

KNOW YOUR RIGHTS A handbook on Human Rights

EDITOR'S NOTE

Though human rights today assume great significance and necessity and though violations of human rights and unlawful acts are denounced even beyond the frontiers of the countries where these occur, the performance in the path of protecting and safeguarding human rights has, nevertheless, not been encouraging in India and it has acquired only a theoretical legitimacy. Indian Constitution guarantees inalienable human rights to its citizens, these rights are not fully enforced by Indian Government while dealing with internal conflicts, agitations, political unrest and terrorism. The growing lawlessness among the State agencies and failure of the justice delivery system has deprived many people of their basic human rights. Violations of human rights by the State has become an order of the day. Scant regard is shown by the State or its agents to the judgments of the Supreme Court or High Courts. It would not be gainsaying the fact that the society has been put to great jeopardy. It has been found that most of the cases of human rights violations go unreported and unredressed for lack of education and awareness among the people about their rights and the redressal mechanism from where they can get redressal. Helpless people very often choose to compromise with their sufferings with no ray of hope in sight. State sponsored human rights commissions have awfully

failed to fulfill the aspirations of the people and have turned to be white elephants consuming millions of rupees with no power and intention to help the victims.

Under these impending circumstances, there is a paramount need and an onerous responsibility upon voluntary non-governmental organisations to educate the masses about their rights and means to seek redressal of their grievances. The present work is a humble effort of our organisation to educate the masses about human rights by giving few practical tips on human rights. It would give a brief description of the rights of the people and the obligation of the State and its agents in performing its duty. Suggestions to make the next edition more purposeful and lucid are welcome.

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What are human rights ?

'Human rights' are those natural rights by virtue of which a human being enjoys life. These are those minimal rights which every individual must have against the State or other public authority by virtue of his being a "member of human family", irrespective of any other consideration. In sum and substance, human rights are inherent in nature and without which we cannot live as human beings. Human rights are fundamental freedoms that allow us to fully develop, our intelligence, our dealings and our conceive and to satisfy our spiritual and other things. These are also called universal moral rights that do not have to be earned, bought or inherited. People are equally entitled to them regardless of their sex, race, color, language class or religious or political beliefs. Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.(Section 2(1)(d) of the Protection of Human Rights Act,1993).

Human Rights includes,

- (1) Right to earn livelihood;
- (2) Right to live in safe environment;
- (3) Right to freedom of expression;
- (4) Right to Protection against exploitation;
- (5) Right to Protection against degrading treatment;
- (6) Right to free legal aid;

In addition to these, there are certain inalienable rights connected with certain necessities of life like food, water, shelter, basic for sustaining life and saving it from hunger and destitution, disease and despair and without which one cannot live. There are also certain fundamental values and freedoms without which it would not be worth living. These rights can play a significant role in the empowerment of the improvised. The oppressed can become more self reliant through an understanding of their rights. An awareness of the rights helps diminish dependency and builds up confident self-reliance when "have-not" appreciate that they are entitled to resources as a matter of entitlement and not just benign charity. Awareness of human rights also play an important role in securing the accountability of those who wield power and control resources essential to the satisfaction of basic human needs.

What are the forms of human rights ?

There are mainly two forms of human rights, Civil and Political rights, Social and Economic rights

and environmental, cultural and developmental rights.

What are Civil & Political Rights ?

Civil and Political Rights are generally referred to as “liberty-oriented” or first generation” rights. They give people the freedom to think and have access to information, the freedom to act and to choose what to do, and freedom to join in the political life of their community and society. For example, the right of the people to vote is a civil and political right. Freedom of thought, religion, conscience and speech, right to peaceful assembly, protection from government interference are some forms of Civil & Political rights. These also include protection against discrimination in employment, exploitation and denial of basic rights to a person which are available to other similarly situated persons. Political Rights also include protection against illegal detention, torture, false implication, denial of right to livelihood, right to practice religious or political faith and belief.

What are Social and economic Rights ?

Those security orientated rights which give social, economic and cultural security to the people are called Social and economic Rights. These rights provide people with protection against having basic things in life taken away from them, such as, food, shelter and health care. These also include, an adequate standard of living, the highest attainable standard of health, just and favourable conditions of work. Elimination of all forms of discrimination including racial or gender discrimination comes under Social and economic Rights.

What are Environmental, cultural and developmental rights ?

These rights ensures that the people have the right to life in an environment that is clean and free from pollution and protected from destruction. They also recognize that groups of people should have the right to cultural, political and economic development.

What are human rights abuses ?

Any infringement of fundamental freedom or basic human right constitutes human right abuse. For example, illegal detention and mis-behavior in Police custody or torture. Discrimination on the basis of sex, gender or class is also a human right abuse.

When Human Rights abuses occur : What can be done ?

When somebody is picked up by the police or illegally detained, his relatives must send telegrams

or fax to the incharge of the Police Station, Senior Police authorities, like Director-General of Police, Senior Superintendent of Police, District Administration like District Magistrate and human rights commission without any delay, giving details of the detainee and the persons who had taken him away and under whose custody the detainee was being kept. Telegrams should also be sent to the Chief Minister or Home Secretary of the State. The print and electronic media should also be informed about the incident. When somebody is killed or tortured in Police Custody, his relatives must involve the general public and journalists and impress upon the authorities for proper medical examination of the victim and urgent medical treatment.

In the case of custodial death, the post-mortem of the dead body must be video-taped in the presence of the relative of the deceased and the Sub-Divisional Magistrate must be asked to conduct the enquiry under Section 173 Cr.P.C. Complaint should be made to the Police in writing and if they refuse the same, it should be sent through registered post or fax. Human Rights activists and lawyers, besides press people must be informed and involved in the follow-up action.

A Complaint of a human right violation can be made either to the High Court of the State having the jurisdiction over the matter under Extra-Ordinary Civil Writ Jurisdiction or Criminal Jurisdiction under Section 482 of Cr.P.C. The High Court can either direct a high level probe or even an independent enquiry by a Judicial Officer or Central Bureau of Investigation, besides ordering interim compensation to the victim or his relatives. A Complaint of a human right violation can also be made to the Human Rights Commission (if any constituted) along with an affidavit of the victim or relative. Photographs of the victim should also be taken and submitted to the Commission. The Commission can entertain a complaint only against a violation of human rights committed by a Public servant and if the matter is not more than one year old.

What are the rights of an arrested person ?

According to the Supreme Court Judgment in D.K.Basu Vs. State of West Bengal, AIR 1997 SC 610, every arrested person is entitled to the following safeguards:

1. Information should be given to the relative or next friend of the detainee, immediately; If the next friend or the relative lives outside the jurisdiction of the Police Station where he is arrested, a telegraphic message must be sent to his next friend or relative.
2. Arrest memo should be prepared by the arresting officer, which shall be attested by a family member or next friend and counter-signed by the detainee.
3. The detainee must be provided with a lawyer of his choice or at State expense.
4. The detainee should not be beaten, tortured or extorted to confess the crime while in custody.
5. The detainee should be medically examined within 24 hours of the arrest and re-examined after

every 48 hours in detention.

6. The particulars of the detainee must be displayed on a notice board affixed at a conspicuous place in the Police Station where he is detained.

7. The Police officer carrying out the arrest of a person must bear accurate, visible and clear identification and name tags with their designations on his uniform. The particulars of all such police personnel who handle interrogation of the arrested person must be recorded in a register.

8. The detainee should be informed of the charges leveled against him by the police.

9. The detainee should not be subjected to degrading and indignified treatment.

What is “Police” ?

Police stands for, Polite, Obedient, Loyal, Intelligent, Courageous, Efficient force.

What are the duties of a Policeman ?

1. To maintain Law and Order;
2. To prevent breach of peace in the society;
3. To investigate into the commission of an offence;
4. To prosecute the person accused of an offence;
5. To maintain record of all the suspects arrested in the Police Station;

What the Policeman should not do ?

1. Not to take the law into his own hands;
2. Not to keep any person in illegal detention;
3. Not to mis-behave or beat or torture any suspect in custody;
4. Not to implicate any innocent person in false case;

What are the rights of Citizens ?

1. Not to be discriminated by any public servant;
2. Not to be denied medical treatment in Government Hospital ;
3. Not to be illegally detained and tortured;
4. Not to be compelled to be a witness against himself
5. To be provided free legal aid in case of indigence or poverty;
6. Women and children below 16 years of age could not be summoned in Police Station for investigation purpose;
7. Women suspects could be arrested only by lady Police;
8. To hold investigation and study on burning topic of human rights;

JURISDICTION OF THE HIGH COURT OF JUDICATURE

Habeas Corpus Petition Under Article 226/227 of the Constitution of India:

The Petition of Habeas Corpus is filed in the High Court against the infringement of fundamental right to liberty of a citizen and for seeking the production of the detainee from the illegal custody of the Police.

Civil Writ Petition Under Article 226/227 of the Constitution of India;

The Civil Writ Petition is filed in the High Court against the infringement of fundamental right and for grant of interim compensation to the victim;

Criminal Miscellaneous Petition Under Section 482 of the Code of Criminal Procedure:

The Criminal Miscellaneous Petition is filed in the High Court for seeking inquiry or appropriate orders into the violation of human right of the victim and for compensation;

JURISDICTION OF HUMAN RIGHTS COMMISSION

National Human Rights Commission, New Delhi

The Commission can enquire into a complaint of human rights violation which is not more than one year old;

The Commission can depute any agency of the Government for a report into the allegations leveled in the complaint;

The Commission can recommend the grant of compensation to the victim or recommend the initiation of disciplinary action or registration of case against the delinquent officer found guilty of the violation of human rights;

State Human Rights Commission:

The Commission can enquire into a complaint of human rights violation which is not more than one year old;

The Commission can depute only the State agency for investigation into the allegations leveled in the complaint;

The Commission can recommend the grant of compensation to the victim or recommend the initiation of disciplinary action or registration of case against the delinquent officer found guilty of the violation of human rights;

SPECIMEN FORM FOR FILING COMPLAINT BEFORE HUMAN RIGHTS

COMMISSION

Before the State Human Rights Commission at

Name and address of the ComplainantComplainant

Versus

Particulars of the concerned areaRespondents

COMPLAINT UNDER SECTION 12 OF THE PROTECTION OF HUMAN RIGHTS ACT.

RESPECTFULLY SHOWETH;-

1. Brief introduction of the Complainant.
2. Facts and details of incident describing the violation of human rights.
3. Relief prayed.
4. Prayer.

Place: Complainant

Dated:

Verification:

Verified that the contents of para no.1 to— are true and correct to my knowledge and belief and nothing has been concealed therein and no part of it is false or mis-stated.

Place Complainant