

NATIONAL HUMAN RIGHTS COMMISSION

INDIA PAPER FOR UNIVERSAL PERIODIC REVIEW

*“Sarve Bhavantu Sukhinah, Sarve Bhavantu Niramaya,
Sarve Bhadrani Pshayantu, Maa Kashchid Dukh Bhaag Bhavet.”*
[O Lord! Let all beings be happy and healthy. I wish well being to all.
Let none suffer from any misery]

1. This has been the cornerstone of promotion and protection of human rights in the Indian society and, therefore, rightly the motto of Commission is also “*Sarve Bhavantu sukhinah*”.
2. Following Human Rights violations faced by many countries under colonial rule in the nineteenth and twentieth centuries and also chastened by egregious violations during two World Wars in the last century, the international community resolved to protect and promote Human Rights in the Universal Declaration of Human Rights. In 1949, the Indian people adopted the Constitution, which guaranteed Fundamental Rights to its citizens. In order to ‘better’ protect human rights, the Parliament passed the Protection of Human Rights Act in 1993 for constitution of a National Human Rights Commission, State Human Rights Commission in States and Human Rights Courts. The National Human Rights Commission accordingly came into existence on 12th October, 1993. The State Human Rights Commissions have also been set up in 18 States.
3. The strength of NHRC, India is its complete autonomy. The selection process of its Chairperson and Members itself is inclusive of both the ruling and opposition parties. The Commission has also complete freedom to select and appoint its staff and officials. The Commission, due to its accessibility and positive actions, has gained credibility amongst the people, which is its major strength.
4. Though the Commission is a recommendatory body, the reports of the Commission are placed in the Parliament with the action taken report by the Government. Thus, there is an inbuilt accountability of the Government for implementation of the recommendations to the extent acceptable. In case the Government disagrees, it furnishes reasons thereof in the action taken report. The experience has been that 95% recommendations have been generally complied with.
5. In last 14 years, the Commission received a large number of complaints relating to various human rights issues. The Commission also takes suo motu cognizance in some cases on the basis of media reports etc. The number of complaints registered and disposed off during last 3 years is as follows:

Year	Fresh cases as well as cases brought forward from previous years	Cases disposed off
1 April 2004-31 March 05	1,35,209	85,661
1 April 2005-31 March 06	1,23,992	80,923
1 April 2006-31 March 07	1,14,114	93,421

6. The Commission's role is complementary to that of judiciary. The Supreme Court has referred a number of important matters to the Commission for monitoring while the Commission has also taken specific cases of violation of human rights to the Courts. The guidelines evolved by the Commission on the treatment of mentally ill persons held in prisons and child rape cases have been adopted by the Delhi High Court and commended to the authorities for adoption. The complementary role of the National Human Rights Commission and the higher judiciary in India is an illustration of 'best practice'.

7. The range of Commission's interventions and results thereof are reported in the Annual Reports of the Commission. The Annual Reports of the Commission up to 2006-07 have been submitted to the Government and reports up to 2005-06 have also been placed in the Parliament with reports on the action taken by the Government. The Commission also brings out annual journals and other publications. The website of the Commission, <http://nhrc.nic.in> gives updated information on the current status of each complaint. The Commission follows a completely transparent procedure in its functions. While details of Commission's actions can be seen in above documents/ website, some of the important recommendations made by the Commission are highlighted in succeeding paragraphs.

8. Since December, 1996, the Commission has been dealing with complaints alleging starvation deaths in Koraput, Bolangir and Kalahandi (KBK) districts of Orissa. The Commission after hearing the parties formulated a practical programme covering rural water supply schemes, public health care, social security schemes, water and soil conservation measures and rural development schemes. The implementation of the programmes as also its monitoring by the Commission through its Special Rapporteurs has yielded good results.

9. In the case of death of unidentified persons due to terrorist attacks and alleged fake encounters by the Police in Punjab in what has come to be known as 'Punjab Mass Cremation Case', the Commission recommended compensation of Rs. 250,000 to the next kin of each of 195 deceased identified to be in deemed custody of police and Rs. 175,000 to each of next of kin of 1103 identified persons whose dead bodies were cremated by Punjab police, amounting to Rs. 24, 27, 25,000/- till the end of the year 2006-07.

10. Communal violence broke out in the State of Gujarat on February 27, 2002. The Commission took suo-motu cognizance of the tragic incidents and has been seized of the issue since then. The Commission asked the State Government to entrust the investigation of certain critical cases to CBI. The Commission has been continuously monitoring the progress of measures taken by the State for the relief and rehabilitation of the riot-affected persons through its Special Rapporteur. In the year 2003, the Commission filed a Special Leave Petition in the Supreme Court of India to enforce "the right of fair trial" for all and a petition for transfer of nine serious cases for trial outside the State of Gujarat. The Commission's intervention in the Supreme Court of India led to several positive outcomes including the transfer of some serious cases to outside Gujarat, reopening and retrial in important cases and conviction of the guilty persons in 'Best Bakery' and Bilkis Bano cases. In the Bilkis Bano case, the Commission extended legal assistance to her. Trials in other cases are continuing.

11. The Commission received a number of representations from non-government organizations and individuals regarding atrocities committed by the Joint Special Task Force

set up by the States of Karnataka and Tamil Nadu to apprehend sandalwood smuggler and forest brigand Veerappan. After detailed deliberations, the Commission recommended immediate interim relief of 28 million rupees to 89 victims to mitigate their suffering and hardship.

12. In the State of West Bengal, large scale violence took place in March and November 2007 on the issue of proposed land acquisition for setting up a mega-chemical hub and a Special Economic Zone [SEZ] covering about 10,000 acres of land in Nandigram and adjoining areas. The Commission took suo motu cognizance of the case and not only called for reports from the State Government but also sent its own Investigation team. The matter is under consideration of the Commission. However, the concerns expressed and actions taken by various agencies like judiciary and Commission seemed to have had a salutary effect.

13. On a report received from the Special Rapporteur of the Commission who visited LGB Regional Institute of Mental Health, Tezpur, Assam in 2005 about lodging of five undertrial prisoners at the Institute for periods ranging from 32 to 54 years, the Commission took cognizance and called for a report from the Government of Assam. As a result of the Commission's intervention, they have since been released and paid compensation.

14. The Commission took cognizance of a complaint alleging attacks on Christians and their institutions in Kandamal District, Orissa on December 24-25, 2007. The Commission has not only issued notice to the Chief Secretary, Government of Orissa and the Director General of Police, Orissa calling upon them to submit a report giving details of injured and casualties, if any, damage caused to the properties, steps taken by the Government to provide relief and compensation to the affected persons/ institutions but also directed that every possible protection be provided to the members of Christian community in the State. The Commission also dispatched a team from its own Investigation Division for an on-the-spot visit and to ascertain facts.

15. Some parts of the country like Jammu and Kashmir and North East region as also some other States are facing the menace of militancy and terrorism. The Armed forces of the Union including Para Military forces have been deployed in some disturbed areas to aid and assist the State Government authorities to handle internal security situation. At times, there are allegations of Human Rights violations by the forces who conduct operations against terrorists and on receipt of such complaints, the Commission calls for reports from concerned authorities. Army has issued strict guidelines to all ranks on the observance human rights while operating in such areas. It has also been reported that since 1994, there have been 1318 allegations of Human Rights violations of which, 1269 have been investigated and 54 have been found to be true. 115 persons have been punished.

16. In the last 14 years, the Commission has endeavoured to curb violation of human rights as well as to promote a culture of human rights in the country through various measures. These include syllabus for the introduction of human rights education from the school level up to the university level, mass awareness programme by way of imparting training and bringing out publications in English, Hindi and regional languages etc. In order to sensitize various stakeholders, the Commission has been organizing training programmes and workshops on Human Rights issues since its inception. The target groups include police personnel, armed forces personnel, judicial officers, students, public representatives, NGOs

etc. The programmes cover general human rights awareness as also some specific issues like rights of the disadvantaged sections e.g. women, tribals, food security, right to education and health and custodial justice etc. The 'Know your rights' series brought out by the Commission has proved highly useful in spreading human rights awareness. Other publications include Handbook on Human Rights for Judicial Officers, Disability Manual, HR education for beginners etc.

17. The Commission has been closely monitoring, as also urging State authorities to move aggressively towards complete eradication of the pernicious practice of manual scavenging. Under a Supreme Court directive, this is to be fully complied with by 2009.

18. India has been striving to protect and promote Human Rights of its citizens inspite of serious problems of terrorism, militancy, as also under development. While there is no denial that some achievements have been made, yet there are certain issues of serious concern related to enjoyment of Human Rights by all its citizens. These issues relate to trafficking in women and children, food security, right to education and health, disappearance of persons, displacement of persons due to disasters, conflicts and development, child labour, custodial deaths, prisons and the disabled. On these issues, the Commission is not only dealing with individual cases but also issuing policy guidelines for implementing agencies.

19. The Commission laid down stringent reporting requirements in respect of custodial deaths and rapes. A National Conference was organized in this regard which was attended by cross section of the society. It discussed ways and means to prevent it. The Commission has issued guidelines, among others, on deaths in alleged fake encounters, arrests, and protection of human rights in prisons. Scrupulous adherence to the Commission's guidelines would go a long way in the protection and promotion of human rights. The Commission was a respondent in a petition in the Supreme Court related to Police Reforms and enactment of new Police Act.

20. The Commission has also taken a proactive approach to periodically monitor and review the implementation of measures by Government for ensuring some basic Human Rights areas of concern. Some of these are as follows:

2. Right to Education:

21. The Commission has been advocating since 1994 for free and compulsory education to all children until they complete the age of 14 years. The 86th Constitutional Amendment Act, which was passed in 2002, mandates that 'the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.' As of now, there is no central legislation in this regard. The Model Right to Education Bill was circulated to the States in June 2006. Though the Constitutional Amendment Act has been passed, this right is a stillborn right as the corresponding legislation is not in place. Notwithstanding *Sarva Shiksha Aabhiyan* and other programmes, fundamental right to education cannot be realized all over the country in the absence of a clear policy and legislative measures, whether through a Central or State legislation. The Commission is deeply concerned about equity and quality of education, which leaves much to be desired. There are significant gaps between urban and rural areas and between elite and non-elite schools in educational attainments with backward districts and tribal people lagging behind the general public.

2. Right to health:

22. Universal equitable access to essential health care based on need continues to elude us. There are significant inter-state, urban-rural and economic status related disparities in access to essential health care which have been clearly brought out by the National Family Health Survey III

. Quality assurance in Mental Hospitals and protection of the rights of mentally ill is also a challenge. The Commission recommended compulsory rural attachment for the doctors and having nurse practitioners to resolve the issue of manpower.

3. Rights of children

23. The Commission regularly monitors the measures towards elimination of the practice of child labour in hazardous work through its Special Rapporteurs and issues recommendations for compensation as well as penal action. The Commission is of the firm view that children should be in schools and not work for their livelihood and that there should be stricter enforcement of protective provisions in the Constitution and in the laws. The Commission has also been deeply concerned about the findings of slow decline in infant mortality rate brought out by the National Family and Health Survey (NFHS 3). Deeply concerned about juvenile justice, the Commission held a National Conference and made detailed recommendations in this regard. Instances of sexual abuse of children have been on the rise and are a matter of deep concern for the Commission. The Commission intervened in specific cases of child sexual abuse including in the Nithari incident where it constituted a High Level Committee on Missing Children and based on its report, it made detailed recommendations on the issue. In July 2007, it has issued Guidelines for speedy and sensitive disposal of child rape cases. The predominantly patriarchal, social, cultural and religious set up based on the foundation that the family line runs through a male has contributed extensively to the secondary status of women in India. This has led to a strong desire to avoid the birth of a female child in the family resulting in decline in the child sex ratio at an alarming rate. Modern technology combined with a cultural preference for sons rather than daughters has led to the mushrooming of neo-natal clinics across India where parents can check the sex of their unborn child. In some parts of the country parents are choosing to abort if the child is female.

4. Right to food:

24. Though sufficient food grains are available in the country, the Commission has been concerned about issues relating to access to food and malnutrition. In spite of plethora of schemes, there seemed to be no convergence. On one hand, we have overcome famines and moved away from being a food deficit country, while on the other hand, there are instances of starvation and malnutrition. The Commission is of the firm view that there is a need to redefine concepts like, 'Right to Nutrition', 'Malnutrition', 'Starvation' so that there is a paradigm shift from 'welfare' approach to 'rights based approach' to the issue of malnutrition and starvation. The Commission has held that Right to Food is not only a constitutional guarantee but also a basic human right. In order to ensure quality execution of Right to Food, the Commission has recommended constitution of Committees which would monitor the access and availability of food grains to the eligible and most vulnerable sections of the society. The Commission has issued the guidelines on the constitution and functioning

of the committees to all the State governments and the Central Ministries. The Commission hopes that, if implemented in letter and spirit, these Committees, which will act as Watch Committees, would pave the way for a hunger free India. Besides drawing up a draft National Action Plan on Right to Food, the Commission is also monitoring incidence of malnutrition in Maharashtra.

5. Rights of persons with Disability:

25. The Commission was actively involved in the drafting of the Convention on the Rights of Persons with Disabilities and soon after its adoption by the UN General Assembly, the Commission commended it to the Government of India for ratification, which has since been done. Article 33 of that Convention provided a role for NHRIs in the monitoring of implementation. Accordingly, the Commission has initiated follow up action. It proposes to hold regional workshops to sensitize various stakeholders about the provisions of the Convention and monitor the execution of the rights of persons with disabilities.

6. Corruption and Human Rights:

26. Recognizing linkages between corruption and good governance and how the former impinges upon the enjoyment of Human Rights, the Commission held a National Conference on this subject in May 2006 and based on it, made detailed recommendations to all authorities concerned.

7. Review of international human rights commitments:

27. As an 'A' category Paris Principles compliant National Institution, the Commission has been playing an active role in the International Coordinating Committee and in the Asia Pacific Forum of NHRIs and was instrumental in the UN Human Rights Council resolution 5/1 which listed critical role of NHRIs in the UN Human Rights Council. On request from the Government of India, the Commission actively participated in the preparation of the India Country Paper.

28. In the interpretation of applicability of international conventions, the Courts and the Commission have always interpreted it in a progressive manner in harmony with international law. Based on the Commission's efforts, the Government of India has signed the Torture Convention. Following the Commission's advice, it has signed and ratified two Optional Protocols to the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. In the same vein, the Commission has been advocating for the ratification of the 1951 UN Convention relating to the Status of Refugees and the Torture Convention. In addition, it has been advocating for a National Law on Refugees.

8. Conclusion:

29. There is an increasing convergence of positions amongst various sections - the State, Human Rights Institutions and civil society – that development is one of the necessary requisites for promotion and protection of human rights and right to Development. Two challenges need to be met before this right can be taken seriously in policy and action. The first is to create a robust concept of development; the second is to identify the practical steps

to implement this right by gearing up the administration and the operation of law. The object of this right is to reduce disparities, harmonize aspirations of freedom and dignity with material improvement of human conditions. Neither objective is possible under conditions of poverty. Poverty often results from willful neglect and discrimination. Lack of adequate development or that which permits exclusion and discrimination in allocation of resources paves the way to increased inequality and marginalization of the poor and the vulnerable. It denies them their human rights in terms of lack of capacity.

31. In the words of Nobel laureate, Amartya Sen, “the overarching objective of development is to maximize people’s capabilities – their freedom to lead the kind of lives they value, and have reason to value.” Economic and social inequalities create differences in access to political power, justice, basic goods and services, all of which are essential for the full realization of human rights. The process of development must strive to realize all human rights entitlements of all rights holders. This is particularly relevant for the poor and the marginalized. For them, it is necessary that the development process move away from needs based exercise in charity and assistance to one that creates and sustains genuine entitlements that span all aspects of their life - economic, social and cultural as well as civil and political.

32. The second challenge is to translate political commitment to practice. Development with social justice cannot be achieved in the absence of respect for human rights. There has to be an enabling environment - legal political, economic and social - sensitive in the local context for realization of right to development. The gap between intention and action has undermined the credibility of several schemes. NHRC targets to be a facilitator to trigger this process for the realization of the right to development.
