UTTAR PRADESH
RAJARSHI TANDON OPEN UNIVERSITY

CHR-03
Human Rights In Everyday Life : What Can We Do? (A Work Book)

BLOCK - I: KNOW THEM

SECTION A

1. Introduction
2. Right and Duty
3. Unlawful Assembly
4. Communal Violence
5. Wrongful Restraint and Wrongful Confinement
6. Murder and Attempt to Murder
7. Rioting
8. Cheating, Forgery and Lottery
9. Hurt
10. Mischief
11. Criminal Trespass
12. Abetment
13. Trafficking in Human Beings
14. Directives Issued by the Supreme Court of India to be Followed in All Cases of Arrest or Detention

SECTION B

1. Consumer Rights
2. Environmental Protection
3. Implementing Health Care
4. Effective Working of Local Self Government

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A WORD ABOUT THE COURSE

The main objective of this course is to familiarize the students with various tips regarding legal literacy. It is one thing to know about human rights but such knowledge is not of much use if the same has not been applied by the learner. Human Rights Education differs from others on a major count: it asks the learner to implement whatever learnt in their day-to-day social behaviour and interactions. The ultimate goal, of course, is to contribute to change of mind-sets which today are largely responsible for a number of negative and stereo-typed behaviour. Advisedly, the learner should reflect on each piece of learning as he or she practices them on the blank pages given (additional sheets should be used). Each piece of learning comes as a tip; and this means, the purpose is not to prepare you for a legal profession but to acquaint you with the daily needs of such rules and procedures which, more often, we are not aware of. Of course, the matter does not end here also. We should also know how to use them for ourselves as well as help others in need. Hence, the Block : IMPLEMENT THEM.

For the course, we have used the materials produced by Multiple Action Research Group (MARG), New Delhi. There are 10 booklets in one set entitled **"OUR LAWS"**. Please practice the main points there through writing them on blank sheets.

Whereas **Courses 1 & 2** gave you some ideas about human rights, **Course 3** actually intends to equip you with tips of law-related information which are vital for living in a climate of peaceful co-existence enriched by a culture of human rights. But all these may not even mean much, if you do not apply the learnings to your daily practices. We sincerely hope, you will contribute that much from your side.

— ***Programme Coordinator***

1. INTRODUCTION

Several questions come to mind when one is asked: what is law? What does it do? How does it serve a given purpose? Who are responsible for law making? What is the ultimate objective of law? So on and so forth. For an answer to all these questions, one may say that law is nothing but common sense. But, what is common sense? Is this the sense of what is good and what is bad? What is just and what is unjust? What one should do and what he/she should not do? In reality 'law' is a combination of all the above-mentioned goals. A functional definition of 'law' would be; a tool used to maintain communal harmony, social interdependence and public tranquility so that the society functions.. It works by laying down certain standards to regulate human behaviour.

It is easy to explain what happens when 'law' is not adhered to. But it is difficult to appreciate the role of 'law' as far as its functional dynamics are concerned more so in a country like India with a population of more than one hundred crores. Enforcement of law is a bigger problem than their mere formulation. When we talk about enforcement or implementation, the 'state' plays a major role. But the question is who gives this authority to the 'State'?

Human beings as social animals need some standards to regulate their conduct so that the latter becomes acceptable to everybody. This whole exercise is aimed towards maintaining social harmony. But again, who will do this? Against this backdrop, the 'state' came into existence with a clear mandate to protect and safeguard the interests of different entities who may not be living together in peace. The 'state' advises, recommends, warns and sometimes punishes its people to discharge various responsibilities; this is actually important. For its smooth operation, different mechanisms have been developed over the years. Legislature, Executive and the Judiciary are amongst others. Farther afield, specialised agencies like police and administration have been raised to look after daily routines.

'State', confers rights on individuals, it also imposes duties on them. The law binds every person and groups of persons which exist in the system. The 'law' also binds the 'state' as an entity. Hence law prevails supreme over everything else in a system and whatever rules and regulations are made have to be consistent with the law of the land which is the Constitution of India in our case. All the laws made and executed conform to the requirements of the **Constitution.** If they don't, they are illegal.

2. RIGHT AND DUTY

Definition

Sense of right and duty plays a major role in the determination of 'law'. 'Right' is the action permitted by the 'law'; not only permitted but the state is also under constitutional obligation to protect and promote genuine interests of its people. Duty is the obligation on the part of men/women of a country towards fellow- beings and the state .However, to maintain public order, the state at times limits some rights and at other times, gives some concessions to some people. The relation between rights and different concessions are as follows:

Claim-Duty-No Claim

Claim indicates what one can force others 'to do' or 'not to do'. Further it indicates that others are under an obligation/duty to behave/act accordingly. It also says that no one can claim against such a right.

e.g., Citizens have the right to use public road.

Privilege-No Claim-Duty

Privilege indicates what one would enjoy without any external interference. The opposite of privilege is duty; others cannot demand such a privilege.

e.g., Parliamentarians are privileged to speak freely inside the house.

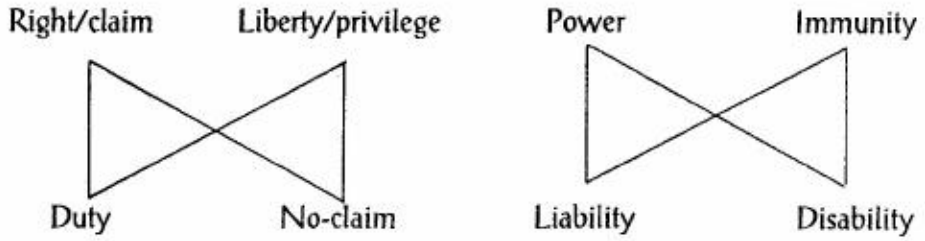
Power-Liability-Disability

Power is the ability on the part of a person or a group of persons to take a decision. Others are liable to such a decision and have been disabled to act alike.
e.g., The board of directors of the company have the power to revamp the structure.

Immunity-Disability-Liability

Immunity is a privilege given to some people by the state against whom legal proceedings cannot be initiated. The empowered must always consider implicit presence of the 'immuned' in his/her course of actions.

e.g., The President of India is immune to prosecution.



INDIAN PENAL CODE

Offences are broadly classified under two heads; civil and criminal. They are entirely different in their nature and treatment. Civil offence is an offence against a party whereas criminal offence is an offence against mankind. Fine is awarded for offences of civil nature but for offences of criminal nature punishment is awarded. This chapter deals with offences criminal in nature.

Some cautions have been given at the end of each offence; read them carefully for regular practice.

3. UNLAWFUL ASSEMBLY

When five or more people congregate with the purpose of compelling any person to do something unlawful, to take possession of something unlawfully, to create problems for lawful execution of any legal/administrative process or to overthrow any government, the offence of unlawful assembly results. Criminal force is often found associated with unlawful assembly.

Necessary elements

Five or more persons (with a)
Common objective

Persons to be punished

Every member of an unlawful assembly. Whoever, intentionally joins or continues to be a part of such an assembly is treated as its member.

Relevant sections

141 to 145

Punishment

Depending on the circumstances the punishment varies from 6 months to 2 years imprisonment of either description with or without fine.

IMPORTANT TO REMEMBER

An assembly, which is lawful at the very beginning, could become unlawful by subsequent acts of its members.

It is not necessary that criminal force has been applied. Mere participation is sufficient to invite punishment if it is unlawful assembly.

DO'S

- *Before you mix in a group, make sure you agree to what they have gathered for.*
- *Take note of the directions, if any, issued by of the public authority.*
- *Before taking part in any protest, strike or like demonstrations, find out about its objectives and modalities.*

4. COMMUNAL VIOLENCE

Any act, which attempts to disrupt peaceful co-existence of people of different religion, race, language, place of birth, caste or community, is liable to punishment.

Essential Elements

Threat to co-existence.

Persons to be punished

Persons who promote or attempt to promote.
Persons who intend to disrupt social harmony in an organised way and have put some efforts thereto.
Persons who do such an act in any religious place or gathering.

Relevant sections

153A and 153B

Punishment

Imprisonment which may extend to three years with or without fine.

IMPORTANT TO REMEMBER

It is not necessary to prove that the tension which has erupted was due to such an act, actually the act in itself is objectionable.

DON'T

- *Criticise religious tenets without understanding the contents.*
- *Get influenced by the self-serving nature of any religious text published by so called hardcore religious activists.*
- *Try to classify people on the grounds of race or religion.*
- *Keep your child in dark about the tenets of other religions.*
- *Express your preconceived notions in public. Such opinions should be expressed only after carefully examining its social implications.*

5. WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

Wrongful restraint means keeping a person not at where s/ he wishes to be and has a right to that end. The slightest unlawful obstruction to the freedom of a human being to move in the directions he likes lawfully amounts to the offence of 'wrongful restraint'. In the process of wrongful restraint if the offender forces the person to say within prescribed limits then it is said to be 'wrongful confinement'.

Essential Elements

Unlawful obstruction
Deprivation of freedom of movement

Persons to be punished

The person who obstructs a man/woman wrongfully.

Relevant Sections

339 to 348

Punishment
Imprisonment upto 3 years with or without fine.

DO YOU KNOW?

This section encompasses;

- Detaining a person for several days by a constable without showing the reason for that.
- Confining a person in a closed room for his being insane without availing ready medical facilities.
- Detaining a suspect after receiving his bail orders in a police station.
- Usage of mobile vehicle like a moving bus, train, etc. for the purpose of restraining a person's movement is similar to confining him within limits.
- Removing a ladder for a person to stay above, thereby obstructing his movements.
- Preventing a tenant to enter into the premises by the landlord.

DO'S

Respect other's rights, while exercising yours.
Take care while executing any work that is related to public utility.
Park your vehicle in a safe place leaving sufficient space for other's mobility.
Value other's time. May be others have something more important to do than attending to you.

6. MURDER AND ATTEMPT TO MURDER

Murder is always an unnatural death. Whoever causes it with the intention of bringing a human life to its end is said to be committing a murder.

Essential Elements

- Death must have occurred in circumstances other than normally known ones.
- The connection between the act and the death caused thereby must be direct and distinct.

Persons to be punished

One who commits murder.
One who attempts murder.
One who abets murder.

Punishment

For the offence of murder, punishment may go upto death penalty. But in any case it is never less than 7 years imprisonment with or without fine.

Take care of the following

- Your casual comments may provoke others to act inhumanly. Hence the gravity of the situation and the mental ability of the persons present there should be taken note of.
- Prolonged negligence, disregard, rejection without sufficient conviction/logic may frustrate a person and may lead him to commit suicide.
- Care must be taken of the ailing insane, children and other diseased persons while making them realise for their wrongs.
- Ensure safety of others while driving or performing any risky jobs.

DO YOU KNOW?

The sections encompass

ill-timed and intentional, might lead to fatal consequences. Talks resulting in ication, to somebody to end his or anyone else's life are treated as an 'act'.

ausing grave physical injury or sometimes death to a man alleged to be a bearer of an evil spirit by others.

Proper remedies and skillful treatment may not be available. Hence, it cannot be a plea

lf-defence has a point from where it can be viewed as an 'act'. The limit once ed the accused comes under related sections.

e of a woman for dowry leading to her death by herself is a grave offence.

Abetting a mentally retarded person or a child to commit suicide may amount to murder.

IMPORTANT TO REMEMBER

It is immaterial if the person whose death has been caused is not the very person whom the accused intended to kill.

An offence is complete the moment death has taken place; whatever be the means adopted by the accused plays very little role in determination of criminal intent.

Expediting the process of death to a person who is suffering from bodily disorders or disease is deemed as causing his death.

Attempt to suicide is an offence under similar section and the person who abets suicide is also guilty.

7. RIOTING

Once any force or violence is used by an unlawful assembly or by any member of the assembly, the offence becomes rioting, if the force or violence has been used in pursuance of a common purpose.

Necessary Elements

Unlawful assembly.
Use of force or violence.

Persons to be punished

Who make other people indulge in rioting by any means.
Who create problem in dispersing an unlawful assembly.
Members of the assembly.

Relevant sections

146 and 153

Punishment

Imprisonment extending to three years with or without fine.

IMPORTANT TO REMEMBER

Every member of the unlawful assembly is equally responsible for any act done by a member.

DO NOT FORGET

Take note of the fact that 'law' under any circumstances does not permit use of force/violence.
Always resort to the mechanisms established by the law for redressal of your grievances.
Do not come under sway of any provocation. The person who is giving a discourse may have some ill-intentions; examine them carefully.
When you find that you are losing control over the situation, ask for help from the police.

8. CHEATING, FORGERY AND LOTTERY

A person who causes others to believe by any means what is false and thereby obtains some benefit out of it, is a 'cheat'. The act by which a cheat wrongfully benefits himself directly or indirectly is known as 'cheating'.

Essential Elements

Dishonest interest in the wrong doer.
Incurrence of some loss for reposing faith in the wrong doer by any person.

Persons to be punished

Anyone who cheats others by any means.

Relevant sections

415 to 420

Punishment

Depending on the circumstances under which the offence is committed, imprisonment which can extend upto 7 years with or without fine.

IMPORTANT TO REMEMBER

Person who is pretending to be some other shall be punished under this section.
Caretakers who commit this offence are liable to severe punishment.

Forgery

Making a false document fully or partly with the intention to draw some advantage out of it or cause any mischief is known as forgery.

Essential elements

Wrong intentions behind making such a false document.

Persons to be punished

Person who prepares, signs and seals a false document.
Person who alters/replaces original documents with a false one.
Person who induces others to make or to take part in making false document.
Person who uses a forged document knowingly.

Relevant sections

463 to 471

Punishment

Imprisonment which may extend upto 10 years with or without fine.

IMPORTANT TO REMEMBER

Even if a person has a genuine claim to a particular accrual, he could still be convicted as guilty of forgery if he submits false documents in support of his claim.

Do's

- ***After arriving at the conclusion that you have lost an important document find out the prescribed rules in this regard. Avail the same by following the laid down procedures to procure it.***
- ***Always say X has told you and don't act as X.***
- ***Your silly interests may be fatal for others.***

Lottery

A lottery is a distribution of prizes by lot or chance without the use of any skill. It stands on the same footing as gambling because both of them are games of chance. The organisers, publisher who advertises and the proposer shall be punished in case of a lottery, unless permitted otherswise.

9. HURT

Anyone who causes bodily pain, inflicts disease or any sort of sickness to any person is said to have caused 'hurt'. If the hurt goes upto the extent of leaving an indelible mark on the person's body or to make the person suffer for 20 days disabling him to perform all his routine activities including acts like eating, sleeping and performing ablutions, then it is designated as 'grievous hurt'.

Essential elements

Hurt must be caused voluntarily.

Relevant sections

319 to 338

Punishment

Imprisonment which may extend upto 10 years with or without fine.

IMPORTANT TO REMEMBER

Under certain circumstances, it is not necessary to hurt but the simple intention and some attempts thereto, is sufficient to be charged under this rule of law

Do you know?

The section could encompass the following:

Poisoning

Wife beating

Torturing domestic help

Teeth as an instrument of biting

Home tools and implements etc. could be constituted as weapons of offence.

Rash and negligent acts which endanger human life and personal safety of others.

Torture by a police officer to an arrestee to elicit confession from him/her.

Torture by revenue officials of the defaulters to collect revenue arrears.

Hurt to public servant on duty.

10. MISCHIEF

Whoever brings out any change in normal situation by damaging in any manner any property with the desire to cause wrongful loss to public or a person, is said to have committed the offence 'mischief'.

Essential Elements

Destruction of any property or its degradation.
Intention of causing wrongful loss.

Persons to be punished

He/she, who commits mischief along with his/her accomplices.

Relevant sections

425 to 440

Punishment

Depending on the loss caused and property damaged, imprisonment upto 10 years with or without fine.

IMPORTANT TO REMEMBER

Any unnatural use of property amounts to destruction of change.
It does not reduce the blameworthiness of the person if the property belongs to him/her who has committed the offence 'mischief'.

Do you know?
These sections could encompass following:
Causing hurt to domestic animals.
Marginalising or polluting water supply.
Destroying or moving of any landmark fixed by any competent authority.
Using of fire or explosives as a means to commit mischief.
Destroying living house, temple or custody house with fire or explosives.
Disturbing a ship in its normal course at sea.

Do's

- *Before altering any existing system, study the relation between the system in question and the people involved in the process.*
- *Your efforts to realign/revamp a structure or to draw some benefit from it may be degrading its inherent values.*
- *It is important to study the behavioural patterns/mannerisms of a particular person/animal/any entity like machines before trying your hands on it.*

11. CRIMINAL TRESPASS

Entering into or upon property in another's possession unlawfully or entering lawfully but staying there unlawfully with an intention to commit an offence or to harm others is 'criminal trespass'.

Essential Elements

Unlawful entry or lawful entry but unlawful remaining.
Intention to cause harm.

Persons to be punished

One who enters unlawfully.
One who remains unlawfully.
All accomplices to such an offence.
One who breaks open or unfastens any closed container, which contains property dishonestly to commit mischief.

Relevant Sections

441 to 461

Punishment

Depending on the criminality of the offence, punishment goes upto imprisonment of life with or without fine.

IMPORTANT TO REMEMBER

The offence is complete as soon as the container is broken open, whether anything is done to the property therein is immaterial.
In case of occurrence of death or grievous hurt in the course of trespass it is immaterial who caused death or grievous hurt. All those who were involved in committing such trespass shall be punished equally.

Do you know!
The introduction of any part of trespasser's body in entering is sufficient to constitute house-trespass.
The time plays a crucial role in determining blame worthiness for trespassing.

Do's

- ***If it is necessary to enter the premises of a particular person, then it becomes imperative to take such permission from the occupant.***
- ***Before utilising the services of a public office, find out the official protocol and the officing style.***
- ***When the person you need to meet is not interested in you, then look for other alternatives.***

12. ABETMENT

When a person actively suggests or stimulates some other to act in a particular manner by means of language, direct or indirect, or by any other means to procure a thing or to cause a particular event **detrimental to mankind** in nature, the act of the person is known as 'abetment'. Aiding a person in any manner by any act either done prior to or at the time of commission of an offence is also known as abetment.

Essential Elements

Instigating a person to act in a particular manner.

Persons to be punished

One who instigates a person to commit an offence.
One who engages himself/herself or some other person in a conspiracy.
One who aids a person to commit some offence.

Relevant sections

107 to 120

Punishment

If the act abetted for is committed then the punishment is the same to that of the offence itself. In case of some other offence committed in pursuance of abatement for a particular act, the abettor would be punished as per his/her liability is concerned. The abetment may not have resulted in any offence, but the abettor shall be punished on the basis of his/her intention.

Do you know?

It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

The abetment of the illegal omission of an act may amount to an offence although the abettor may not be bound to do that act.

An attempt to commit the offence of abetment is an offence in itself.

To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

It is not necessary that the person abated should be capable by law of committing an offence. Instigating a child or lunatic is also an act of abetment.

13. TRAFFICKING IN HUMAN BEINGS

Exporting or importing of human beings like cattle, to expose them to unhealthy trades with an intention of exploitation and procuring men/women for the above mentioned purpose is 'trafficking in human beings'.

Section 366A and 366B are intended to punish the export and import of girls for prostitution. Section 366A deals with sourcing of minor girls from one part of India to another. Section 366B makes it an offence to import into India from any country outside India girls below the age of 21 years for the purpose of prostitution.

Kidnapping of any person with an intention to put his or her life in danger, reduces him or her to a slave. To make him/her an object of unnatural lust of any person is liable to severe punishment under section 367. The persons who assist in commissioning of such an act are also punished under section 368.

Anyone who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his/her will, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine. Section 370 and 371 punishes habitual slave dealers. Selling of minors for the purpose of prostitution is punishable under section 372. Section 373 punishes for buying minors for the purpose of prostitution. Under any circumstances other than prescribed by the 'law', 'forced labour' is not permissible. Section 374 punishes for forced labour.

Do you know?

The offence of kidnapping is complete when the minor is actually taken from the lawful guardianship. The distance to which the minor has been taken away is immaterial

IMPORTANT TIPS TO REMEMBER

Ignorance of law is not excusable.

An accused is always entitled to the 'benefit of doubt'.

Burden of proof lies on the prosecution.

Every person has the right to lodge a complaint with the police.

The accused has the right to be heard by a competent authority.

No one is guilty till declared so by an appropriate court.

One has the right to search the officer who comes to his/her house with a search warrant.

Telephone calls to the police are exempted of any toll.

Confession to police is not evidence.

Doctors are under duty to extend their services in case of emergencies without looking into the formalities at the police end.

An arrestee can meet his/her counsel in between interrogation period.

GENERAL EXCEPTIONS

Considering the complexity of circumstances, the 'law' has acknowledged the difficulties through generalisation. Certain circumstances may demand a specific treatment and cannot be left to be handled in a manner similar to that with a normal one. General exceptions are detailed below:

Section 76 excuses a person who has committed an offence under a misconception of facts but in good faith.

e.g., A soldier fires on a mob by the order of his superior officer in accordance with the law.

Section 77 and 78 say that a duty bound and abiding judge is exempted from criminal prosecutions for his/her exercise of power in good faith. The officials who carry out an order of a court are also protected under these sections.

Section 79 protects those acts of a person which are justified by law, and s/he believes in good faith justified by law for acting in that particular manner.

e.g., a person after exercising his mental faculties seizes one Mr. X who appears to have murdered in order to bring him before the proper authorities.

Section 80 says that doer of a lawful act is exempted if he does it in a lawful manner without any negligence, if his act results in an accident.

Section 81 excuses persons for acting in a manner resulting to some harm to prevent another big harm.

Likewise ***sections upto 106*** protects players of risky sports, doctors, caretakers, communicators and acts done in self defence, if the doer act in good faith and that he/she tried his/her level best to avoid the mishap. Also he/she did not exceed the limits prescribed by the law thereby. Children below 7 years and persons with unsound mind are also exempted

from criminal incapicity

prosecutions. But the law punishes the person who has misused the and innocence of the insane and children in causing harm to others.

14. DIRECTIVES ISSUED BY THE SUPREME COURT OF INDIA TO BE FOLLOWED IN ALL CASES OF ARREST OR DETENTION

01. The police personnel carrying out the arrest and handling the interrogation of the arrestee should ***bear accurate, visible and clear identification and name tags with their designation.*** The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

02. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such ***memo shall be attested by at least one witness,*** who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall ***also be countersigned by the arrestee*** and shall contain the time and date of arrest.

03. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be ***entitled to have one friend*** or relative or other person known to him or having interest in his welfare ***being informed, as soon as practicable, that he has been arrested*** and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

04. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside of the district or town through the Legal Aid Organisation in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

05. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

06. ***An entry*** must be made in the diary at the place of detention regarding the arrest of the person which ***shall also disclose the name of the next friend of the person*** who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

07. The arrestee should, where he so requests, be also examined at the time of arrest of major and minor injuries; if any present on his/her body must be recorded at that time. ***The 'Inspection Memo' must be signed both by the arrestee and the police officer*** effecting the arrest and its copy provided to the arrestee.

08. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, health services of the state or union territory concerned. Director, Health Services should prepare such a panel for all Tehsils and districts as well.

09. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

These requirements are primarily meant for the prevention of custodial violence but it may be submitted here that they are equally useful for prevention of arbitrary arrests and detentions. Failure to comply with above requirements will render the concerned officials liable to be punished for contempt of court in addition to departmental action.

1. CONSUMER RIGHTS

One of the most important milestones in the area of consumer protection in the country has been the enactment of the **Consumer Protection Act, 1986.** This Act has been necessitated since the well organized sectors of manufacturers, traders and service providers continued exploiting the consumers, despite the existence of various provisions of laws and the Civil Courts protecting their interests. The little remedies available under the earlier Contract Act or Sales of Goods Act, etc., were too time-consuming and costly. Thus an acute need was being felt to protect the interests of the consumers. The Consumer Protection Act, 1986, was enacted to fill this wide gap. This Act was further amended in 1993 introducing some very important provisions beneficial to the consumers.

The Consumer Protection Act, 1986 is a unique and comprehensive legislation. The objects and reasons behind the Act are based on **inherent rights.** The simple facts you should know as a consumer about the Act which will build up your confidence and you may not feel as helpless as you may think now.

This Act has set in motion a revolution in the field of consumer rights, the parallel of which has not been seen anywhere else in the world.

Unlike existing laws which are punitive or preventive in nature, the provisions of this Act are compensatory in nature. The Act is intended to provide simple, speedy and inexpensive redressal to the consumers' grievances and relief of a specific nature and award of compensation wherever appropriate to the consumer.

Rights of the consumers:

1. ***Right to safety.*** It simply means the right to be protected against the marketing of goods and services that are hazardous to life and property. So one should be cautious in purchasing goods and services. He/she should be wary of purchasing goods not marked with **ISI** or **AGMARK** and in case of absence of such marks should inquire from the shopkeeper about the quality of the goods.

2. ***Right to be informed.*** The consumer has a right to be informed about the quality, quantity, potency, purity, standard, and price of goods so as to protect himself against unfair trade practices.

3. ***Right to choose.*** The right to be assured, whenever possible, to access the authority of goods and services at competitive prices. It means access of the consumer to a wide variety of goods at competitive prices.

4. ***Right to be heard and assured*** that the consumers' interests will receive due consideration at appropriate forums. It means that there should be appropriate forum for a consumer to approach in case he feels cheated or duped.

5. ***Right to seek redressal.*** The consumer has a right to seek redressal against unfair trade practices or unscrupulous exploitations. The consumer could take up the matter

with the offending party. If there is no redressal he can take up the matter with the consumer association in the area.

6. ***Right to consumer education.*** The consumer organizations can play a constructive role in consumer education. They can inform the consumer about their rights and also teach them how to seek, use, and evaluate consumer information. The need for such an action is more acute in the rural areas.

The Central and State Consumers Protection Councils are to protect and promote the above objectives.

Relief available to consumers:

The Act provides for simple, speedy and inexpensive redressal of grievances and is compensatory in nature. There is no complexities or technicalities involves, even there is no court fee or stamp duty to be affixed, no matter whatever be the amount involved in the complaints.

Based on these rights, relief are available to a consumer which is depending on the nature of relief sought by the consumer and facts, the Redressal Forums may give orders for one or more of the following reliefs:

1. removal of defects from the goods,
2. replacement of the goods,
3. refund of the price paid,
4. award of compensation for the loss or injury suffered,
5. removal of defects in the goods or deficiencies in the services,
6. discontinuance of unfair trade practices or restrictive trade practices or direction not to repeat them,
7. not to offer the hazardous goods for sale,
8. withdrawal of the hazardous goods from being offered to sale, or
9. award for adequate costs to parties.

Structure of Consumer Courts:

To provide simple, speedy and inexpensive redressal of consumer grievances under in Act, a three tier quasi-judicial machinery, popularly known as consumer courts, at the national, state and district levels have been set up. These courts are designed to render free redressal to the consumer's disputes against any defective goods and deficient services which include unfair and restrictive trade practices.

National Consumer Disputes Redressal Commission known as **National Commission** is functioning at New Delhi. Each State has a Consumer Disputes Redressal Commissions known as the **State Commission**. Similarly, every district in the country has a Consumer Disputes Redressal Forum-known as the **District Forum**.

The provisions of this Act are in addition to and not in derogation of, the provisions of any other law for the time being in force.

Who is a Consumer?

A Consumer is anyone who buys or agrees to buy any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment, consumer also includes any user of such goods other than the person who actually buys goods and such use is made with the approval of the purchaser. However, a person is not a consumer if he/she purchases goods for commercial or resale purpose. But there are exceptions. For example a person is a consumer if he/she purchases goods for the purpose of earning his/her livelihood by means of self-employment.For example it has been held in the case where a lady purchased a photocopier for the sole purpose of earning her livelihood and not for large scale business or trading activity that it was not a commercial activity and she was considered a consumer (the secretary, Consumer Guidance & Research Society of India V. M/s BPL India ltd.-I (1992) CPJ 140 NC).

In the case of "services" a "consumer" means a person who hires or avails of any service or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment it also includes any beneficiary of such service other than the one who actually hires or avails of the service for consideration and such services are availed with the approval of such person.

What is a service?

The "service", in the Act, means service of any description which is made available to its potential users and includes provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment or amusement or the supply of news or other information. It is important to note that it does not include the rendering of any services free of charge or under a contract of personal service.

Under the Consumer Protection Act, a consumer can lodge complaints about his doctor, lawyer, tax consultant, tailor-master or anyother services for which he has paid and feels that he has not been given his due. In all these matters the grievances of the consumers have been attended and the consumer forums in different parts of the country have issued suitable directions. Some Examples:

Service rendered by private doctors is covered by the provisions of the Act.

Education is also a service within the purview of the Act .

Hiring of Marriage Hall also involves rendering of services.

Who Is a Trader?

Any person who sells or distributes any goods for sale or a manufacturer of such goods and in case of goods sold in package form , the packer thereof is a trader.

What is meant by a Defect?

"Defect" means any fault, imperfection or shortcoming in the quality, quantity, nature and manner of performance which is required to be maintained by or under any law or as it claimed by the trader in any manner whatsoever in relation to any goods, e.g., suppressing facts regarding the goods' transaction/sales amounts to defects in goods.

What is Deficiency?

"Deficiency" in service, means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

What is an Unfair trade practice?

"Unfair trade practice" means a trade practice, which for the purpose of promoting the sale, use, or supply of any goods, or for the provision practices and thereby causing injury to the consumer of such goods or services. These include:

1. Falsely representing goods about their standard, grade, style, model or composition,
2. Falsely representing that the services are of a particular standard, quality or grade,
3. Falsely representing any rebuilt, secondhand, renovated, reconditioned, old goods as new goods,
4. Falsely representing that goods or services have sponsorship, approval, performance, characteristics, accessories, use or benefits, which they do not have,
5. Misleading statement/representation concerning the need for or usefulness of any goods or services,
6. Giving any warranty or guarantee of the performance, efficiency or length or life of any goods and not fulfils his obligation,
7. Misleads the public about the price of any goods, services or trade of another person,
8. Any trade practice which deceives public through bargain price by advertisement.

Who is a manufacturer?

'Manufacturer' means a person who makes or manufactures goods or parts thereof. Even if he only assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself, he is a manufacturer. Finally, if a person puts, or causes to be put, his own mark on any goods made by any other manufacturer and claims same as his own, he is also a manufacturer. However, a branch office shall not be deemed to be a manufacturer even though it assembles parts of goods dispatched to it by the manufacturer's head office.

Who is a person?

Law protects the rights but rights are protected of entities. Under the Act, a firm, whether registered or not, a HUF (Hindu Undivided Family), a cooperative Society and every other association of persons whether registered under the Societies Registration Act, 1860 or not, are included in the definition of a person.

Where to file a complaint and upto what value?

Depending on the amount of money involved, any consumer, which feels he has been genuinely cheated, duped, or otherwise harassed can file a complaint at the appropriate forum, available to him.

- If the cost of the goods or services and compensation asked for, is ***upto rupees five lakh,*** then the complaint can be filed in the District Forum where the cause of action has partly or fully arisen or where the opposite party resides. A complaint can also be filed at a place where the opposite party carries on his business or where the branch office of the opposite party is located.

- If the cost of goods or services and compensation asked for is ***more than rupees five lakh but upto twenty lakh,*** the complaint can be filed before the State Commission.

- If the cost of goods or services and compensation asked for ***exceeds rupees twenty lakh,*** the complaint can be filed before the National Commission at New Delhi.

Apart from this the Supreme Court of India is the final court of appeal. Even otherwise, under Article 226 and 32 Of the constitution of India remedy of writ jurisdiction is always open in case any of the provisions of the act it self are impugned or challenged before the High Court or Supreme Court respectively.

What constitutes a complaint?

Under the Act, a complaint means any allegation in writing made by a complainant in regard to one or more of the following:

- Any unfair trade practice as defined in the Act or restrictive trade practices like –tie

– up sales adopted by any trader.

- One or more defects in the goods. The goods hazardous to life and safety, when used, are being offered for sale to public in contravention of provisions of any law for the time being in force.

- Deficiencies in services.

- A trader charging excess of price.

i) fixedby or under any law for the time being in force; or
ii) displayed on goods; or
iii) displayed on any packet containing such goods;

Who can file a complaint?

The following can file a complaint under the Act:

- A consumer

- Any voluntary consumer organisation registered under the Societies Registration Act, 1860 or Companies Act, 1956 or under any other law for the time being in force.

- The Central Government

- The State Government or Union Territory Administrations

- One or more consumers on behalf or numerous consumers who are having the same interest (class action complaints).

A complaint can be filed by either of the aforesaid entities. One can go to the court as individuals or a grievance of public nature through an association or through one or more consumers in case the dispute involves a grievance of common interest. The concept of public interest litigation is highlighted. Finally Government may, *suo motu* initiate action under the Act.

Procedures for filing complaints

- There is no court fee is required for filing a complaint before the District Forum, the State Commission or the National Commission.

- The complainant or any of his / her authorised agent / person can present the complaint in person. It is not obligatory / necessary to engage a lawyer, even a consumer organisation can be authorised to represent the case.

- The complaint can be sent by post to the appropriate Forum / Commission.

What a Complaint should contain?

Though there is not prescribed form, your complaint addressed to the President of the concerned consumer court should contain.

a) the name, description and the address of the complainant

b) the name, description and address of the opposite party or parties, as the case may be, as far as they can be ascertained;

c) the facts relating to complaint and when and where it arose;

d) documents, if any, in support of the allegations contained in the complaint;

e) the relief which the complainant is seeking

- The complaint should be signed by the complainant or his/her authorised agent.

Limitation period:

The complaint is to be filed within two years from the date on which cause of action has arisen.This period can be condoned on merits by the Redressal Agency.

Procedure for filing appeals:

- Appeal against the decision of a District Forum can be filed before the State Commission within a period of thirty days. Appeal against the decision of a State Commission can be filed before the National Commission within thirty days. Appeal against the orders of the National Commission can be filed before the Supreme Court within a period of thirty days from the date of the order. The redressal Forum can condone this limitation period on merits.

- There is no court fee required for filing appeal before the State Commission or the National Commission.

- Procedure for filing the appeal is the same as that of complaint, except that the application should be accompanied by the orders of the District Forum/ State Commission as the case may be and grounds for filing the appeal should be specified.

Speedy Disposal:

To ensure speedy disposal of consumers grievances.

It is obligatory on the complainant or appellant or their authorised agents and the opposite parties to appear before the Forum / Commission on the date of hearing or any other date to which hearing could be adjourned.

- The National Commission, State Commissions and District Forums are required to decide complaints, as far as possible, within a period of 90 days from the date of notice received by the opposite party where complaint does not require analysis or testing of the commodities and within 150 days if it requires analysis or testing of commodities.
- Where the opposite party or its agent fails to appear on the date of hearing, the Commission / Forum may decide the complaint ex-parte.
- Not more then one adjournment shall ordinarily be given.

Advantages of approaching consumer courts:

- Provides simple, speedy and inexpensive redressal compared to the Civil Courts where aggrieved consumers with small claims need not wait for long to get justice.
- Simple complaint is enough explaining facts of the case with supporting documents for seeking relief.
- Complaint can be filed in person or by post.
- Complaint can be filed where the cause of action partly or fully arose or where the opposite party resides, carries on business or has a branch office.
- Justice free of cost, court fees not required.
- Engaging lawyer is not compulsory, any authorized agent* can approach on behalf of consumer / opposite party.
- Time bound disposal of cases, i.e. as far as possible, within 90days from the date of notice received by the opposite party case needs to be decided, in 150 days where testing is involved.
- There is a court in every district, in addition to a State Commission in each State and a National Commission which is located in New Delhi.

Addresses of the appropriate Forum / Commission:

The address of the National Commission is:

National Commission,
5th Floor Janpath Bhavan,
Connought Place, New Delhi – 110001.

In so far as the addresses of State Commission / District Forum are concerned, it can be obtained from any voluntary **consumer organisation** working in the area, the District Collector / 'Magistrate's office, Secretary In-charge of Consumer Affairs in the concerned State Govt. or from

Consumer Protection Unit,
Department of Consumer Affairs,
Krishi Bhavan, [illegible] Delhi- 110 001

Alert consumers protect themselves:

An exclusive law to protect the interests or consumers is in place. Similarly the consumer courts throughout the country also exist to redress consumer disputes free of cost. The government at the centre and in the State continue their efforts are also directed at the Act and make the consumer courts effective. Government efforts are also directed at the creation of consumer awareness through various agencies. The welfare of consumers now remains in their own hands. If the consumers are alert and responsible and able to assert their rights, resist / reject the substandard goods / serviceswherever required and do not hesitate to seek justice through consumer courts, if needed, then the manufacturers, traders and the service providers can not afford to take them for granted and they will be bound to produce standard goods and services. Hence alert consumers, aware of their rights and responsibilities, not only can protect themselves but can also make consumer sovereignty a reality.

Appendix:

Consumer Protection Act In Implementation: An example.

Doctor's Negligence Costs a Leg

K. Shankar was sufferingfrom a pain in the right leg below the knee. He approached Dr. Anumalla Satyanarayana for treatment at his private clinic. After examination, Shankar was admitted to his nursing home for 6 days. But, as his condition deteriorated, Shnakar on his own leftfor Hyderabad to take treatment from the Apollo Hospital. Here, doctors diagnosed gangrene in his right leg and suggested immediate amputation up to thigh level. They also noted that Shankar was diabetic on irregular treatment and was suffering the painin his right leg for four years.

Shankar, on his return to Nizamabad filed a complaint with the District Forum and alleged negligence on the part of the nursing home. Dr. Satyanarayana denied the allegation, saying he had taken due care but Shankar did not heed the restrictions imposed on him due to diabetes coupled with drinking and smoking habits.

Unconvinced Shankar further alleged that despite the excruciating pain. Dr. Satyanarayana had not contacted any specialist and continued giving treatment without relief. Shankar was kept immobile for six days with traction on his right leg and these crucial days led to the amputation.

The District Forum upheld Shankar's case and awarded him Rs. 18,000 towards medical expenses and Rs.30,000 for disability Dr. Satyanarayana appealed in the State Consumer Disputes Redressal Commission. But the Commission upheld the ruling. (*Source: CPR Nov. Dec. 99*

COMPLAINT BEFORE THE CONSUMER COURTS

If you have purchased something and the same is deficient in quality and if you have hired somebody for rendering services and the services are not to your satisfaction and have paid for the same, you are eligible to file a complaint before the consumer court.

As said before, there are three types of consumer courts.

The District Forum, The State Commission and the National Commission.

The District Forums are found at the District level. The District Forum tries cases upto the compensation level of Rs.5 lakhs. The State Commission will try cases in which the compensation amounts are between Rs. 5 lakhs and one rupee Rs.20 lakhs. Any complaint above Rs.20 lakhs will be heard by the National Commission.

FORMATS
For Filing Complaints

1. BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM.

COMPLAINT NO OF 2000

IN THE MATTER OF:

——————————COMPLAINANT

VERSUS

——————————OPPOSITE PARTY

COMPLAINT UNDER SECTION II OF THE

CONSUMER PROTECTION ACT, 1986.

MOST RESPECTFULLY SHOWETH:

1. That the Complainant is a——————————describe the status of the complainant)

2. That the Opposite party is (describe the status of the opposite party)

3. Describe in detail the grievances.

4. State the nature of the loss.

5. State whether the values of the loss is less than five lakhs;

6. State the details of the place where the transaction occurred to prove the jurisdiction of the court.

6. Prayer.

Date
Signature of the petitioner

2. BEFORE THE STATE CONSUMER DISPUTES REDRESSAL COMMISSION

COMPLAINT NO. OF 2000

IN THE MATTER OF:

——————————COMPLAINANT

VERSUS

——————————OPPOSITE PARTY

COMPLAINT UNDER SECTION 13 OF THE

CONSUMER PROTECTION ACT, 1986.

MOST RESPECTFULLY SHOWETH:

1. That the Complainant is a——————————(describe the status of the complainant)

2. That the Opposite party is (describe the status of the opposite party)

3. Describe in detail the grievances.

4. State the nature of the loss.

5. State whether the values of the loss is more than five lakhs and less than twenty lakhs;

6. State the details of the place where the transaction occurred to prove the jurisdiction of the court.

7. Prayer.

Date
Signature of petitioner

3. **BEFORE THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

COMPLAINT NO. OF 2000

IN THE MATTER OF:

——————————COMPLAINANT

VERSUS

——————————OPPOSITE PARTY

COMPLAINT UNDER SECTION Ii OF THE

CONSUMER PROTECTION ACT, 1986.

MOST RESPECTFULLY SHOWETH:

1. That the Complainant is a—————————— (describe the status of the complainant)

2. That the Opposite party is—————————— (describe the status of the opposite party)

3. Describe in detail the grievances.

4. State the nature of the loss.

5. State whether the values of the loss is more than twenty lakhs;

6. State the details of the place where the transaction occurred to prove the jurisdiction of the court.

7. Prayer.

Date
Signature of the petitioner

In case you are not happy with the order passed by the National Commission, you can file an appeal before the Supreme Court within thirty days of the receipt of the order.

2. ENVIRONMENTAL PROTECTION

Deteriorating environment has become a matter of grave concern in last three decades. The department of Science ad Technology took care of the environment issues in the seventies; but responding to the ever-increasing threat to environment the Government of India established a full-fledged Ministry of Environment and Forest's (MOEF) in 1983-84. Since then a whole range of legislations have been framed and guidelines have been issued before undertaking any project. It became mandatory now to include environmental impact assessment in the project reports alongwith the ameliorative and obliterative measures to compensate the environmental losses. More recently, the Government has also decided to organise 'public hearings', before starting any public project which has the potential to damage the ecology.

Let us note that there is a clear provision in the Constitution of India, regarding environment. Part V of the Indian Constitution contains the Directive Principles of the State Policy.

Article 47 states: "The State shall regard the raising of the level of nutrition and the standard of living of its people and improvement of the public health". As a corollary to this, ***Article 48-A*** states: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country".

In part IV-A of the Constitution, ***Article 51-A(g)*** confers a Fundamental Duty upon every citizen of India to protect the environment. It lays down that: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures".

The nation witnessed the eruption of first ever-major environmental controversy in the early seventies, when the **Silent Valley Power Project** was proposed in Kerala, which was to be set up in a dense rain forest area. Various academicians, scientists, advocates, social activists and concerned citizens vehemently opposed this project and, forced the Government of India to appoint a high power committee. This committee was empowered to make a comparative evaluation of the benefits and losses accruing from the project and to make a clear recommendation whether the Project be continued or dropped. This committee recommended that the project should be dropped in view of the severe adverse environmental collateral impacts.

It will be relevant to mention here that ideally one third of the total geographical area of the country should be under the 'green cover' for maintaining a healthy natural environment in the nation. Though the forest departments stressed that the country has more than the required green cover, for the first time this false notion was exposed by the satellite images which showed that country does not have more than 20% under forest cover. The problem lay in one technicality: the forest departments, all over the nation, considered the 'forest land' under their jurisdiction as 'forested' but the satellite images showed that most of the 'forest land' is barren or degraded forest. The first such study, undertaken by the Department of Space, became a centre of major controversy in 1982 but since then the satellite mapping of green cover has become an annual feature.

Keeping in mind the failure of the states to check the shrinking forests, the subject of 'Forests' was taken out of the Concurrent List of the Constitution and handed over to the Union Government. Under the new provisions, conversion of forestland into non-forest land was banned, in principle, Any public or private project, involving five or more acres of forestland, has to be cleared by the MOEF for which specific guidelines have been given. A whole range of plant and animal species, were identified as endangered and special measures were adopted for their protection, conservation and propagation. Consequently, a number of wildlife park and sanctuaries were established for this purpose, to the extent, that today about 10% of India's forest is covered by the wildlife parks and sanctuaries.

Earlier, three Acts were implemented for ensuring a safe environment:

1) The Water (Prevention and Control of Pollution) Act, 1974
2) The Water (Prevention and Control of Pollution) Cess Act, 1977
3) The Air Pollution Control Act, 1981

Subsequently, in the wake of worst ever industrial disaster of the Bhopal MIC gas leak case, yet another stringent law became effective from May 12, 1986, i.e., **"The Environment (Protection) Act, 1986"**. The aim of this was mentioned as: "An Act to provide for the protection and improvement of environment and the matters connected therewith". In addition to this, there is a **Factories Act**, which prohibits the industries to contaminate the environment. Separate laws regulate the use of insecticides and pesticides. There also exist state laws regulating certain aspects of pollution. There also exist suitable provisions in Indian Penal Code dealing with the environmental pollution.

But before going into this issue, let us see what is pollution. **Pollution** is an indicator of the life-threatening degradation of an environment. For example, Delhi is one of the world's most polluted cities and most of it is **vehicular pollution.** Delhi has about 30 lakh vehicles on its road, which is more than the cumulative total of vehicles in Bombay, Calcutta and Madras (other three metropolitan cities). On an average, daily 300+ vehicles are being registered in Delhi. Consequently, **on an average every one out of its ten citizens is suffering from one or the other lung ailments.** The second major source of pollution is industries. In this connection, the Supreme Court, has issued an order t the Delhi Government to provide land sites within 15 days for establishing plants to convert municipal waste into fertilisers. The Delhi Government has pleaded for more time which the apex court refused. This strict time frame has been given as the Delhi Government was given the order to identify the land for this three years ago but it did nothing in that direction.

Let us have a bird's eye-view on the provisions enshrined in the Indian Penal Code and Environment (Protection) Act, 1986, regarding the protection of the environment.

Indian Penal Code

The Indian Penal Code has an entire Chapter (Section 268-290) dealing with public nuisances. If someone's action causes danger, obstruction, injury or annoyance to the public or to his neighbours, he is guilty of public nuisance. "Public nuisance" means a lot

of things: all injuries or hazardous activities, including pollution of air and water, blasting and similar operations, use of inflammable substances, excessive smoke, filth or fuel and other polluting activities.

Section 133 and 143 of the Code of Criminal Procedure, 1973 say a person who wants to complain about public nuisances can approach a Magistrate to issue an order for restraining the commission, continuance or repetition of the public nuisance.

Under Section 91 of the Code of Civil Procedure, 1908, two or more persons may, with the leave of the court, apply to the District Judge for th specified relief regarding the removal of public nuisances. The relief available is:

i) declaration and injuries, or
ii) such other relief as may be appropriate to the circumstances of the case.

Such an application can be made to the court by the Advocate General also.

The Water (Prevention and Control of Pollution) Act, 1974, applies to Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal besides the Union Territories. The Act will also apply to any other state, which adopts the Act by a resolution under Article 252(1) of the Constitution. Article 252 says one or more states can pass a resolution and authorise Parliament to make laws on a matter which are mainly of the State's concern. The salient features of this Act are:

1) It prohibits the use of streams or wells for the disposal of polluting matters. A stream can be a river, watercourse, inland water, subterranean water and sea or tidal waters.

2) Restricts the opening of new outlets and new discharges into them by requiring the consent of Pollution Control Board.

3) Authorises the Central and State Boards for the prevention and control of water pollution.

4) Any violation of the provisions of the Act is considered as punishable offence. For this purpose specific mechanisms have been laid down for the offences by companies' (Chapter III, Section 16) and 'offences by the government departments' (Chapter III, Section 17).

5) Under the provisions of this Act, in order to strengthen it, environmental protection rules have also been framed in detail.

The Water (Prevention and Control of Pollution) Cess Act, 1977, levies a cess on every person carrying on any specified industry and every local authority. The Cess is calculated on the basis of water consumed by such persons or local industry.

The object of The Environment (Protection) Act, 1986, is to provide a law that will cover

not only land and water or air but all the aspects of the environment. Here the environment is defined as "water, air and land" and "the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property". Similarly pollutants and hazardous substances are also specified. The principal provision in this Act is that no person is to handle any hazadous substance (or cause to be handled) except in accordance with prescribed procedures and safeguards prescribed under Section 6(2)(b). they can also be regulated by measures under Section 3(2)(vii) and written directions under Section 5.

In congruence with this Act, the Factories (Amendment Act), 1986, was also modified regarding the 'provisions relating to hazardous process'. These modifications were aimed to ensure the safety of the environment as well as the safety of workers engaged in the manufacture, storage and transfer of hazardous water. The Act also includes the 'list of industries involving hazardous processes' and 'permissible levels of certain chemical substances in the work environment'.

In addition to this there are several other important notifications and Acts which deal with the prohibition of pollution. These are:

1) The Environment Clearance Notification 1993
2) The Environment Audit Notificatin 1992
3) The Coastal Regulation Zone Notification 1993
4) The manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms/ Genetically Engineered Organisations or Cell Rules 1989
5) The Manufacture, Storage and Import of Hazardous Chemicals Rules 1989
6) The Hazardous Waste (Management and Handling) Rules 1989
7) The Mines and Minerals Act 1947
8) The Atomic Energy Act 1962
9) The Radiation Protection Rules 1971
10) The Poisons Act 1919
11) The Insecticides Act 1968
12) Indian Fisheries Act 1897
13) The Prevention of Food Adulteration Act 1974
14) The Ancient Monument and Archaeological Sites and Remains Act 1958
15) The Urban Land Ceiling Act 1976

ENVIRONMENTAL LITIGATION

Let's now look at an important environmental case which has been in the limelight since long.

The Sardar Sarovar Project (SSP) on the Narmada River

Background: The river Narmada is a interstate river flowing between the states of Madhya Pradesh, Gujarat and Maharashtra, which could not agree upon any formula on sharing the water. In 1975, the issue was referred to Inter-State Water Dispute Tribunal, which gave its final verdict in 1979. According to it, four states, Gujarat, Maharashtra,

Madhya Pradesh and Rajasthan were allocated a definite quantity of water, based on the assumption that utilizable quantity of water available at Narmada is 28 MAF Under the award of the Tribunal, two dams SSP (in Gujarat) and NSP (in Madhya Pradesh) were planned for construction. The SSP-NSP was conceived as a twin project, both being constructed at the same pace (without which 30% of the benefits of SSP will be reduced) and the NSP acting as a storage-cum-feeder dam for the SSP.

Issues at Stake: The main issues comprising this controversy are many. The time when Tribal gave its award in 1979, based on the data collected in early 70s, ground situation underwent a sea-change. Many newer technical, administrative and legal aspects arose afresh, as the Ministry of Environmental and Forest (MOEF) came into existence. The newly framed strict guidelines, regardingconversion of forest land into the use of non-forest purposes, compulsory afforestation in lieu of the forests being submerged, protection of the wildlife due to the submergence, catchment area treatment, rim stability, protection of archeological and historical sites, and above all, the issue of rehabilitation and resettlement of project affected population. Severe questions were raised on the manner in which the total quantum of water in Narmada river was calculated and it was shown that the actuall water available is only 22 MAF, not 28 MAF, as assumed by the Tribunal. The total number of the project affected people increased many times more during the period, when the data was collected for the Tribunal and project becoming operational. The cost-benefit data was claimed to be totally false, cost of the project was highly underestimated whereas the benefits were highly exaggerated. For example the cost of the project was shown to be about Rs.4000 Crore in the papers submitted to the Planning Commission, whereas, two years later, the cost of the project in the agreement with the World Bank was shown to be Rs.12,500 Crore.

The Detailed Project Report (DPR) of the SSP never included the environmental aspects related to the project, as there were no guidelines of MOEF, when it was being conceived. As a result, the MOEF withheld its sanction to the project (which was mandatory for any project involving forest lands) for more than 8 years. Despite this, the Government of Gujarat succeeded into procuring a loan from the World Bank, initiated preliminary work on the project (in 1994) and started putting pressure on the Central Government to get the project cleared from MOEF. Finally, buckling under the political pressure, the MOEF gave its conditional clearance to the project. Nevertheless, all the conditions were ruthlessly violated by the Gujarat Government to the extent that within one year of giving its clearance, the MOEF officially declared that the work should be stopped immediately, as none of the cnditions stipulated with the clearance to the project were being followed. But the MOEF has no legal power to implement its decision and so the work continued.

Finally, a petition was filed in the Supreme Court in 1994, encompassing all the issues. In this continuing case, the apex court in its historical ruling in 1996, stopped the further construction of the dam and freezed it at 80 metres. In the year 1999, the Government of Gujarat pleaded to give it permission to raise the dam height by 5 metres and the court granted it. The matter is still in the Supreme Court and very shortly, from February 29, 2000, final hearings will begin.

The SSP case becomes very important in the view that the violator of the law was another

organ of the state itself. It was first such incidence that the Supreme Court accepted a litigation of this magnitude, involving a Government developmental project, affecting four states. It provides a hope that in Government sponsored development proejcts, if an organ of the state refuses to follow the stipulations of other organ of the state, then the victims can approach the High Court and/or Supreme Court.

3. IMPLEMENTING HEALTH CARE

The Constitution of India is the basic instrument of social change. Action can be taken to remedy a situation which violates the right to life. The Supreme Court has said that where legal injury is caused to a person or a class of persons who by reason of their poverty, disability or socially or economically disadvantaged position cannot approach the courts for judicial redress, any member of the public, acting in good faith can bring an action before the court seeking judicial redress for them. This is clearly a useful tool for consumer activists who can initiate proceedings in the Supreme Court without a consumer being physically there. **Fundamental Rights** are enforced by petitioning either in the Supreme Court or the High Court. Following articles are relevant for claiming a **right to health**:

Article 21 *states that no person shall be deprived of his life or personal liberty except according to the procedure established by law* ***(the fundamental right to life).***

Article 32 gives every citizen the right to ask the Supreme Court to enforce his or her fundamental rights **(the right to enforce a fundamental right)**.

Article 47 states that it is the duty of the State to raise the level of nutrition and the standard of living of its people and to improve public health **(this is a directive principle and not a fundamental right)**.

Article 226 states that High Court can issue writ on any matter connected with Fundamental Right.

THE EMPLOYEE STATE INSURANCE ACT 1948

The Employee State Insurance Act has set up the Employees State Insurance Corporation to administer a scheme whereby factory workers would be entitled, amongst other things, to receive free medical benefits (***Section 50***). Medical benefits consist of complete medical care free of cost to the insured person (and his family if benefit has been extended to them) and comprises:

- Outpatient care
- Supply of dressings and drugs
- Specialist services
- Pathological and radiological investigations
- Domiciliary services
- Ante-natal, natal and post-natal services
- Immunization
- Family planning
- Emergency services
- Ambulance services
- Health education
- Inpatient treatment

Medical care is provided either directly through the agency of Employee State Insurance hospitals and dispensaries or directly through a panel of private medical practitioners as insurance medical officers.

Note. Government employees also receive free medical care through a similar scheme. They contribute towards the cost of this through deductions from their wages.

GOVERNMENT HEALTH CARE SYSTEM

Now, we can turn to administration of health care at different levels of the government, or particularly as it applies to millions of people waiting for services at the lower levels of health administration.

1) Health Policy in India is made and implemented to some degree at all levels. The health system in India has the following main links:
   a) Centre
   b) State
   c) District
   d) Block
   e) Village

2) ***The Constitution (73rd Amendment) Act 1992*** concerning panchayats and ***The Constitution (74th Amendment) Act 1992*** concerning municipalities were passed by the Lok Sabha on 22.12.92 and they provided:

   a) for the mandatory establishment of panchayats at village, intermediate and district levels, and also for the establishment of **Nagar Panchayats** for urban/ transitional areas, a municipal council for smaller urban areas and a municipal corporation for large urban areas.

   b) that the State ***MAY*** by law endow panchayats and municipal authorities with powers and authority to enable Self-Government and ***MAY*** allow devolution of powers and responsibilities to panchayats with regard to health care administration.

3) The **delivery of health care** to the people is made at three levels:
   a) Primary
   b) Secondary and
   c) Tertiary

   Since most poor consumers will be in receipt of primary health care and since it serves the maximum number of consumers, the Government sees it as the main instrument of attainment of health for all.

4) The Structure of Primary Health Care

   a) The rural areas of a district are divided into **Community Development Blocks**

of which there are about 6000 in India. Each block should cover 1,00,000 people. Within the blocks are:

i) 2 or 3 Primary Health Centres (PHCs) which should have a doctor and nurses, and facilities for dealing with medical care, mother and child care including family planning, safe water and basic sanitation, prevention and control of locally endemic diseases, collection and reporting of important statistics, health education, national health programmes, referral services, training of health guides, health workers, health assistants and local *dais*. The PHC is the first point of patient referral. They are often poorly equipped, have no doctor in residence and are short of drugs.

ii) Each Health Sub-Centre covers 5 or 6 villages. There are over 1,00,000 in India. They are supposed to reach people in the most outlying regions. They aim to cover 5000 people or 3000 in hilly or tribal areas. They have one male and one female health worker providing mother and child care, immunization and family planning. There is a chronic shortage of male health workers.

They are mostly female and many workers of both sexes do not know what they are supposed to be doing and have poor supervision from block level assistants.

iii) Some PHCs have been upgraded to **Community Health Centres**. They are supposed to be equipped with 30 beds and have specialised services in gynaecology and obstetrics, paediatrics, surgery and medicine. There are about 1300 in India.

iv) At village level locally selected guides who live in the village receive three months training and local dais who have had one month training provide basic medical and obstetric care.

Neither rural nor urban health services (particularly in slums) for delivering primary health care are fully operationalised. Shortages of doctors, nurses, equipment and medicines are commonplace and the underprivileged are not being served. This is largely due to lack of resources, due to the concentration by the Government on spending money on training doctors, most of whom end up working in the private sector and the encouragement of allopathic medicine rather than traditional medicine which does not rely for its efficacy on expensive drugs, equipment and nursing. Training of para-medicos has been ignored. In the 8th Plan all these matters have been addressed by the Government and it says that it intends to reverse the trends.

felt by many that the people have very little control over their health care ties although some NGOs have had success in implementing health programmes way which is more participative and demand led. It is to be hoped that the lvement of the panchayats will also help in this process.

5) The term ***Secondary Level Health Care*** is used to refer to the care provided at sub-divisional and district level. There are 431 districts. It includes the district hospitals and the programmes under the control of the chief medical officer which incude malaria, TB, leprosy, family planning, etc. and school health programmes. In the **Eighth Plan** the Government stated its intention to encourage private care at this level with particular reference to hospitals and nursing homes.

6) The term ***Tertiary Level*** is used to refer to medical colleges hospitals and specialised hospitals which are supposed to be kept for healthy manpower development and research. However, due to shortages of secondary level care, these hospitals are often used as ordinary hospitals for both acute and non-acute cases.

USING THE LAW TO OBLIGATE THE GOVERNMENT TO SUPPLY HEALTH SERVICES

Some lawyers argue that there are no laws enabling individuals or groups to bring action against the Government for failing to provide the services it is supposed to prvide free of charge, unless the fundamental right to life has been infringed. The Constitution contains some directive principle relating to health:

- ***Article 39*** directs the State to secure that children are given opportunities and facilities to develop in a healthy manner.

- ***Article 47*** directs the State to raise the level of nutrition and the standard of living and to improve public health.

Some constitutional lawyers say that these cannot be enforced in a court of law. However, in relation to the State's duty to improve public health, there is a very find line between infringement of the right to life and the State's duty to provide, for instance, safe drinking water. If people die as a result of the State's failure to provide this service, is that not an infringement of the right to life? A case on this point has already been taken before the High Court in Gujarat which dismissed it not on the constitutional point but because the organisation which brought the case had not collected enough information about the exact position regarding the defective supply of water. The Court gave them liberty to restore the case when the information had been collected. This probably indicates that the Court has conceded that the right of the people to have the benefit of clean and accessible water is part of the right to life under *Article 21* (**CERS vs. State of Gujarat**).

It seems that a little imaginative litigation of this nature may extend this right to all sorts of health issues.

DOCTOR'S DUTIES

Though a doctor is not bound to treat each and everyone asking for his/her services, s/he should never forget that the health and lives of those people under treatment depend on his/her skill and attention. Having taken a case, the doctor is not supposed to neglect the case, nor should s/he withdraw the case without giving sufficient advance notice. *Wilful negligence on the part of the doctor is punishable under the law.*

Patience and delicacy should characterise the treatment. Privacy of information shared for the purpose of treatment should never be revealed by the doctor unless required by the law of the State.

Doctors, especially, public health physicians should enlighten the public regarding quarantine regulations and measures of prevention of epidemic and communicable diseases. S/he is expected to labour hard in an epidemic situation without regard to risk to his/her own health.

REMEMBER:

Each State has a Medical Council with its own Rules to investigate complaints of professional misconduct on the part of the doctors. Such complaints must be lodged in writing giving relevant details and signed by the complainant.

Recently, the Union Health Ministry has introduced some changes for the code of ethics for the doctors in the wake of the controversy over the treatment given to the Late Union Minister Rangarajan Kumaramangalam (particularly the diagnosis of the ailment).

A major change envisaged is to enjoin upon the doctors not to merely go by the advise of the medical representatives in prescribing the drugs for various ailments (the move is aimed at preventing "irrational prescription" which pose major public health problems). Another important amendment to the code of ethics related to regulating publicity by the doctors. The issue has assumed significance in the wake of increased access of internet.

These changes were introduced by the Union Health Ministry and are, therefore, binding on all the doctors.

4. EFFECTIVE WORKING OF LOCAL SELF GOVERNMENT

Article 243-G of the Constitution says that the legislature of a state may, by law, endow the Panchayats with such power and authority as may be necessary to enable them to function as institution of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at appropriate levels including preparations of plans for economic development and social justice and implementation of schemes for economic development and social justice as may be entrusted to them including those listed in the 11th Schedule. This Schedule contains a list of 29 subjects.

The 73rd Amendment (1992) in the Constitution of India is considered a landmark in the hstory of independent India as it paved the way for the Panchayati Raj. **The Panchayati raj or the 'local self government' is an attempt to involve the people at the village level with the process of development.**

The provisions of this amendment enable the people to evolve their own system at the village level in order to undertake development activities, fulfilling the needs of the people, by themselves.

The salient features of the 73rd Amendment are:

1) The Panchayats have been equi-placed with Parliament and Legislative Assembly.

2) Gram Sabhas have been given legal recognition. All the valid voters of a village, whose names are included in the voters' list, constitute a Gram Sabha.

3) There is a provision of reservation for the Scheduled Castes and Scheduled Tribes. In addition to this, 30% reservation for women is also ensured.

4) Constitution of a Finance Commission and areas for generating finance by the Panchayats has been identified.

5) Under the Panchayati Raj system, a provision for the direct elections of its representatives at all the three level is ensured.

6) The States have been empowered to induce further changes, as and when necessary, in the 73rd Amendment.

It is evident that the implementation of the Panchayati Raj legilsation has enormous potential in elevating the economic and social status of the millions of the downtrodden. For example, as a result of the elections to the Panchayats there are about 34 lakhs elected representatives as members and chairpersons at all levels of Panchayats across the country. As a result of reservations provided for SCs and STs and women under Article 243-D of the Constitution, out of the total elected representatives, about 7 lakh members and chairpersons are from SC and ST categories. Of them about two lakhs are women belonging to these groups. Besides, out of the total elected representatives at all levels more than 11 lakh are women belonging to different castes and classes of the rural society. This

is the broadest representative base existing in any nation of the world. This will certainly strengthen and promote the human rights situation in the rural areas as Panchayats have distributed powers among millions instead of putting it in the hands of few at the Central and State level.

Thus, by and large, these guidelines enshrined in the **73rd Amendment**, have been retained by different States and subsequently, each State has introduced its own Panchayati Raj Act making suitable modifications. The entire 11th Schedule has been allocated to the Panchayat, which is as follows:

1) Agriculture, including Agriculture Extension.
2) Land improvement, implementation of land reforms, land consolidation and soil conservation.
3) Minor irrigation, water management and watershed development.
4) Animal husbandry, dairy and poultry
5) Fisheries
6) Social forestry and farm forestry
7) Minor forest produce
8) Small scale industries, including food processing industry
9) Khadi, village and cottage industries
10) Rural housing
11) Drinking water
12) Fuel and fodder
13) Roads, culverts, bridges, ferries, waterways and other means of communications
14) Rural electrification, including distribution of electricity
15) Non-conventional energy sources
16) Poverty alleviation programme
17) Education, including primary and secondary schools
18) Technical training and vocational education
19) Adult and non-formal education
20) Libraries
21) Cultural activities
22) Market and fairs
23) Health and sanitation, including hospitals, primary health centres and dispensaries
24) Family welfare
25) Women and child development
26) Social welfare, including the welfare of handicapped and mentally retarded
27) Welfare of the weaker sections and in particular Scheduled Castes and Scheduled Tribes
28) Public Distribution System
29) Protection of community assets

Thus, the basic thrust of Panchayat's work has been listed. For effective implementation of Panchayati Raj, it becomes paramount that the **members of the Gram Sabha be educated,** organised and prepared to take the benefits of the provisions of the Panchayati Raj amendments for improving their socio-economic conditions and taking power to the people. In order to achieve this, some of the States (like Madhya Pradesh) have made a

provision (under Article 6) that Gram Sabha has the freedom to review any subject related to the working of Gram Panchayat and the Gram Panchayat shall implement the recommendations of the Gram Sabha. Thus, in no unclear words, this becomes binding on the Gram Panchayat to implement the recommendations of the Gram Sabha.

In **Madhya Pradesh**, the Gram Sabha has been further empowered, under Article 7, through the following provisions:

1) At least three months before the onset of the new financial year, the Gram Sabha will hold its annual meeting and at this annual meeting, the Gram Panchayat will place the following:
   - annual accounts,
   - administrative report of the preceeding financial year,
   - the programme of development and other works for the next financial year,
   - comments on the past audit report and response to it, if any.
   - any other subject, which Janapad Panchayat, Zila Parishad, Collector or authorised officer in this connection, expect to put up before this annual meeting.

2) The Gram Sabha shall have the freedom to review any or all subjects under Article 7(1) and the Gram Panchayat shall implement the recommendations of the Gram Sabha.

A comment on the financial provisions made for the Gram Panchayats will be relevant here. The funds are being diverted to the gram Panchayats in two different ways. Firstly the funds for various works under different schemes, like Jawahar Rozgar Yojna, Indira Awas Yojna, etc. are now directly being channeled to the Gram Panchayat. Secondly, funds under different state programmes diverted to the Block level officials and if the work falls in thelist of works of Gram panchayat is entitled for, then the work will be done by the Panchayat and the payment shall be made by theconcerned official on the recommendation of the Gram Panchayat. In addition to this, the Gram panchayat has also been empowered to generate its own funds through various means like imposing taxes on domestic cattle, road tax on the roads falling within the administrative boundaries of the Gram Panchayat etc. Obviously, generating funds in this manner will give rise to anti-Panchayat feelings as it will put additional financial burden on the rural populace. Therefore, it is very much doubtful that Gram Panchayats will generate funds on their own by such methods, especially in the context of the overall poverty prevailing in the rural India.

It is in this backdrop that one of the basic lacunas which emerges for effective implementation of the local self-governance is *financial. There is no provision for a minimum financial guarantee to Gram Panchayat in any of the state.* Thus, despite empowering the Panchayat for carrying out a whole spectrum of work, there is no financial surety to them. Thus, in many of the states, it is being witnessed that those Gram Panchayats where the Pradhan of the Panchayat does not carry much political clout, there the activities of the Panchayats are drastically hit precisely due to the lack of resources.

For the effective implementation of the local self-governance, it is important that training be imparted to Pradhans, Up-Pradhans and Panchs of the Gram Panchayats to make them aware of their rights, duties and how to actualise them. Sadly, no state government has taken any initiative in this direction. Perhaps the fact that any major change in the system is met with equal resistance by the forces whose vested interests demand that status quo shall be maintained, is the root cause of such inertia.

UTTAR PRADESH
RAJARSHI TANDON OPEN UNIVERSITY

CHR-03
Human Rights In Everyday Life : What Can We Do? (A Work Book)

BLOCK II : IMPLEMENT THEM

SECTION A

How to Register A Case?

How to File an Affidavit?

How to Petition to the Family Court?

How to Complain to the NHRC?

How to Write Letters to Newspapers?

How to Write Letters to Officials?

How to File a PIL (Public Interest Litigation)

SECTION B

Interviewing and Fact Finding

Campaign and Advocacy

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CHR-3/66

A WORD ABOUT THE BLOCK

A common sense view divides knowledge into (i) theoretical and (ii) practical. This block deals with practical knowledge, knowledge necessary to meet the requirements of a dire situation. How does one file an FIR in a Police Station? How to write a letter to authorities or to newspapers etc.? Concerns like these have been addressed which, we hope, you will use for yourself as well as for others who are in need of them. Sample copies of formats have been given which can be used if an official copy of the format is strictly not necessary. Wherever and whenever required, one should and can campaign for a cause. Always for the good of the people. In these situations, it also becomes necessary for the knowledgeable people to give a lead and organize the victims of human rights violations into an effective movement. This calls for a role of advocacy on which successful campaigning depends heavily. A small exercise has been given as an example to indicate the steps and strategies involved in campaigning and advocacy.

Prof. Pandav Nayak
(Programme Coordinator)

1 HOW TO REGISTER A CASE?

You may have seen or come across the human rights violations taking place in your locality or in the village, township, city you are living in. Such violations could be in the form of police atrocities, State repression against social activists in particular and community in general, violence against women and children, atrocities against dalits and tribals and so on. Now the big question is what needs to be done in such a situation? Shall we fight for the cause of restoring human rights of everyone or should we ignore it. The challenge in front of every one of us is to contribute to building of a **society** where a peaceful co-existence of everyone is ensured. So, as and when a case is brought to your notice or you happen to come across an incident of human right violation, you need to approach the appropriate authorities.

Normally, the first person to contact would be the local police.

Depending on the nature of the offence or the violation that you witness, complaint should be made at the local police station.

It is advisable that

- the complaint should be filed in a ***detailed*** manner,
- give each and every information in ***chronological order*** that led to the violation of the human rights,
- the complainant must ***sign on all the pages*** of the complaint,
- the complaint must also mention the ***section of the Indian Penal Code*** which would be applicable in the case and seek appropriate relief.

Once the complaint is registered, the police will draft their report which is the **First Complaint Report**, (It is popularly known as **FIR**). ***FIR is the first step of the criminal procedure that leads to the trial and punishment of a human right violator.*** It is also the most important supportive evidence on which the entire structure of prosecution case is built. The main objective of FIR is to enable the police officer in charge of the police **station to initiate** the investigation on the crime and to collect evidence as soon as possible.

As far as possible, an **FIR** must contain the following points:

1) **Whether** the informant is an eyewitness or hearsay witness.
2) **The** nature of the cognizable offence.
3) **The** name and detailed description of the accused person his/her colour, height **approximate** age, features, clothing, distinctive marks on his/her face etc.
4) The name and identity of the victim of the Human Rights violation.
5) The date and time of occurrence.
6) The place where the human rights violation took place.
7) The motive of human rights violation.
8) **How** the human right violation took place (describe the true picture of the said **violation**, the part played by each violator and other details in respect to the said **violation**).
9) **The name** and address of the witnesses of the violation.

It is worth mentioning here that *there is no such law which says that the FIR should give each and every detail* about the commission of Human Right violation. *It should be an information sufficient* to induce the police officer to investigate the offence.

- *As a complainant, you are entitled to get a copy of the FIR.* If by any chance the FIR prepared by the police officer contains distorted information, the complainant can refuse to sign it.
- After the FIR is prepared, the police will investigate the matter and depending on the nature of the offence can arrest the person against whom the complaint is made.

One can also send the complaint in the form of a letter. The letter must be addressed to the appropriate authorities and should be sent by registered post.

Once the case is registered, the case would be transferred to the court and the case will be heard on that court. *The complainant would be treated as a witness in the case.*

> ***Owing to the huge backlog of cases, normally the case comes up for hearing many years later. So it is better to keep all the records in hand in order to effectively get the case tried.***

If the Station House Officer does not take any action on the FIR registered at the police station, you can approach the Police Superintendent or the district Magistrate for investigation and taking action against the concerned police officer.

The victim can also file petition with the judicial magistrate and on that basis, the magistrate can take action against the concerned police officer. If these authorities fail to take action, the victim can approach the High Court or the Supreme Court and can file a writ petition.

FORMAT OF LETTER

The Station House Officer
..... Police Station,

Dear Sir,

(Now describe in detail the nature of the complaint, describing every incident that you have witnessed which you think constitutes a Human Rights violation. It is important to mention in the complaint the details of the offences and the provisions of law which you think has been violated. It is important to mention all the sections in the complaint so that nothing is left out as it is difficult to amend later).

The complaint should be in the form of a letter describing the details of the offences along with dates and names, if any.

The Complaint must be signed and if the complaint runs into several pages the complainant must sign on each and every page.

SPECIMEN COPY OF FIR

1. Form No. Book No.

FIRST INFORMATION REPORT

First Information of a Cognizable Crime Reported under Section 154 Cr.P.C.
Police Station .....
No..... Date and hour of occurrence ....

1) Date and hour when reported

2) Name and residence of informant and complainant

3) Brief description of offence (with section) and of property carried off, if any

4) Place of occurrence and distance and direction from Police Station

5) Name and address of the Criminal

6) Steps taken regarding investigation explanation of delay in recording information

7) Date and Time of despatch from Police Station

Signed ..... Designation .....
(First information to be recorded below)

(**Note**: the signature or seal or thumb impression of the informer should be at the end of the information and the signature of the writer of FIR should exist as usual.

II HOW TO FILE AN AFFIDAVIT

An affidavit is a statement or a declaration in writing an oath or affirmation before a person having authority to administer the same.

The deponent is a person who actually signs the affidavit. All courts and persons having by law or consent a party can administer oath under Secion IV of the Act to receive evidence. An affidavit can be relied upon to a greater degree than an ordinary statement or declaration. Following formula is used to verify an affidavit by a deponent.

'I, the above named deponent, do hereby verify that the contents of paras 1 to _____ are true to the best of my knowledge and belief.'

Signed and verified this _____ day of _____ 20 ____ at _____

Sd/-
Deponent

Following points may be borne in mind before making an affidavit :

1. First ascertain whether there is a need to submit an affidavit.

2. Remember that whereas the amount of court fees to be affixed is Rs. 2/-, it is Rs. 5/- in cases other than courts.

3. Ascertain particulars of the person making declaration.

4. Subject matter of swearing each point must be clearly brought out in separate para.

5. Contents of the affidavit must be properly verified in the manner given below.

6. An affidavit needs to be verified either by an Oath Commissioner or by a notary.

Specimen form of an Affidavit

In the court of .....

No.....20.....

A.B..... Plaintiff

Vs.

C.D..... Defendant

Suit for .....

Fixed for .....

I ....., aged ..... years, son of do hereby solemnly affirm and declare on oath as under

1.

2.

3.

4.

5.

Dated .....

Sd/-
(Deponent)

VERIFICATION

I the deponent, do hereby verify that the contents of this affidavit in apragraphs Nos..... are true to my personal knowledge, and those in paragraphs Nos. ..... are believed by me to be true on information received from ..... and nothing has been concealed.

Signed and verified this ..... Day of ..... 20..... at .....

Sd/-
(Deponent)

III HOW TO PETITION TO THE FAMILY COURT?

The **family court** tries cases relating to the personal laws. All matters of matrimonial disputes, issues of child custody would be tried by the family courts. Depending on the nature of the dispute, a petition will have to be filed before the family court. Most places do not have courts called Family Court. In such a situation, these cases would be heard by certain designated District Judges who are assigned the work of family courts.

In a family court, you can file a petition for divorce, maintenance, custody of children, etc.

When you want to file a complaint in the family court, you will have to first **draft your case** in the form of a petition and present the same to the family court. You may also have to affix court fees on the petition. Court fees differ from place to place. Once the petition is drafted, you must go to the court where the petition has to be filed, and file at the designated place. The people at the office (called the registry) will help you to get the right information on the matter and the related procedure. You must not hesitate to get the right information.

After the case is taken up for hearing, the court after it satisfies itself that a case has been made out, will issue notice to the opposite side to appear before the court. The notice is sent by the court. However, you will have to file registered covers in the court and also supply copy of the petition that you have filed to the office so that the same can be sent to the opposite party.

After the opposite party appears, he/she would be allowed to file a reply to your petition. After the reply is filed, you may be given time to file a rejoinder or the court may decide that there is no need to file a rejoinder.

After the petition is received the Court, if it thinks it is a fit case to intervene, will issue notice in the case to the opposite parties. The opposite parties will appear before the Court after the notice is served on them. They will also be given an opportunity to explain their stand in the matter and they may be given time to file the same in the form of an affidavit. After these papers are filed, the Court will hear the case and pass its judgement.

If the petition is filed in the High Court, if you succeed, there is a likelihood that the opposite party may file an appeal against the judgement before the Supreme Court. If you fail, you may prefer an appeal before the Supreme Court.

A *Format of Petition for Dissolution of Marriage*

IN THE COURT OF .....

PETITION NO..... OF 2000

IN THE MATTER OF : .....

..... PETITIONER

VERSUS

..... RESPONDENT

A PETITION UNDER SECTION 13 OF THE HINDU MARRIAGE ACT FOR DISSOLUTION OF MARRIAGE

MOST RESPECTFULLY SHOWETH:

1) That the Petitioner is .....

2) That the Respondent is .....

3) Describe in detail the chronology of events, the date of marriage, the nature of relationship enjoyed between the parties from the date of marriage to the date of filing of the petition.

4) Describe in detail the grounds for filing the petition (could be cruelty, demand of dowry, having an adulterous relationship, etc.)

5) Prayer

Date: ..... Signature of petitioner

B *Format of Petition for Adoption and Maintenance*

IN THE COURT OF .....

PETITION NO..... OF 2000

IN THE MATTER OF : .....

..... PETITIONER

VERSUS

..... RESPONDENT

A PETITION UNDER SECTION 18 OF THE HINDU ADOPTION AND MAINTENANCE ACT

MOST RESPECTFULLY SHOWETH:

1) That the Petitioner is .....

2) That the Respondent is .....

3) Describe in detail the chronology of events, the date of marriage, the nature of relationship enjoyed between the parties from the date of marriage to the date of filing of the petition.

4) Describe in detail the grounds for filing the petition (could be cruelty, demand of dowry, having an adulterous relationship, etc.)

5) Describe the nature of desertion, if any.

6) Explain the amount of maintenance sought and the justification for the same.

7) Explain the details of the income of the Respondent with supporting documents.

8) Prayer

Date: ..... Signature of petitioner

IN THE COURT OF .....

PETITION NO..... OF 2000

IN THE MATTER OF : .....

..... PETITIONER

VERSUS

..... RESPONDENT

A PETITION UNDER SECTION ..... FOR CUSTODY

MOST RESPECTFULLY SHOWETH:

1) That the Petitioner is .....

2) That the Respondent is .....

3) Describe in detail the chronology of events, the date of marriage, the nature of relationship enjoyed between the parties from the date of marriage to the date of filing of the petition.

4) Describe in detail the grounds for filing the petition (could be cruelty, demand of dowry, having an adulterous relationship, etc.)

5) Explain the reasons for seeking custody of the child giving grounds due to which you think the opposite party is not capable of having custody of the child.

6) Explain the source of your income which would support your case that you are capable of maintaining the child.

7) Prayer

Date: ..... Signature of petitioner

IV COMPLAINT TO THE NHRC

The National Human Rights Commission was set up essentially to look into the issues relating to human rights violation in the country. The Commission is autonomous in nature. The Commission has been assigned to inquire on its own initiative or on petition presented to it by a victim or any person on his/her behalf about the violation of human rights. It can also intervene in any proceeding involving any allegation of violation of human rights pending before a court with its due consent. The Commission can also visit any jail or any other institution under the control of state government where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon. It can review the safe-guards provided under the constitution for the protection of human rights and recommend measures for their effective implementation.

While inquiring into the complaints of human rights violation under the act, the Commissions enjoys all the powers of the civil court. The Commission also has its own investigating staff for investigation into complaints of Human Rights violations. During the process of investigation it can also take the services of any officer of central and state government. In the past, Commission has also associated voluntary organisations in investigation work.

Now whenever, you witness an instance of a human right violation from anybody, you can prepare a petition which will be a narration of facts describing in detail all the incidents which led to the violation of the Human Rights. There are no specific formats for the filing of the complaints before the National Human Rights Commission. The complaint may be in Hindi, English or in any language included in the eighth schedule of the constitution. The complaints are expected to be self-contained. The commission do not charge any fee on the complaints.

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

a) with regard to events which happened more than one year before the making of complaints.
b) with regard to matters which are sub-judice.
c) which are vague, anonymous or pseudonymous.
d) complaints pertaining to service matters.

Complaints to the NHRC

According to a recent circular, the Commission likes to inform all concerned that complaints of human rights violations can be sent to the Commission in the form of a simple letter addressed to the Chairperson. The complaint can be made in any Indian language and sent by hand/by post/by fax/by e-mail. Complaints can also be made on the Commission's mobile phone number **98-10298900** after office hours and on holidays. Public have been advised by the Commission not be misled into making payments to any body for drafting complaints to NHRC. The Commission may take suitable action against persons found misleading the public. Address all communications to :

National Human Rights Commission,
Sardar Patel Bhavan,
New Delhi-110001
Website : www.nhrc.nic.in

On receiving the complaints, the Commission may ask for further information and affidavits to be filed in support of allegations whenever considered necessary. The Commission will investigate the matter after the receipt of the complaint and make a report which are recommendatory in nature. The court also conducts hearing in instances where it feels there is necessity of hearing the parties. The commission may take any of the following steps upon completion of inquiry:

1) if the inquiry discloses the commission of violation of Human Rights or negligence in the prevention of violation of Human Rights by a public servant, it may recommend the concerned government or authority to initiate the proceedings of prosecution.
2) Commission can also approach the Supreme Court or the High Court concerned for directions, orders or writs as the court may deem necessary.
3) Recommend to the concerned Government or authority for the grant of immediate interim relief of the victim or the members of his/her family as the Commission may consider necessary.

The authority/state government/central government on receiving the report/recommenda tion from the Commission will inform the Commission about the action taken within one month in respect to general complaints, and within three months in respect to complaints relating to armed forces.

V HOW TO WRITE LETTERS TO NEWSPAPERS?

The media has always been a very powerful tool to highlight and publicise the issues as well as get the things moving. This is true of every event that takes place in a society. Like any other event, violation of human rights has a lot to do with media to get the issue publicised and activate the concerned authority in the desired direction. We all know that those who are responsible for the violation of human right are well aware about the potential of media and hence they try use it in their favour. Often they succeed. If they succeed after committing the violation of human rights, it is because the affected party is not able to either approach the media or does not know how to use it. Thus, it is imperative for the affected party to not only be aware of the potential of the media but should also be well versed with the use of it.

If the incident of human rights violation is not reported by the media, there is very little chance of the police, the administration and other concerned people to take interest in the event. Once the event is reported, there is all kind of pressure and all the authority and concerned people to take action on the reported event. Now, the action is determined by the nature of the report that has appeared in media. For example, if a piece of land of a marginal farmer is illegally grabbed by powerful people and it has been followed by clashes between the two parties, there is every possibility that the powerful people will be able to use the media in their favour. As a result, it is possible that the whole incident is termed as caste clashes as often happened in the past. The reason behind it is that the affected people do not know how to use the media and they fail to take required initiatives. On contrary, if the affected party takes the initiative and the incident is reported in the media the way it has happened, the picture would be different. The police, the administration, the local politician, etc. would act differently after publicity. Thus, one should know the importance of media and the way it should be used.

By and large, the media is used through ***press release***. Press release is different from press reports. Press release is prepared by the affected party to publicise the issue and pressurise the authority to take action. On the other hand, the press report is prepared by the press reporter and is aimed at catering the readership requirement. But the editor sitting in the press does not want to spend much time to editing the press release. Therefore, if the press release is written on the pattern of press report, it is more likely to get published.

The pattern on which a press release should be prepared

- In the first paragraph, the whole incident of human right violation should be given as briefly as possible. Never forget to mention the exact date, time and place of the event.

  Should narrate the whole details of the violation of human right. It should also mention the eye witnesses if there are any.

- Next steps should be to highlight the background of the event.

- This should be followed by the reaction of all the parties involved in the violation of human right.

- The next point should deal with the reactions given by concerned authorities.
- The last steps should deal with the next step that the concerned parties are likely to take.

The information that is essential to write the press release

- The place where the violation of the human right has taken place.
- The dates and time of the event.
- Step by step details of the event.
- Background of the event.
- Impact of the event.
- The statements by victims of the human right violation and those responsible for the violation of human right.
- The statement by the eye witness and reaction of the general people.

VI HOW TO WRITE LETTERS TO OFFICIALS?

Writing letters or memorandum to the government officials is another way by which the human rights activists can pressurise the government for redressal. There are several instances where the cases of human rights violations are suppressed by the big influential people to protect the culprit. At times the local level officials also connive with the influential lot and give out a distorted picture. By writing *memorandum*, human rights activists can bring actual incident of human rights violations to the notice of the government and can seek immediate relief.

The memorandum should be prepared on the following pattern.

- The memorandum should be addressed to the person with his/her designation and address in the following manner:

The Chief Minister

..... Government

.....

.....

- This should follow with the subject of the Memorandum. Subject should not exceed one or two lines.
- Next one should specifically address the person to whom the memorandum is addressed like **My Dear** so and so.
- Now coming to the main body of the text. In the first paragraph, give the detailed information about the incident of human right violations which took place in your area. Also mention how the individual or the group/community have been affected in that particular incident of human right violation.
- Once the initial information about the incident of human right violations is spelt in the first paragraph, give step by step detailed information about how and by whom this was done. This part of the text can run into several paragraphs. The purpose of detailing is to make the official fully aware about the prevailing situation in the area.
- This should be followed by a demand charter. The demand charter should be written point wise and step by step on priority basis. The most urgent and important one should figure on the top of the list while the less important ones should come down the order.
- Towards the end, request the person to take immediate action so that the violators of human rights should not go scot free.
- This should follow the name, designation and address of the organisations or the group with which you are associated. ***Never forget to put your signature.***
- Last but not the least, always mention the name and designation of all such persons to whom you are sending the copies of this memorandum. For example, in case of human rights violations the copies of memorandum should be sent to the following officials.

- Home Minister, Govt. of ..... state
- Home Secretary, Govt. of ..... state
- Director General of Police, Govt. of ..... state
- Chairman, National Human Rights Commission
- District Magistrate
- Superintendent of Police
- Editors to important local and national dailies

VII HOW TO FILE A PIL (Public Interest Litigation)

One of the best things which has happened in this country in the recent past is to provide justice to the illiterate, underprivileged and exploited masses through the enaction of the law called Public Interest Litigation (PIL). It has been observed that due to lack of awareness about the legal rights, their poor socio-economic conditions and absence of effective machinery to provide legal aid, the poor in this country often face difficulties in getting justice.

There has been instances where a large number of people become the victims of injustice and exploitation, and in such a case it is often for each of them to file separate petition for the collective wrong done. The reinterpretation of the concept of 'locus standi' by the Supreme Court of India allows public spirited individuals and social action groups to file petition in the courts on behalf of the individuals or the community whose constitutional and legal rights have been violated.

The term **PIL** originated in United States of America in sixties. In India PIL begun towards the end of seventies and came in to full bloom in the eighties. The objective of PIL is to obtain justice for the people by voicing people's grievances through the legal process. The aim of PIL is to give to the common people of this country access to the courts to obtain legal redress. To conclude, PIL brings justice within the easy reach of the poor and the disadvantaged sections of the society. To understand the nature of the PIL cases, few examples are given below:

a) Ratlam Municipality case involving obligation of Municipal Corporations towards citizens.

b) The Bandhua Mukti Morcha case regarding the rights of quarry workers.

c) The case of 29000 undertrials languishing in prisons of Bihar.

d) The Asiad Games workers case regarding the minimum wages of migrant labour employed by the Government construction purposes.

Matters related to the following, can be taken up for PIL:

1) Basic amenities such as, roads, water, medicines, electricity, primary school, primary health centre, bus service, etc.

2) Rehabilitation of displaced persons.

3) Identification and rehabilitation of bonded and child labourers.

4) Illegal detention of arrested persons.

5) Torture of persons in police custody.

6) Custodial deaths.

7) Protection of prisoner's rights.

8) Jail reforms.

9) Speedy trial of under-trials.

10) Ragging in colleges.

11) Atrocities by police.

12) Atrocities against SCs/STs.

13) Neglect of inmates of government welfare homes.

14) Children in custody.

15) Adoption of children.

16) Corruption charges against public servants.

17) Maintenance of law and order.

18) Payment of minimum wages.

19) Legal aid to the poor.

20) Starvation deaths.

21) Indecent television programmes.

22) Prohibition.

23) Environmental pollution.

24) Unauthorised eviction.

25) Protection of pavement and slum dwellers.

26) Dowry deaths.

27) Implementation of welfare laws.

28) Reform of illegal social customs such as, Sati, child marriage, Devadasi system, etc.

29) Violation of fundamental rights of the weaker section.

PIL can be filed by sending letter petitions with relevant facts and documents to the Chief Justice of High Courts or the Supreme Court. These letters must be sent through registered post with acknowledgement cards attached to it. There are instances where the Court has taken actions by accepting letters and telegrams sent to it as writ petitions. One can also file PIL in the court through the assistance of Legal Service Committee of the Court. Voluntary organisations or social action groups can also file cases of PIL at the respective courts on their own or through PIL Lawyers or PIL Firms.

Before filing a PIL in the Court, one should thoroughly discuss the legal aspects of the case with the affected people and try to figure out whether the matter infringes the fundamental rights of the people or not. The complainant should also mention which fundamental rights have been violated. It is worth mentioning that the group or the voluntary organisation working with the affected people must discuss with the people as to how a legal course of action can provide them relief and prevent further violation of their human right. The group should discuss the matter with a socially conscious lawyer in order to

have a second opinion on the issue and the course of action being planned in this regard. During this process the group should collect all the documents, newspaper clippings, investigation reports, reports made by voluntary organisations or fact finding teams, photographs, affidavits and other documents related to the issue. These documents can be used as evidences to support the affirmations and claims to be made in the PIL petition. The purpose of this exercise is to do the preliminary research so that the petition can be filed with full conviction.

Once the issue has been discussed with the affected parties a petition should be written with all the facts and details, dates related to the violation of human right in the format given below. It is recommended that the petitioner should mention in the petition the type of relief the affected people want in this regard. The supporting documents must be attached with the main petition as Annexures.

In a public interest litigation, strict rules of procedure are not followed. Even a letter addressed to the Supreme Court may be treated as a petition. But one must ensure that all the facts are specifically set out in the petition and proper reliefs are prayed for.

It is also important that you take interest in the case as long as the case in is pending. If there is no proper follow up, the court may dismiss the petition on the ground that the Petitioner is not interested in pursuing the case.

Form of Sample Writ Petition

IN THE SUPREME COURT OF INDIA
CIVIL WRIT JURISDICTION
WRIT PETITION (C) NO. OF 199

IN THE MATTER OF : .....

..... PETITIONER

VERSUS

..... RESPONDENT

A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

To
The Hon'ble Chief Justice and
His Companion Justice of the
Hon'ble Supreme Court of India
The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

Facts of the case:
(Write paragraphwise and number the same)

1.

2.

3.

4.

5.
(last paragraphs)

- That the petitioner has not filed any other petition in this Hon'ble Supreme Court or in any other Court for the same relief.
- That the petitioner has exhausted all other remedies and are left with no other efficacious or alternative remedy than to approach this Hon'ble Court under **Article 32** of the Constitution of India.

PRAYER

In view of the facts and circumstances stated above it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:

i) issue an appropriate writ, direction or orders directing the respondents.

a)

b)

c)

ii) award the cost of the petition in favour of the petitioner.

iii) pass such other further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Date: (Signature of the Petitioners)

(**Note:** The above format can also be used to file a writ petition in the High Court under Article 226).

A INTERVIEWING AND FACT FINDING

Fact finding mission is another tool in the hands of human rights activists to promote the culture of human rights in the society. It is one way of collecting the facts and other details with regard to human rights violation in society and getting the issue widely publicised with the help of media. Once the report of fact finding mission is made public, it pressurises the administration at the local level and the government at the larger level to move into action at one hand and pushes the local and state administration to take action against the violators on the other.

Now the question is how to go for a fact-finding mission. Generally, we get information about the violation of human rights of any individual or group from the newspapers. But many a times this information comes through informal channels like from group and/or human rights activists working in the area. Once the information of human rights violations is received, effort should be made to check the authenticity of the information from other sources. Efforts should also be made to meet the family members of the victim to get correct information.

This should follow with constitution of a fact-finding team. The team should comprise activists, noted individuals, prominent persons from the judiciary, advocates and intellectuals. While constituting the team it is always advisable to involve women members in the team. There are numerous incidents of human right violations where the victims have been the women groups. In such a situation women victim always feel more comfortable in speaking to the women members of the fact-finding team. Apart from this, the presence of women members in the fact finding team makes it more balanced and the threat of physical attack (often associated with fact finding missions) on the fact-finding team also gets reduced. Ideally the fact-finding team should comprise of five to seven members.

Once the team is constituted, it should inform the District Magistrate of the concerned district about the incident of human rights violation and about the proposed visit by the fact-finding team. The fact-finding team should request the local administration to provide protection and security during their visit to the area. In the past there has been instances where the fact finding teams have been physically attacked. It is advisable to take along some senior officials of the district during the fact-finding mission.

Once the team reaches the site of human rights violation, it should speak to the victims, the eyewitnesses, the public and prominent individuals of the area. The interview of these groups should be done at great length to find out the actual situation as well as the reasons for the violations. The fact-finding team should also go through the local newspapers to know what exactly has happened and what led to the violation of human rights. Many a times the reasons cited for the conflict are not true. One can get the background of the conflict from local newspapers. Efforts should also be made to contact the accused and one should try to know his/her views on the incident. The police and local administration should also be contacted to know what all they did in the face of the incident.

The focus of the interview during fact-finding is to collect more and more information about the incident. What generally happens during the interview process is that the

interviewee remains more inclined towards what happened to him/her and focusses on the immediate cause of the conflict. As a member of the team, we must try to find out the background of the incident and the actual facts should not get diluted. One should take into account all the sections of the society while doing interview. During interview one may face a situation where the interviewee does not feel comfortable in speaking in public. If such a situation arises, one to one interview can be conducted in person.

There have been several incidents where the administration has been involved in the violation of human rights. In such a situation it is advisable to interview as many people as one can and the authenticity of the report and interview should remain intact. All interviews must be audio recorded to prevent any fall out at later stages. Wherever possible the fact-finding team should collect the documentary evidence to substantiate their findings.

Another aspect of the fact-finding is publication of the report. Once fact-finding team returns from the mission they should prepare a detailed report as soon as possible. If at all the detailed report is taking time more than what was earlier envisaged, the fact-finding team must prepare an interim report and a press conference should be called to disseminate the findings of the fact-finding mission. The reports appearing in the newspaper or media helps in creating awareness and building opinion on the issue as well as putting pressure on the authorities to take action against the human rights violators. Simultaneously the National and State Human Rights Commissions should also be informed to take necessary action.

Once the report is published, as a follow-up of the fact-finding mission, it is expected from the local as well as state administration to remain alert so that the human rights violators are not able to take revenge.

B CAMPAIGN AND ADVOCACY

In case of human rights violations, more needs to be done even if we have approached authorities for their redressal. Actually, there should be positive steps taken so that authorities also realise that an organised group/persons are active already in the issue under their notice or investigation. Mere existence of such activists is good enough check against violators as well as authorities who are supposed to take action against them. This is a positive line of development which is meant for protection of human rights.

In this positive area, two vital functions are: campaign and advocacy. The words explain the functions involved in respect of these two roles. We are reproducing below a case study on malaria epidemic in Rajasthan in order to focus, by way of a sample, what is to be done for advocacy and campaign. The material has been compiled and presented below from a Consumer Coordination Council Publication.

MALARIA EPIDEMIC ATTRIBUTED TO GOVERNMENT'S SLOTH

From August 1994 till the month of November, malaria had claimed at least 1000 lives in Barmer, Bikaner, Jodhpur and Jaisalmer districts of Western Rajasthan according to a survey carried out by a group of non-government organisations (NGOs) working at Local, State and National levels. The group consisted of Voluntary Health Association of India (VHAI), Urmul and Rajasthan Voluntary Health Association, besides others. The high mortality rate was attributed to Plasmodium falciparum parasite which causes cerebral malaria.

Factors Leading to the Epidemic

The main factors leading to the epidemic were insufficient infrastructure and lack of strategic planning. The massive water logging around the Indira Gandhi Nehar Pariyojana (Rajasthan Canal) as well as the migrant labourers from North-Eastern States and Punjab might also have contributed to the situation. A very good monsoon season in Rajasthan, one of the best in over a period of last forty years, had also resulted in the growth of vegetation that had provided an ideal environment for mosquito breeding.

The National malaria Eradication Programme (NMEP) held an emergency meeting at the Institute of Desert Sciences in Jodhpur to assess the situation. It was after this meeting that VHAI and other NGOs formed a group and began conducting village-to-village verification of the epidemic.

Role of Mass Media

All this information was released in a press conference held in Delhi on 22nd October, 1994. The press gave a good coverage to the issue and by the same evening Prime Minister expressed concern at the outbreak of malaria in Rajasthan. He asked the Health Ministry to review all the steps taken and required to be taken to deal with the outbreak of the epidemic. He also called for a review meeting to take stock of steps being undertaken by Central and State Governments to check the disease.

It was also being speculated whether the parasite had become restraint to Chloroquine, the standard medicine to treat malaria.

Advocacy Done by the Group

The group was advocating that the Government must find a long-term strategy to combat the problem with regular surveillance mechanism. Further arrangements had to be made to post static medical teams in the worst affected areas for at least the next 15 days, since under the system of mobile teams prevalent at that time the doctors were in a hurry to cover as many villages as possible and in the process there was a high possibility of missing out patients in remote areas.

The group was also insisting on intensive spraying of DDT, which was a difficult task since the vector, anopheles stephansi, breeds in potable water. The large underground water reservoirs were also infested by the vector.

VHAI constituted an independent commission on health constituting of reputed health experts, epidemiologists etc. to examine the public health system and submit its report within six months.

The epidemic exposed loopholes in outlays in the health budget, with the allocation for malaria control slashed by almost 40 per cent in the 1991-92 budget as part of World Bank recommendations to cut subsidies

Government's Reaction

The initial response of the Government was to ignore the reports and it described the reports about malaria deaths in Rajasthan carried by newspapers as incorrect and highly exaggerated. According to the information received from the Directorate of Health Services, Jaipur, there were 231 deaths due to malaria from January '94 to October '94. The State Health Authorities were undertaking crash action programme for containment of malaria on priority basis.

The State Government immediately began dispensing radical treatment of six doses of primaquine to all those showing symptoms of malaria.

The health workers were deputed to stay on in the villages to ensure that proper treatment process is carried-on by the patients. The Government restarted its malaria eradication programme on October 2nd. Till then, the patients had been left virtually without care.

Within 24 hours of these reports appearing in the press, the Rajasthan Chief Minister summoned a high-level meeting to review the situation. After taking stock, the Chief Medical Officer and Health Officer of Barmer district were suspended for not taking adequate steps to contain the epidemic despite heavy loss of lives.

Four principal secretaries were sent to supervise the situation in four malaria affected districts. Each officer was given charge of one district and was to report directly to the Chief Minister and suggest effective preventive measures. The State Government prepared a contingency plan to control the disease for which Rs.10 million had been earmarked.

Within a week's time period, the Union Minister of State for Health, declared in Jaipur that the State Government's report of 257 deaths caused by malaria was entirely credible. Such seriousness, as conveyed by newspaper reports and the NGOs, about the situation was denied by the Government in the Legislative Assembly. This conclusion was drawn by the study team sent to the State for spot assessment of the situation. The Minister reiterated that the situation in the State was well under control and praised the State Government's efforts to control the situation.

Conclusion

What is certain is that the toll would not have been so high had the State Authorities not been slow to respond to the danger. In some districts, the doctors were just prescribing medicines and not supplying them. Hence, corruption at the level of Government officials and lack of awareness on the part of the people led to the disease taking the form of an epidemic.

Though the disease was under control due to mass prophylaxis, chances of another outbreak of the disease in March and April next year, once the winter season is over, was very high. Despite Government claims that all steps had been taken to control the outbreak, fact is that the department of malaria instead of undertaking steps to eradicate the disease, had been busy trying to cover up and had been issuing incorrect statistics. The irresponsibility of the department was evident from the fact that though the largest private hospital in Jaipur had notified the department about the spurt in the number of cases of viral hepatitis and malaria caused by falciparum parasite, the health department continued to maintain that there was not a single case of malaria in Jaipur.

Campaign Strategies

1) The main object of any proposed campaign activity is to counter the indifferent attitude of the administration with facts and figures collected systematically for maintaining their authenticity. These facts and figures need to be highlighted properly via extensive media exposure to catch the attention of concerned authorities.

2) People's participation is an important ingredient for the success of any campaign activity. This can be achieved through enlisting support of Local, State and National level NGOs. It was being envisioned that in future years, people would be more alert and active to meet any such eventuality.

3) A lot depends on the issue being selected for the campaign, whether a large number of people could identify themselves with the issue. The urgency of the timing has to be such that it can enlist mass support.

4) It is important to study the existing structure of Government so that the issue is addressed to the appropriate authorities to enable quick results.

5) Even if the existing crisis is solved by the campaign being carried out, plans have to be made for future, to avoid repetition of such happenings in future.

6) To achieve concrete results, specific and workable solutions should be thought of to establish credibility.