rights violations, criminal and civil cases. In criminal cases, the police investigate the case, the prosecutor prepares the case and the judge hears both sides. After weighing all the facts and circumstances, judges can punish or acquit the accused and order compensation for the wronged party or make other orders that are suitable. When a complaint comes to a human rights commission, the commission has the power to make an independent inquiry about what has happened through its own investigators and call all the people involved in the matter before it, listen to witnesses, ask for explanations from the State, and come to its own conclusion, but it cannot punish the offender. It can however, make recommendations to the government to pay immediate compensation and start inquiries toward punishing the offender. Because a human rights commission does not have to follow all the formal rules of a court it can make inquiries and come to a decision more quickly. Governments are required in good faith to take action on the orders made by a human rights commission though many times they contest these orders or delay in obeying them.

Zakir, a young man died in custody. The National Human Rights Commission asked the Criminal Investigation Department [CID] of the state [Maharashtra] to find out how he died. They found that Zakir had been picked up by three police constables and had been beaten to death. The constables were arrested by the police, suspended from service and criminal cases were registered against them. The National Human Rights Commission directed the Maharashtra State Government to pay Rs 2 lakhs immediately to Zakir's family members as the police constables, who were agents of the government charged with the responsibility of protecting people's lives and property, themselves caused Zakir's death.

The State Government said that since the constables were being tried in court, it would pay the immediate compensation only after the policemen were found guilty. *However*, determination of guilt in court is not a condition for grant of immediate compensation by a human rights commission. Even if criminal charges cannot be properly proved in court, it will not affect a ruling by the human rights commission as the facts may be enough for a commission to give directions. The National Human Rights Commission pressed the Maharashtra Government to pay the immediate compensation to Zakir's family members and it was paid before the case was finally decided in court.

4. How to File a Complaint

This section discusses:

- who can file a complaint
- against whom can a complaint be filed
- the process of filing a complaint

Who can file a complaint with the human rights commission?

Any person, group of persons or organisation can complain about human rights violations to a human rights commission. It does not matter who the person or organisation is. Human rights commissions cannot turn people away because of their age, economic status, caste, sex or religion.

Sometimes it may not be possible for the victim whose rights have been violated to make the complaint. They may have died, be in custody, unable to read or write, or they may be too unwell. In such cases, someone else may make the complaint on behalf of the victim.

Complaints may be brought by:

- individuals or a group of individuals; or
- any forum, association or non-governmental organisation [NGO]; or
- any other agency.

Human rights commissions receive a large number of complaints. The National Commission alone receives over 70,000 complaints a year. A majority of these are rejected because they are not actually about human rights abuses but are complaints about other matters such as property disputes, service matters, consumer affairs, family or neighbourhood quarrels.

In many cases, it is enough to correct a situation if the human rights commission simply takes note of a complaint. Often a simple letter to an erring department has led to immediate relief. For example, commissions receive many complaints of government departments withholding people's pensions. Though this is not strictly a human rights violation, just seeking a report on the situation has led to quick payment.

Against whom is a complaint filed?

Complaints are filed against **public servants** who have:

- themselves directly violated someone's human rights;
- abetted i.e. assisted, aided or incited someone in the violation of human rights; or
- neglected their duty and not prevented a violation of human rights.

A “**public servant**” is any person who holds authority on behalf of the government and performs government functions such as a **magistrate, a policeman, an officer in the armed forces, a government doctor, a government teacher, tehsildar, patwari, an electricity department employee etc.** (For a complete definition see Section 21 of the Indian Penal Code)

Does it cost anything to file a complaint?

No, it does NOT cost anything to file a complaint.

Human rights commissions do NOT charge a fee to file a complaint

Asha's husband was killed in a fake encounter with a forest patrol. She asked Harish to help her write a complaint to the State Human Rights Commission. He told her it would cost Rs 500 because he was part of an NGO authorised by the commission to file complaints. Harish is dishonest. Human rights commissions do NOT work with any NGO or any other individual (including a lawyer) for the purpose of filing complaints.

Is a lawyer needed to file a complaint?

No, a lawyer or an advocate is NOT needed to file a complaint or even to plead the case before the commission. Anyone can write a letter to a commission explaining what happened and why they are complaining. The letter should be clear and simple. It does not have to be in legal language. All that is required is that the letter should give details of each event as it took place and explain who did the harm, and what injury or damage has been caused. Commissions also have a simple complaint form that can be used but it is not necessary to file a complaint only on that form. Sending the complaint by speed post or registered AD makes sure it gets there in a timely manner.

If the person making the complaint does not know how to read or write s/he can get someone else to write the complaint or come personally to the human rights commission.

Are there any types of complaints that human rights commissions do not take up?

Human Rights Commissions usually do not take up a complaint if:

- the complaint is against a private person and not against the State or an agent of the State

Human rights commissions are there to see that the government does not overstep its authority. Therefore, complaints regarding domestic disputes, cheating, recovery of property, bogus deposit schemes, landlord-tenant disputes are not taken up as these are generally between private persons.

- the person complaining has approached the Commission one year after the human rights violation has taken place
- the case is already being inquired into by another human rights commission
- the case is already before the court and there is likelihood of relief being provided there

Due to practical difficulties, human rights commissions cannot take up a complaint if it is :

- ❖ illegible - cannot be read because it is badly written;
- ❖ vague or anonymous - not signed and does not say who is complaining or show what the problem is;
- ❖ trivial or frivolous.

Examples of Complaints that are not taken up by Human Rights Commissions

- Termination of Mahesh's employment contract by ABC Pvt Ltd
- Failure of the Postal Department to deliver Malini's letter
- Sale of defective television set to Diya by a shopkeeper
- Government contractor's failure to repair signboards in Ramesh Babu's village
- Dispute between Akram and Sajid for partition of their ancestral house
- Marital dispute between Bina and Raman for custody of their son
- Non-payment of rent by Jagdish's tenant
- Overcharging by parking lot contractors
- Poor condition of berths in trains
- Reduction in travel allowance of government employees
- Imposition of tax by the Excise Department on goods and services
- Inability of Mani to study due to loud music played by his neighbour
- Improper election of secretary, Residents' Welfare Association

Examples of Complaints that can be filed with Human Rights Commissions

- Police trying to pass off the death of Sarojini's son as an accident when he really died of electric shocks given to him at the police station
- Rita getting AIDS after she came in contact with an infected syringe at the Government Hospital
- Failure of the Railway authorities to take adequate steps to ensure the safety of women travellers on trains
- Police breaking the window panes of Vishal's house and threatening him not to give evidence against the Superintendent of Police
- Injuries suffered by Aslam and Sudha due to indiscriminate firing by security forces during a grenade attack
- Refusal of the police to register a case against high caste residents of Muthu's village who made him eat excreta because they wanted to insult Dalits
- Sajid and Karim being made to sit on a donkey and drink urine by policemen in an attempt to humiliate them
- Death of Amrita after she came in contact with live electricity wires that were negligently left exposed by the Electricity Department linesman
- Failure of Beena's University to take adequate measures to prevent senior students from humiliating and abusing freshers in 'ragging' incidents
- Failure of the municipality to prevent a sweet mart from preparing sweets in a public place, causing both a health hazard and a public nuisance
- Julius being made to work as a bonded labourer on the local landlord's fields because he is unable to return the money he borrowed
- Non-investigation of Mitali's complaint regarding sexual harassment by her boss
- Burning of houses in Thembu's village by army jawans after an encounter with militants
- Non-registration of Joseph's case by the police regarding illegal occupation of his house by a Member of Parliament [M.P]
- Failure of the Municipal Corporation to cover manholes in Baljit's colony even after being sent many reminders
- Thomas being denied blankets by staff at the Central Jail because he refuses to pay them money
- Failure of the State Pollution Control Board to shut down unauthorised tanneries that are making life unbearable in Pershad's colony due to overpowering bad smell
- Neglect of the government to rehabilitate a displaced tribal community following construction of a reservoir and national park on their land
- Wrongful detention of under trial prisoners in an asylum for inordinately long periods

How to File a Complaint

Complaints can be filed:

- in person at the human rights commission
- by telephone or by fax
- by post or by telegram
- by e-mail [National Human Rights Commission]

Complaints should:

- ideally be in writing - typed or written in clear handwriting so that they are easy to read
- be addressed to the Chairperson or the Secretary of the human rights commission
- be signed by the person complaining or have her/his thumb impression

Complaints should also:

- include the full name, address (name of village, tehsil, district and state) and other contact details (PIN code, phone number, fax number, email address, or pp) of the person making the complaint
- include the full name, address and contact details of the victim, if the person making the complaint is not the victim. If the victim is a member of a minority group, scheduled caste or tribe, it should be mentioned
- include the full name(s), address(es) and contact details of the person(s) against whom the complaint is being made and the name of the authority who has overall responsibility (if it is known)
- include the time, date and place of the incident - describe exactly what happened and who was involved - it should not leave any facts out or include anything which is not true
- explain how the situation has affected the person making the complaint or the person whose rights were violated (victim)
- give the names, addresses and other contact details (if possible) of any witnesses or other people who can give information about what happened
- list any other action that has been taken - reports to the police (with name of the police station), visits to lawyers or any court proceeding

Details of the addresses and phone numbers of the National Human Rights Commission and the state human rights commissions are given on the last page of this handbook.

5. How does a Human Rights Commission Work?

This section discusses:

- receiving and investigating complaints
- recommendations/directions on complaints
- inspections, projects and programmes

What happens to a complaint after it comes to the human rights commission?

After a complaint comes to the commission, it is carefully looked at to see if the facts show that there might have been a human rights violation. The person making the complaint is then informed that the case has been taken up by the commission. If the case cannot be taken up, the person is sent a letter detailing the reasons why the complaint cannot be taken up.

The complaint is then sent to the Chairperson and members who decide what action to take on the case.

Urgent Cases

These relate to complaints, which are serious and need immediate attention. They include complaints where there is great or immediate threat to life, or where women, children, minorities or bonded labour are involved. They are taken up on a priority basis by human rights commissions.

Example: where a para-military force has picked up a person for questioning on suspicion of being a terrorist and the person's family has not been informed where she is being held.

How is a complaint investigated?

Depending on the nature of the complaint, it may be sent to the government department concerned for a report or may be given to the local police or the Criminal Investigation Department [CID] for investigation. If the commission is not satisfied with the investigation report or if the case is sensitive and there is risk of political interference or if it involves a serious human rights violation, where senior officers or highly placed persons are involved, the commission can ask its Investigation Wing to carry out an inquiry.

Once the inquiry report is received, the commission may ask the complainant or the person against whom the complaint is made for their comments.

After going through all the facts and circumstances carefully, the Chairperson and/or members decide a case. They may dismiss it, which means that they have determined that no human rights violation has taken place. Alternatively, if they establish that a violation has occurred, they will make recommendations to the government about what action should be taken in the case.

Sometimes, because the department concerned itself takes the required action, there is no need to make a recommendation.

A government schoolteacher in Punjab complained to the State Commission that he was mentally harassed as he was being constantly transferred because of some old enmity with a Member of the Legislative Assembly [MLA]. He said that the MLA's son kept lodging false complaints against him with his superiors, who kept transferring him. The Punjab Human Rights Commission asked the Education Department to give reasons why the man was being transferred so often. The transfers stopped once the Commission stepped in. In this case, the Commission was able to redress the complaint without having to give recommendations.

What types of recommendations are made by human rights commissions?

Human rights commissions can make recommendations to the government to:

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

Examples of Recommendations made by Human Rights Commissions

The police in Karnataka informed the National Human Rights Commission that a man in their custody had committed suicide by hanging himself with a nylon rope in the toilet of a police station. But the People's Union for Civil Liberties (PUCL), Karnataka suspected foul play by the police and asked the National Commission to investigate the matter. The Commission found that the post-mortem and inquest reports contradicted each other and did not establish that the man had committed suicide. After going through all the facts and circumstances, the Commission concluded that even if the remote possibility of the police version being correct was accepted, the police was still responsible for not preventing the man's death and ordered: a) registration of criminal cases and departmental action against the policemen b) investigation of the case to be carried out by the Corps of Detectives, Karnataka State c) Rs 2 lakhs be paid to the family of the deceased d) a case to be registered against the government doctor who did the post-mortem on the charge of destroying evidence.

An 18 year old girl died at a Public Health Centre in Assam. Even though she was trembling and her condition was serious, the doctor on duty did not come to her aid as he was too busy attending another patient. By the time he came to her, it was too late. No post mortem was carried out, so the police did not register a case. The Assam Human Rights Commission took up the issue and directed that a case of negligence should be registered against the hospital staff and also disciplinary action should be taken against them for failing to follow correct procedure.

A Sri Lankan Tamil refugee wrote to the National Human Rights Commission about poor living conditions in a refugee camp in Tamil Nadu. He said that some people were being indefinitely held there without being informed by the authorities about when they would be released. He also complained that restrictions had been placed on the movement of refugees in the compound and there were no arrangements for visitors to meet them. The daily allowance was also insufficient. The National Commission sent a team to carry out an inspection visit of the camp and directed the State Government to: a) take steps to speedily dispose off the cases against the refugees b) allow them to exercise and move about freely in the camp c) increase the daily allowance for adults to Rs 35 from Rs 20 and for children to Rs 20 from Rs 14 d) make sure that medical and revenue officers carry out regular visits to the camp.

The National Human Rights Commission learnt that blind and visually impaired students were often receiving their Braille textbooks at the end of the academic year rather than at the beginning. The Commission discovered that one of the reasons was that many states don't have a Braille press. Recognising the right of all blind and visually impaired students to Braille textbooks, the Commission directed all states to develop a Braille press and distribution system that would ensure students would receive the books at the beginning of the academic term.

Does the Government have to obey the order of a human rights commission?

Once it has gone through all the facts and circumstances of a case, the National Commission or state commission informs the concerned government about its decision. Though the Protection of Human Rights Act, 1993 says that commissions can only make recommendations to government and do not have the power to enforce a decision, governments are expected to abide by the recommendations of a human rights commission. If the government decides not to abide by the recommendations of the human rights commission, it has to give reasons for not doing so in a special report called **action taken report**. This report is required by law to be laid before the Parliament in case of the National Human Rights Commission and before the Vidhan Sabha [State Legislative Assembly] in case of state human rights commissions. In addition, human rights commissions can also go to the High Court to get their recommendations enforced. Because of media and civil society pressure, aware citizens and alert courts, it becomes very difficult for the government to reject a decision of a human rights commission.

The National Human Rights Commission asked the Tamil Nadu government to pay immediate compensation to a victim of police torture but the Tamil Nadu State Government did not comply with the orders given by the Commission. So the Commission itself went to the Madras High Court and asked it to direct the State Government to pay up. The High Court ordered the victim to be paid the amount decided by the National Commission along with 18% yearly interest from the date of the Commission's recommendation till the date of payment. The High Court disapproved of the State Government's attitude so much that it also ordered it to make an extra payment as punitive costs.

Can a human rights commission take notice of a violation on its own?

Yes, in certain cases, human rights commissions take note of reports concerning human rights violations from newspapers, telecasts and other forms of mass media. This is called taking *suo moto* notice of a complaint, meaning that the human rights commission, realising that a serious violation of human rights has taken place, decides to look into the matter on its own without someone having to register a complaint.

A newspaper reported that the health of slate factory workers in Madhya Pradesh was being badly affected by silicon dust that was released due to inferior machinery. Taking note of the news report, the National Human Rights Commission issued directions to the State Government to ensure that: a) only quality machinery made by Bharat Heavy Electricals Limited [BHEL] is used in silicon factories so that workers may have access to a dust and pollution-free environment b) the Labour Department should inspect the factories on a monthly basis and submit reports to the State Human Rights Commission c) widows and children of deceased workers are taken care of by factory owners d) children are not employed in the factories.

Are there any instances where human rights commissions have looked at mass violations of human rights?

Yes, human rights commissions do address such situations. A mass violation of human rights is a state of affairs where the rights of a large number of people as a collective group are affected. A mass violation may take place either as a result of a direct action of the State or by its failure to control a man-made or natural calamity.

Gujarat Riots

In February-March 2002 large scale communal violence took place in Gujarat. About 3000 people, mainly belonging to the minority Muslim community were killed savagely and their property was looted and destroyed. Reports indicated that the State Government – its administration and the police, had not done enough to protect the minority population, stop the violence and arrest the guilty to bring them to justice. The National Human Rights Commission registered a complaint before itself on its own initiative and asked the State Government to report what it was doing to restore law and order. Later when there were reports about witnesses being intimidated and guilty persons being let off by the courts, the Commission approached the Supreme Court on behalf of the victims.

Persecution of Hajong and Chakma Refugees

The National Human Rights Commission received reports from the People's Union for Civil Liberties (PUCL) and from Amnesty International that Hojong and Chakma refugees who had originally come to India from East Pakistan between 1964-71 were being harassed and threatened in Arunachal Pradesh. Though they were initially welcomed in India after they fled from religious persecution in East Pakistan, there were reports that the State Government had failed to take adequate steps to protect them from harassment by the local people. Noting the seriousness of the situation, the National Commission brought it to the notice of the Central Government and the State Government and asked them to ensure that the life and property of Hajong and Chakma people were protected. Not satisfied with the efforts to protect them, the Commission approached the Supreme Court to direct the State and Union Government to protect 65,000 Hajong and Chakma refugees.

Starvation Deaths in Orissa

Concerned over reports that many people had died of starvation in Koraput, Bolangir and Kalahandi (KBK) districts of Orissa, the National Human Rights Commission sent a team to report on the situation. It also appointed a Special Rapporteur to oversee relief and rehabilitation work and make observations on progress. The Commission asked the State Government to strengthen the emergency feeding and mid-day meal programme by ensuring there is enough staff and adequate stock of food grains for proper distribution; carry out a review of entitlements under the Public Distribution System; review the existing scale of one tube-well per 150 persons so that the average distance people have to travel to get water is reduced from one and half kilometres to half a kilometre; and to fill up vacancies of doctors and para-medical staff on a priority basis. The Commission is periodically reviewing both the short and long term measures being taken by the State Government to improve the situation.

What else besides dealing with complaints does a human rights commission do?

Human rights commissions have a responsibility to oversee government activities and ensure government institutions are following human rights norms and standards. Members of human rights commissions are expected to carry out regular inspections of:

- police lock-ups
- jails
- juvenile homes
- detention centres
- refugee camps
- government hospitals

Inspection Teams from human rights commissions have helped highlight poor living conditions that exist in most jails in the country such as overcrowding, lack of proper toilets, inadequate medical facilities, serving of unhygienic food and bad condition of buildings. They have also highlighted the plight of the large number of under-trials awaiting decisions on their cases.

Human rights commissions are also expected to track developments in the field of human rights; analyse laws from human rights lens; undertake research; conduct human rights sensitisation programmes; and raise human rights awareness through press releases, publication of reports, newsletters, pamphlets, documentaries, handbooks etc.

What sort of projects are human rights commissions involved in?

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

Some Projects involving Human Rights Commissions

The National Commission and the British Council partnered in a project to build human rights investigation and interviewing skills amongst police officers, as well as human rights custody management skills amongst prison officials. The human rights commissions of Kerala, Madhya Pradesh, Punjab, Tamil Nadu and West Bengal were involved in the project.

The National Commission, the Canadian Human Rights Commission and the Indira Gandhi National Open University are jointly developing manuals on the rights of disabled people for lawyers, academics and disability rights activists. These manuals cover provisions in law that protect the rights of the disabled; redress mechanisms that exist to uphold these rights; and international standards and good practices.

A project on Child Rights and Child Protection was conducted by the Punjab Commission and the British Council. A number of non-governmental organisations were also involved in this project whose focus was to raise rights awareness amongst children by holding 72 Public Education Programmes across 12 districts in the state.

The Chhattisgarh Commission and the Commonwealth Human Rights Initiative in partnership with the National Commission and Multiple Action Research Group have carried out Human Rights Training and Sensitisation Programmes for officers serving in police stations.

6. Immediate Compensation provided by Human Rights Commissions

This section discusses:

- why immediate compensation is given
- the nature of compensation that is given
- some examples

What is immediate compensation?

Immediate compensation is a special type of compensation recommended by human rights commissions to victims or their families. It is paid so that money can be made available to them for rehabilitation, without delay. **It does not affect the right to claim further compensation in court by filing a civil case against the offender.** It is therefore termed '*interim relief*' by human rights commissions.

In Bihar, a man was electrocuted after he came in contact with a live wire that came loose from a distribution line after a storm. His wife complained to the National Human Rights Commission that she was facing an acute financial crisis because of her husband's death. The Commission found that the State Electricity Board had not bothered to immediately remove the wire or switch off the power to make the place safe for the public. Holding the Board guilty of negligence, the Commission ordered that Rs 2 lakhs be immediately paid to the victim's family. The Commission asserted that payment of Rs 2 lakhs as interim relief would not affect the right of his dependents to get further compensation in court.

What kinds of cases can get immediate compensation?

Though there is no hard and fast rule, typically complaints regarding serious violations of human rights such as death in custody; torture; rape; illegal detention; kidnapping; destruction of private property; insults to personal dignity; and negligence by police, security forces or government agencies qualify for payment of immediate compensation.

The police in Uttar Pradesh claimed to have killed four 'criminals' who they said were about to rob a petrol station. The National Human Rights Commission found the police version to be false and that the four innocent people had been taken out from a nearby hotel and gunned down. The State of Uttar Pradesh was ordered by the Commission to pay Rs 4 lakhs each to the victims' families. The Commission also asked the government to speed up its inquiry into the incident so that the guilty policemen could be prosecuted in court.

Why do human rights commissions recommend immediate compensation?

Immediate compensation is given to show that the State has done a wrong. It is an acknowledgement by the State that it has failed to protect the life and limb of its citizens. It is also ordered to make up for the pain and suffering and for the loss caused to the victim and family.

Of course, there is no way a human life can be valued in money. No amount of immediate compensation is enough to off-set the monetary loss for the dependents of an earning person, let alone the incalculable grief that is suffered by those who have lost loved ones.

Those who have undergone the trauma of being tortured or beaten or have been subject to humiliating or degrading treatment carry scars both mental and physical for life. Neither their suffering nor their grief can be made up in terms of money but an award of immediate compensation does bring with it a sense of justice and relief.

What do human rights commissions look at while recommending immediate compensation?

Some of the things that commissions take into account while recommending immediate compensation are:

- ❖ extent of injuries suffered by the victim
- ❖ medical expenses incurred for treatment
- ❖ loss of income because of inability to work on account of injuries
- ❖ number of dependents directly affected by the loss in earning capacity of the victim
- ❖ humiliation and mental trauma suffered by the victims and/or their families

In Punjab, an army officer was brutally beaten at a roadside dhaba by policemen who then illegally arrested him and poured alcohol down his throat to show that he was drunk and creating a nuisance. The Punjab State Human Rights Commission, taking note of the trauma suffered by the victim's wife, his sister-in-law and minor son in whose presence he was beaten and the fact that he was down-graded to a lower medical category thus affecting his career prospects, directed payment of Rs 1 lakh as immediate compensation.

Who pays the immediate compensation?

Once it has established that the State has failed in its duty to protect a person's human rights, the commission makes a recommendation to pay immediate compensation to the victim or her/his family. This recommendation to pay immediate compensation is made either to the government under whose jurisdiction the violation has taken place or the government that controls the department responsible for the violation. Sometimes after paying immediate compensation, the government concerned recovers the amount from guilty officials.

In Manipur, a man went missing after he was picked up by the Assam Rifles and taken to their battalion headquarters for questioning. Fearing for his life, his wife complained to the National Human Rights Commission which asked the Assam Rifles for a report. The Assam Rifles reported that he had been released. But the Commission was not convinced. After going through all the facts and circumstances, the Commission concluded that while the victim's side was able to prove that he was taken into custody, the Assam Rifles were not able to prove that he was alive when they "released" him from their custody. The National Commission asked the Central Government to pay Rs 3 lakhs as immediate compensation to the victim's family. Though the crime took place in the jurisdiction of Manipur state, the Commission asked the Central Government to pay the immediate compensation amount as the Assam Rifles are under the direct control of the Central Government.

What is the amount of immediate compensation that may be recommended by the human rights commission?

Immediate compensation amounts vary from case to case depending upon the circumstances and from commission to commission. Some illustrative cases are given overleaf:

In Uttar Pradesh, a fifteen year old Dalit girl committed suicide after two firemen and a police constable took her to their house and raped her. When the victim went to report the matter, the Sub-Inspector at the police station and the Fire Station Officer instead of taking action on the complaint passed derogatory remarks and threatened to register false cases against her. Frustrated that she could not get justice, the girl took her life. The National Human Rights Commission ordered that Rs 2 lakhs be paid to the victim's family as their behaviour had directly contributed to her death.

In Delhi, a father appealed to the National Human Rights Commission to carry out an independent investigation into his son's death. The police refused to tell him how his son died and threatened him not to pursue the matter. The Commission ordered an inquiry which revealed that the victim collided with a cycle rickshaw, which led to a scuffle. A policeman then intervened in the matter and beat the victim so badly that he collapsed and had to be taken to the hospital where he was brought dead on arrival. Holding the police guilty of gross misconduct, the Commission ordered Rs 3 lakhs to be paid as immediate compensation to the victim's family.

In West Bengal, an undertrial prisoner had her arm amputated after a part of the roof of her cell fell on her and crushed her arm. The West Bengal Human Rights Commission found that the reason for the roof-collapse was bad maintenance and lack of repair. Holding the Public Works Department responsible for negligence as it had failed to carry out necessary repairs even after repeated reminders by the jail authorities, the Commission ordered that the victim be paid Rs 25, 000 as immediate compensation.

In Jammu and Kashmir, a man was permanently disabled by an improvised explosive device during a cordon and search operation. He was stopped by an army patrol on his way back from a marriage and forced to handover his car to transport armymen to a house where some suspected militants were hiding. He was also forced by the armymen to accompany them while they searched the house. During the search, a bomb exploded and seriously injured him. The Jammu and Kashmir Human Rights Commission ordered that he be paid Rs 75, 000 as immediate compensation.

In Chhattisgarh, an eye camp was organised with the help of the Health Workers Union. Many people flocked to get their eyes operated at a government hospital. Because an unexpectedly large number of people turned up for the eye camp, some were referred to private hospitals. Unfortunately 13 of them suffered loss of eyesight due to poorly conducted operations at the private hospital. Eight of them complained to the State Commission. Because, they had been referred by the government hospital, the Chhattisgarh Commission directed that Rs 50,000 be paid to each of the victims on account of the government hospital's failure to check whether the private hospital had the capability to conduct the operations or not.

7. Priority Areas for Reform

Human rights commissions are now being recognised as a vital component of a functioning democracy. India proudly established the National Human Rights Commission in 1993 and many state commissions have followed. However the commissions must be able to do much more than just decorate the State administration. For one, they need sufficient powers and independence to protect people's rights and develop a human rights culture across the country. Over the years, weaknesses in the national and state commissions have been revealed.

An effective commission needs its founding legislation to vest it with a robust framework from which to operate. Unfortunately, the *Protection of Human Rights Act, 1993* is not such a solid foundation. The Act does not fully accord with the Paris Principles⁴ - a set of internationally recognised standards meant to guide States in the setting up of strong, effective human rights commissions. According to the Paris Principles, commissions should be given as broad a mandate as possible by law in respect of composition and sphere of legal and operational competence. They should also have adequate funding and not be subject to financial control that affects their independence, which is the most common form of governmental control over human rights commissions.

The work of human rights commissions is undermined by weaknesses in the *Protection of Human Rights Act, 1993*; insufficient budgetary allocations; overall lack of trained staff; resistance from government departments; and inadequate investigative and forensic capability; among other things.

Some priority areas of concern are:

Greater powers for commissions

Though human rights commissions receive thousands of complaints each year, they only have powers to *recommend* action against wrongdoer.

⁴ They have been endorsed by the United Nations Commission on Human Rights in March 1992 and by the General Assembly of the United Nations in December 1993. Paris Principles were developed after a consultation with representatives of National Human Rights Institutions; States; the United Nations and its specialised agencies; and Inter-governmental and Non-governmental organisations from across the world.

Commissions cannot compel the government to act on their recommendations. Of course, governments – central or state – often obey the recommendations of a commission but they neglect to follow deadlines set for compliance. Because of the habitual delay in taking action, human rights commissions have to spend additional time and energy in sending compliance reminders and sometimes even have to approach the High Court if the government resists their recommendations. To assure relief to victims and their families, recommendations must bind the government and penalties should be levied on officials responsible for delay or obstruction.

Additionally, the present arrangement - where only the National Commission has the power to look into incidents involving armed forces and to only seek a report from the central government [without being allowed to summon witnesses] - is totally inadequate.

Commissions should have the authority to address human rights violations regardless of who commits them. It is critical that human rights commissions are vested with powers to proceed against members of the armed forces for any violations they may commit. A large number of unaddressed violations take place in areas of insurgency or internal disturbances where armed forces are deployed.

Appointments

The procedure under the Act for appointing commissioners has been sharply criticised. The Appointments Committee⁵ is entirely made up of politicians. Other voices do not have an opportunity of being heard. The process of consideration for appointment is not transparent because it is done behind closed doors. No shortlist is made available on which there could be a public discussion. Unfortunately, the process lends itself to political patronage rather than merit of a candidate being tested against criteria laid down in law. It is also not mandatory to consult the existing commission before new appointing members. The *Protection of Human Rights Act, 1993* requires three of the five members of a human rights commission to be former judges but does not specify whether these judges should have a proven record of protecting human rights and upholding

⁵ In case of the National Commission, this committee consists of the Prime Minister; the Speaker of the Lok Sabha; Minister for Home Affairs; Leader of the Opposition in the Lok Sabha; Leader of the Opposition in the Rajya Sabha; and Deputy Chairman of the Rajya Sabha. In case of state commissions, this committee consists of the Chief Minister; the Speaker of the Vidhan Sabha; Minister for Home Affairs; and Leader of the Opposition in the Vidhan Sabha. In states, where there is a Legislative Council or Vidhan Parishad, the committee also includes the Chair of the Council and Leader of the Opposition in the Council.

constitutional values. The criterion for the other two members is that they should have “*knowledge of, or practical experience in, matters relating to human rights*”. This loose wording allows people to be appointed merely because it is *assumed* they have acquired knowledge of human rights in the course of their past work - for example, as policemen or bureaucrats - without examination of their belief in human rights values.

A glaring deficiency in the appointment criteria is that there is no specific requirement for all the members to have a demonstrated commitment to the protection of human rights. This has raised controversy and questions about the ability of commissioners to function usefully. It is rather unfortunate that no one from the non-governmental sector and only two women have been appointed to the National Human Rights Commission till date. This, despite the fact that the Paris Principles lay down that appointment of members to national human rights institutions should be by a procedure that ensures *pluralist* representation of social forces involved in the protection and promotion of human rights. Thus, consideration in appointment should be given to people from non-governmental organisations that take up human rights and discrimination issues, trade unions, concerned social and professional organisations, like those of lawyers, doctors, journalists and eminent social scientists. Dalits, women, minorities, disabled people too, must find their voices represented in human rights commissions.

Long delays in appointing chairpersons and in filling up the full quota of members and staff has practical implications – most notably backlogs. Large numbers of cases are left pending before commissions because there are not enough commissioners to process them. This reduces public confidence and faith in the commissions.

Independent cadre for commissions

The independence of the commissions is often compromised due to their dependency on the government for staff, who are often on deputation from various departments or reemployment after retirement. The Paris Principles require human rights commissions to have their own staff and premises precisely to make them independent from the government.

It is undesirable for a commission to have staff drawn largely from the bureaucratic or police fold. Although it is argued that people from within government cadres have extensive experience and that their connections gain them access and trust when investigating complaints or getting a

policy implemented. However, there is much danger that these very connections and the likelihood that one may have to revert back to the parent department may dilute the vigour with which investigations are pursued, or particular action is pressed for.

Because the work of human rights commissions is specialised, they need specifically recruited and trained staff. The capacity of human rights commissions to function as autonomous and responsive bodies would be greatly enhanced if they develop their own cadre and appoint staff from outside the narrow pool of government bureaucracy.

Legislative Oversight

By law, commissions must table their **annual reports** in Parliament or the State Legislature. Many times, commissions themselves delay in submitting their reports. On submission, too frequently, reports lie with the government for long periods before being tabled, either because the Parliament or the legislature is not in session or because there are other priority issues for legislators to discuss. During this time, the public is denied the right to access the report on the grounds that it is a breach of 'parliamentary privilege' i.e. the report must be discussed and passed by the legislators before being made available to the general public.

When reports are finally tabled, they are rarely discussed in depth. Mechanical passing of annual reports, without proper examination of their contents is a loss of opportunity for debate and discussion on devising suitable measures to address violations and put in place a human rights culture. Equally it is a missed opportunity to look at the performance of human rights commissions and assist them in tackling obstacles to their functioning.

Lawmakers need to be pressured to thoroughly discuss commission reports; analyse cases; identify patterns of human rights abuses; and take the required preventive action. Regular and timely discussion of annual reports by lawmakers is vital to evaluating the progress that our country is making each year in improving its human rights record.

Human rights commissions are often left with **insufficient funds** of their own to carry out on the spot investigations; run projects and programmes; support the work of non-governmental organisations; hire specialists; and develop and maintain their infrastructure. To reiterate, Paris Principles lay down that a commission should have an infrastructure suited to the smooth conduct of its activities, in particular adequate funding. The tension between the government and the human rights

commission, which is in effect an oversight body is often reflected in inadequate budget allocations. Commissions' funds are owed from the home ministry's budget, whereas ideally they should be taken out from a central or state pool and not connected to any ministry's budget. At the time of discussion on the budget, legislators must ensure that commissions find themselves well provided for as their mandate to protect and promote human rights is of paramount importance in a democracy.

Sufficient budgetary allocation will help reduce the dependence of human rights commissions on the government, especially during inquiries where human rights investigators take the help of the same department whose employee they are inquiring against, either in reaching the place where the incident has taken place or alternately if the place is remote, commissions are forced to accept the inquiry report from the department concerned because of the physical cost involved in carrying out an on the spot investigation.

Apart from making sure that human rights commissions are allocated enough funds in the budget to carry out their functions, the Parliament and state legislatures have a duty to **examine the expenditure** of public funds that support the work of human rights commissions. Details of the money spent by human rights commissions are rarely mentioned in their annual reports, though they are expected to be available in the reports prepared by the comptroller and auditor general. Non-mention of fiscal expenditure in annual reports is a denial of the public's right to know how their money is being spent. Legislatures must also ensure that budgets are not under-spent and returned to the exchequer and that the money allocated is spent substantially on projects and programmes that directly promote and protect human rights, rather than on maintaining infrastructure, salaries, perks, and travels.

Fostering a Human Rights Culture

Developing a human rights culture is a key strategy to combating human rights abuses. A human rights aware society does not accommodate violations. People need to know what their rights are when interfacing with the State. For example, many people are not aware of their rights upon arrest or when registering an FIR and so violations persist. Therefore, commissions need to invest much more in projects that promote human rights rather than simply addressing individual complaints. A constant grouse of civil society is that negligible amounts of commissions' expenditure are spent on rights' awareness programmes.

It is important that a variety of sectors, such as industry, educational institutions and local self-government are targeted to raise awareness, thereby ensuring that the country does not have pockets of poor protection.

Closer cooperation with civil society

Encouraging the efforts of non-governmental organisations and institutions working in the field of human rights is a function of human rights commissions under the *Protection of Human Rights Act, 1993*.⁶ Credible civil society groups offer commissions many hundreds of eyes and ears across the country, especially in remote areas. Civil society collaborations also provide commissions with other means to cross check facts and circumstances instead of the heavy reliance at present on police or district administrations. Civil society offers human rights commissions diverse expertise-doctors, environmentalists, development specialists and the like. Their cooperation in the past has helped commissions draw national attention to long standing and pressing human rights issues. Civil society partnerships have assisted in mutually strengthening the capacity of activist groups and commission staff to understand the ins and outs and technicalities of human rights observance, while increasing commissions' reach in spreading human rights awareness.

Though the National Human Rights Commission and some state commissions have supported and partnered with non-governmental organisations, there is scope for greater collaboration. Unfortunately, there remains reluctance in commissions to fully engage with civil society groups in more formal and structured ways. Too often civil society groups also tend to write off commissions as unresponsive bureaucracies but in fact, this neglect only hinders their ability to do all they can and be all they should be. Commissions too, must realise that support from civil society is vital to their effectiveness.

Essentially it is partnership between the commissions, the government and society that will help entrench human rights throughout the country. The commissions are the catalysing force and the State, in order to change its face from abuser to defender of human rights, has a vital responsibility to see that their independence or their ability is not impeded in any way. Citizens, as users and beneficiaries - and many times victims - of the system can engage closely with the commissions as equals and partners. Active public oversight is essential to address the shortcomings of the commissions.

⁶ Section 12 (i)

Annexure I

Universal Declaration of Human Rights	Fundamental Rights in the Indian Constitution
· Right to equality and freedom from discrimination.	· Article 14 Equality before the law and equal protection of law. · Article 15 Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.
· Right to life, liberty and personal security.	· Article 21 Protection of life and personal liberty.
· Freedom from slavery.	· Article 23 Prohibition of traffic in human beings, <i>begar</i> and similar forms of forced labour.
· Freedom from arbitrary arrest and detention.	· Article 22 Right to be informed about the grounds of arrest; to consult and be defended by a lawyer; and to be produced before a magistrate within 24 hours of arrest.
· Right to freedom of thought, conscience and religion.	· Article 25 Freedom of conscience and right to freely profess and propagate religion.
· Right to a fair public hearing; to have all guarantees for defence; not to be held guilty for an offence that was not an offence at the time it was committed or to be subject to punishment heavier than what was applicable at the time the offence was committed.	· Article 20 Protection from being forced to be a witness against oneself and protection from being convicted for an offence that was not an offence at the time it was committed or being given a punishment higher than what has prescribed by law at the time the offence was committed.
· Right to freedom of movement and residence within the borders of the country.	· Article 19 (e) and (f), Freedom to move freely throughout the territory of India; and to reside and settle in any part of India.
· Right to freedom of opinion and information.	· Article 19 (a) Freedom of speech and expression.
· Right to freedom of peaceful assembly and association.	· Article 19 (b) and (c) Freedom to assemble peacefully and without arms; and to form associations or unions.
· Right to education.	· Article 21A Right to Education for children between the age of 6-14.
· Right to remedy by a competent tribunal for acts violating fundamental rights.	· Article 32 Right to go to the Supreme Court for the protection and enforcement of fundamental rights.

Annexure II

Universal Declaration of Human Rights	Directive Principles of State Policy in the Indian Constitution
· Right to Social Security.	· Article 41 imposes a responsibility on the State to make effective provisions to secure the right to work, education and public assistance in all cases of unemployment, old age, sickness and in other cases of undeserved want.
· Right to work in just and favourable conditions; and to get without discrimination equal pay for equal work.	· Article 42 imposes a responsibility on the State to make provisions to secure just and humane conditions at work. · Article 39 (a) and (d) impose a responsibility on the State to direct its policy towards ensuring men, women and children have an adequate means of livelihood; and to ensure that men and women get equal pay for equal work.
· Right to rest, leisure, reasonable working hours and holidays; to take part in cultural life and enjoy the benefits of scientific progress.	· Article 43 imposes a responsibility on the State to secure to all workers whether agricultural, industrial or others, a decent standard of life and full enjoyment of leisure, social and cultural opportunities.
· Right to a standard of living adequate for health and well being of the individual and family.	· Article 47 imposes a responsibility on the State to raise the level of nutrition and the standard of living and to improve public health. · Article 45 imposes a responsibility on the State to provide early childhood care and education for all children until they complete the age of six.
· Right to a social and international order in which the rights given in the Universal Declaration can be realised.	· Article 51 imposes a responsibility on the State to promote international peace and security; maintain just and honourable relations between nations; respect international laws and treaties; and encourage mutual settlement of international disputes.

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Rights are real if only they are accompanied by remedies. It is no use giving rights if aggrieved persons have no legal remedies to resort to when their rights are invaded. –Dr B.R Ambedkar

It is the legal obligation of the State to protect everyone's human rights. India's Constitution guarantees that every person has a right to be treated equally; that no person will be discriminated against; that minorities will be protected; and people who have been historically disadvantaged, and continue to be, like women, children, Dalits, scheduled castes and tribes will be protected and provided equal opportunities. The Constitution also guarantees that every citizen can speak freely; worship freely; move freely; work freely; live anywhere in India; preserve one's own language and culture; take part in political life; oppose the government's policies peacefully; and approach the courts if s/he is being denied her/his rights.

Laws in our country must hold fast to constitutional provisions. This means that the Parliament and the state legislatures must enact laws that actively promote and protect the rights guaranteed in the Constitution. No law can conflict with any of these rights. Courts, as upholders of the law, therefore have the primary responsibility to see that the law does not conflict with the Constitution; it is respected; and no one's rights are violated.

As complementary institutions to uphold people's rights, human rights commissions have been established to see that the Government does not infringe upon the rights of people; rather it takes active steps for their protection and promotion. It is with this intention in mind that the Parliament passed the *Protection of Human Rights Act, 1993*, under which the National Human Rights Commission and state human rights commissions came into being.

Though more and more people each year do bring thousands of complaints to human rights commissions, not enough people in this vast country know about these commissions or how they can help them. This handbook is intended to provide the reader with a guide on how to use human rights commissions, explain how they work, understand what kind of violations they look into, and how they may be accessed. This is because until we as citizens become aware of our rights and the various institutions and mechanisms that exist to uphold them, the noble ideals of our freedom struggle will remain unfulfilled.



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