



CHAPTER

5(A)

Human Rights in India

Learning Outcomes :

Students will be able to:

- understand the meaning of rights and human rights
- differentiate between human rights and fundamental rights
- appreciate the significance of Universal Declaration of Human Rights
- understand the link between Sustainable Development Goals and Human Rights
- understand how human rights laws are rooted in its constitution in India
- discuss various kinds of human rights that are safeguarded by laws in India

This Unit consists of two main chapters, one on the Human Rights laws in India, Indian Constitution and Statute Laws, and the other on the Human Rights commissions and their complaint mechanisms.

The focus of this Sub -unit is on Human rights laws in India.

A. Introduction**1. Historical Context**

Historically, varied religious and social traditions as well as philosophical writings have recognized in different ways and with diverse perspectives the inherent rules of being humans, particularly the principles that ensure respect for human dignity. Such principles have commonly been understood as basic and unalienable. For example, traditions like Christianity, Islam, Hinduism, Buddhism, and Confucian have made reference to 'respect' and 'well-being' for others, which mean that human beings must conduct themselves in particular ways. The modern society, also, has recognized certain rules of respecting human dignity and their well-being and formulated them in the form of human rights.

Generally, the word 'rights' denote that these rules are entitlements or claims of all to be recognized and protected through duties and obligations, and the State ensures that human rights of all are guaranteed.

Human rights are standards that recognize and protect the dignity of all human beings. Human rights govern how individual human beings live in society and with each other, as well as their relationship with the State and obligations that the State has towards them.

Human rights are based on values that keep society fair, just and equal. They include the right to life, the right to health and the right to freedom from torture etc.

i. How did the story of Human Rights begin?

The origin of Human Rights began in the year 539 BC when troops of Cyrus the Great, conquered Babylon. After winning the war, Cyrus did something unexpected! He freed the slaves to return home. He also declared that all people had the right to choose their own religion.

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The Cyrus Cylinder- ***It is a clay tablet containing statements of Cyrus, the Great. It is the first human rights declaration in history.***

In the 20th century, during the Second World War, the world saw barbarous acts that outraged the conscience of mankind. In December 1948, this resulted in the adoption of Universal Declaration of Human Rights (UDHR) by the then newly established United Nations that recognized human rights to be the foundation for freedom, justice and peace.

ii. What is a Right?

A 'Right' is a moral or legal entitlement to have or do something. A right is a justified claim on others. In other words, Rights are reasonable privileges or claims of people which are accepted by society and affirmed by statute.

Rights include human rights and fundamental rights.

iii. What are Human Rights?

- Human rights are basic rights that we have because we exist as human beings. These are not granted by any state.
- Human rights belong to all human beings irrespective of their nationality, race, caste, creed, gender, etc. All individuals enjoy same human rights, without any discrimination.
- Human rights are safeguards that a human being seeks in order to live with dignity and equality. Therefore, human rights are **universal** and **inalienable** rights.
- The principle of **universality** of human rights means that we are all equally entitled to our human rights.
- Human rights are **inalienable**; therefore, these should not be taken away, except in specific situations and according to due process. For instance, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.
- A few examples of human rights are those basic rights that ensure fairness, equality, freedom and respect to all people. These rights abolish various unjust practices like exploitation, discrimination and inequality.
- Human rights include most fundamental rights like right to life, rights to food, education, work, health, and liberty etc.

Human Rights Logo





iv. International Human Rights

- In 1948, the United Nations General Assembly adopted Universal Declaration of Human Rights (UDHR) as 'a common standard of achievement for all peoples and nations.'
- The Universal Declaration of Human Rights provides and defines various kinds of human rights that are applicable to all human beings.
- These include the fundamental, civil, political, economic, social and cultural rights, for example freedom of speech, assembly, conscience and religion; right to education; right to livelihood and decent standard of living; right to life, liberty and security of person; right to equality; freedom from all forms of discriminations including based on gender and race; and so on.
- The principle of universality of human rights is the cornerstone of international human rights law.
- The Universal Declaration of Human Rights has been embraced by almost all member States of the United Nations. All members states have committed to respect and protect the basic human rights values provided therein.



v. What are Fundamental Rights?

Fundamental Rights are basic rights of the citizens of a country. Fundamental Rights are enshrined in the Constitution and they are enforceable in the court of law. If there is any kind of violation of fundamental rights, one can approach the court for protection of such rights.

Difference between Fundamental Rights and Human Rights

The main difference between fundamental rights and human rights is that the fundamental rights are specific to a particular country, whereas human rights have worldwide acceptance.

BASIS FOR COMPARISON	FUNDAMENTAL RIGHTS	HUMAN RIGHTS
Meaning	Fundamental Rights are the basic rights of citizens of a country which are stated in the constitution and enforced by law. These may slightly vary from country to country.	Human Rights are the basic rights that all human beings can enjoy, regardless of their nationality, ethnicity and religion etc.
Scope	It is country specific.	It is universal.

Fundamental Rights and Human Rights are important to create a better environment for people and to help them preserve their dignity.



vi. Sustainable Development Goals and Human Rights

The Sustainable Development Goals (SDGs) and human rights are interlinked. Over 90 percent of the goals of the SDGs relate to human rights obligations. When a State makes progress towards achieving SDGs they move forward to fulfil their human rights obligations. Few SDGs that are linked to human rights are:

No Poverty



Gender Equality



Zero Hunger



B. Indian Constitutional framework on Human Rights and related Laws in India

In India, human rights are rooted in its Constitution just like the US, South Africa, and many other countries. The Indian constitutional human rights framework involves the following parts:

1. **The Preamble**
2. **Fundamental Rights:** Part III of the Constitution contains the Fundamental Rights
3. **Directive Principles:** Part IV of the Constitution contains Directive Principles and
4. **Fundamental Duties:** Part IV(A) contains Fundamental Duties

1. The Preamble

The Constitution of India begins with the Preamble affirming its aims, objectives, and the guiding principles. The principles laid out in the Preamble are used for interpreting provisions of the Constitution that are vague and ambiguous.

The Preamble is the '**basic structure**' of the Constitution. The doctrine of 'basic structure' takes away the amendment power of the Parliament with regards to certain features of the Constitution such as democracy, rule of law, secularism, separation of powers and judicial review. Some of these features appear in the Preamble.

The Preamble proclaims the rights and freedoms, provisions of which are contained in the Constitution in various parts and clauses aimed 'to secure to all its citizens' those rights and freedoms.

2. Fundamental Rights - Part III of the Constitution

- (i) **Articles 12-35 in Part III** of the Constitution contain the provisions on **fundamental rights**.

Fundamental rights are largely **civil and political rights**.

The fundamental rights in India consists of the following rights:

- a) **Right to equality- Articles 14-18**
- b) **Right to freedom- Articles 19-22**
- c) **Right against exploitation- Articles 23-24**
- d) **Right to freedom of religion- Articles 25-28**
- e) **Cultural and educational rights- Articles 29-30**
- f) **Right to constitutional remedies- Articles 32**



(ii) **Some of the salient features of Fundamental Rights are listed below:**

- o Fundamental rights are enforceable by the higher courts in India.
- o Article 32 provides the right to the aggrieved ones, whose fundamental rights have been violated or denied, to petition the Supreme Court for the enforcement of fundamental rights.
- o Article 13 elevates the authority of fundamental rights. It ensures that the State or other competent authority do not make laws including ordinances, orders, bye laws, rules, regulations, notifications, customs or usages that contradicts or takes away or breaches the fundamental rights.
- o Fundamental rights are mostly enforceable against the State and in some cases against private persons. An example of the former is the right to freedom of speech and expression; for the latter is the prohibition of employment of children below the age of **fourteen years** in factories, mines, and in places of hazardous activities.
- o The term 'State' includes the Government, Parliament, State Legislatures, District Boards, Panchayats, Municipalities, and other authorities or organizations that are an instrument or agency of the state like, the Indian Oil Limited, Karnataka State Road Transportation Authority, Delhi Jal Board, and so on

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What is a State?

Article 12 defines the term State.

Article 12 of the Indian Constitution states that: “Definition in this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”

For the purposes of Part III of the constitution, the state comprises of the following:

- Government and Parliament of India i.e the Executive and Legislature of the Union
- Government and Legislature of each State i.e the Executive and Legislature of the various States of India
- All local or other authorities within the territory of India
- All local and other authorities who are under the control of the Government of India

(iii) **Let us now understand various fundamental rights in detail :**

a) Right to Equality - Articles 14-18

Article	Brief description
Article 14	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, on grounds of religion, race, caste, sex or place of birth.
Article 15	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 16	There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
Article 17	Abolition of untouchability
Article 18	Abolition of all titles except military and academic



➤ Article 14

Article 14 provides to all the right to equality before law and equal protection of the law. It prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

It means that law treats everyone equally without consideration of their rank or status or other backgrounds.

Equality Principle - The principle of equality means that one uniform law cannot be applied to all equally as some may not be similarly placed as others. So 'equality' treats equals similarly and unequals differently.

Although Article 14 states equality before law, that does not mean absolute equality. The application of the equality principle cannot be universal or general in character. This means that the same law cannot apply to every person equally and similarly; different situations may require different treatment.

Therefore, the same law may not apply to everyone but only to a class of people. The State is entitled to make a reasonable classification for purposes of legislation and treat all in one class on an equal footing.

For example, the Prohibition of Child Marriage Act, 2006 prescribes the marriageable age of girls as 18 years and that of boys as 21 years; this restricts a minor from getting married. This example draws a distinction based on age in relation to the question of the prohibition of child marriage.

However, if the marriage between two parties were to be disallowed based on the classification of religion, race, caste, sex or place of birth, it would amount to discrimination and breach of right to equality.

➤ Article 15

Discrimination & access to public places- Article 15 is based on the equality principle. It prohibits State from discriminating anyone based on grounds of religion, race, caste, sex or place of birth.

Also, it prohibits anyone and the State from using these grounds to restrict any citizen from entering shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, roads and places of public resort.

➤ Article 16

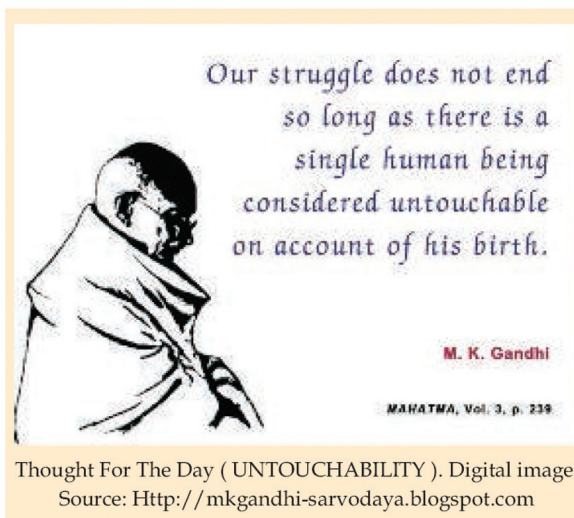
Reservation and affirmative action - Article 16 is also based on the equality principle of Article 14. It provides for equality of opportunity in matters of public or State employment and bars any discrimination to any citizen on grounds of religion, race, caste, sex, descent, place of birth, or residence.

However, this article allows the State to provide reservation or affirmative action programs for government jobs to backward classes like Schedule Castes and Scheduled Tribes who because of historical and continued disadvantages based on caste, status and otherwise have not been adequately represented in the services under the State.

➤ Article 17

Abolition of Untouchability - Under Article 17 'Untouchability' is abolished and its practice in any form is forbidden.





This article can be enforced against both the State as well as private individuals.

The offence of untouchability is punishable in accordance with special laws like the:

- Protection of Civil Rights Act, 1955 and
- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

The abolition of untouchability in Article 17 is made operational by these two special laws that attempt to remove any form of harassment and abuses to 'Dalits' and 'Adivasis' by the State or private individuals.

➤ **Article 18**

Abolition of Titles - Article 18 talks about the abolition of titles. It states:

- ◆ No title, not being a military or academic distinction, shall be conferred by the State.
- ◆ No citizen of India shall accept any title from any foreign State.
- ◆ No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- ◆ No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

b) Right to Freedom- Articles 19-22

➤ **Article 19**

Article 19 prescribes and protects the following kinds of freedoms to all citizens:

- a) Freedom of speech and expression
- b) Freedom to assemble peaceably and without arms
- c) Freedom to form associations or unions
- d) Freedom to move freely throughout the territory of India
- e) Freedom to reside and settle in any part of the territory of India; and
- f) Freedom to practice any profession, or to carry on any occupation, trade or business



Reasonable restrictions on freedoms under Article 19

Article 19 also provides 'reasonable restrictions' on these freedoms, which means that these rights are conditional. The State can 'reasonably' limit or take away the right to 'freedom of speech and expression' when there is a threat to the sovereignty and integrity of India, or the security of the State, or friendly relations with foreign States, or public order, or decency or morality, or in relation to contempt of court, or defamation, or incitement to an offence.

For example, the State can prohibit someone from making inciting speeches that may provoke others to commit violence.

The chart below presents the various conditions under which the State can limit or take away freedoms.

Freedoms	Restrictions (grounds)
Freedom of speech and expression	Sovereignty and integrity of India, or the security of the State, or friendly relations with foreign States, or public order, or decency or morality, or contempt of court, or defamation, or incitement to an offence
Freedom to assemble peaceably and without arms	Sovereignty and integrity of India, or public order
Freedom to form associations or unions	Sovereignty and integrity of India, or public order or morality
Freedom to move freely throughout the territory of India	Interests of the general public, or for the protection of the interests of any Scheduled Tribe
Freedom to reside and settle in any part of the territory of India	
Freedom to practice any profession, or to carry on any occupation, trade or business	Interests of the general public; or the State prescribed professional or technical qualifications; or State run trade, business, industry or service, that excludes participation of citizens or others either completely or partially.

However, at times the Supreme Court can invalidate State's restrictions if it finds them to be unreasonable.

As an instance, the State cannot put restriction as an excuse because it is unable to maintain public order, e.g., application of aforementioned restrictions on the sale of a book because of a few unruly protesters; such restrictions are unreasonable and breach the right to freedom of speech and expression of the author.

Point to ponder!

Do criminals have human rights?



Human rights framework to the criminal justice system

➤ Article 20

Rights of persons accused of crimes - Article 20 provides for safeguards to persons who are accused of having committed crimes. This article provides the human rights framework to the criminal justice system.

The rights of persons accused of crimes are: Firstly, Article 20 provides that no person can be convicted for the commission or omission of an act that does not amount to an offense by any law in force at the time of such act.

For example, sodomy law under section 377 of the Indian Penal Code (IPC) treated consensual homosexual conduct between same-sex adults as a criminal offense.

In 2009, Section 377 was declared invalid and unconstitutional by the Delhi High Court to protect rights to privacy, non-discrimination, and liberty of lesbian, gay, bisexual and trans gender people.

But in 2013, the Supreme Court reversed the High Court's decision.

However, in 2018 the Supreme court overturned its 2013 judgment and struck down Section 377 of the IPC as unconstitutional.

In this example, sodomy law will not apply to any consensual homosexual conduct committed in 2011 but will apply to commissions that took place post-Supreme Court judgment of 2013 till 2018 (when the law again changed).

Therefore, Article 20 prohibits application of laws retrospectively and prospectively.

Secondly, Article 20 provides that any person who is convicted of a crime should not receive a penalty greater than what is provided in the law in force at the time of the act of offence.

Thirdly, it provides for another important right - 'no person shall be prosecuted and punished for the same offence more than once.' This means that if someone commits an offence, that person should not be harassed and punished repetitively (more than once) for the same offence.

Fourthly, it states that 'no person accused of any offence shall be compelled to be a witness against himself.' This provision safeguards the accused's right against self-incrimination. An accused may give information based on own knowledge if he or she chooses to, but cannot be forced to be self-witness against himself or herself.

Last, every accused has a right to fair trial.

➤ Article 21

Right to life and personal liberty - Article 21 states as follows - 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

This article is most fundamental; it is expansive and covers many other rights and is applicable to both the **citizens as well as non-citizens**.

The meaning of 'right to life' includes **right to human dignity**, right to basic requirements of life, right to participate in activities and expression, right to tradition, heritage, and culture, and so on.

'Personal liberty' means various rights that provide for personal liberty of a person, i.e., everyone has the right to do as per his or her will freely.

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The meaning of '**right to life** and **personal liberty**' is broad and embraces many aspects including..... see the table below.



'Right to Life & Personal Liberty'

human dignity, basic necessities of life, engaging in activities and expression, tradition, heritage and culture, privacy, pollution free environment, livelihood, against sexual harassment, against solitary confinement, legal aid, speedy trial, against delayed execution, in capital punishment, against custodial violence, shelter, healthcare and medical provisions, against bonded labor, against cruel and unusual punishment.

The second part of the article describes how one's right to life and personal liberty can be taken away.

A person can be deprived of his or her 'right to life or personal liberty' only by **procedure established by law**. This means that any law that limits or takes away one's right to life and personal liberty must contain a procedure that is **fair and reasonable and not arbitrary**.

For example, the Indian Penal Code prescribes death penalty for certain crimes. This involves established procedures like:

- 1) death penalty is awarded only in 'rarest of rare' cases, and
- 2) there should not be a delay in executing the prisoner waiting in death row. Also, Indian Penal Code allows for appeal where the wait period is longer than **five years**.

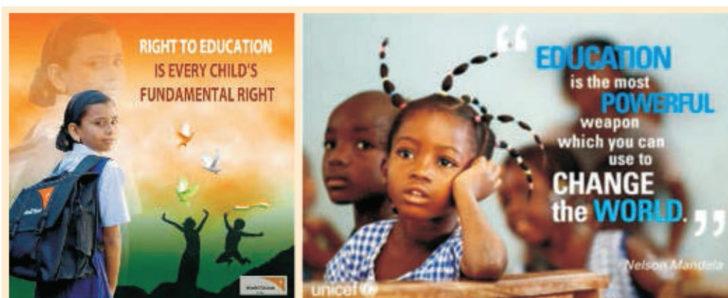
Class Activity:

Conduct a class debate on whether 'death penalty' should be abolished in India.

➤ Article 21A

Right to education - Article 21A states that 'The State shall provide free and compulsory education to all children of the age of **six to fourteen years** in such manner as the State may, by law, determine.'

This article provides for the right to education to all between the age of six and fourteen and obligates the State to implement this.



Right to Education Is Every Child's Fundamental Right Source: Digital image. Source: Peopleint.wordpress.com

A Child's Right To Education Source: Digital image. Source: Selwood.com



Prior to 2002, the Indian Constitution considered elementary education for children between age six and fourteen as a policy goal provision in the Directive Principles of State Policy, which Supreme court raised to the status of fundamental rights affirming depriving one from education amounts to depriving one's right to life (Article 21 - Fundamental Right). Accordingly right to education for the children of ages of 6 to 14 is now part of the fundamental rights.

Briefly put, Directive Principles of State Policy are not enforceable in a court of law as they are aspirational goals to be achieved over a period of time.

In 1992-93, however, the Supreme Court affirmed that depriving one from education amounts to depriving one's right to life under Article 21, which is a fundamental right. This meant that elementary education to the status of fundamental right from that of a policy goal (directive principles) and hence made it enforceable.

Accordingly, in 2002, Article 21A providing right to elementary education was created as a fundamental right by **the Constitution (Eighty-sixth Amendment) Act, 2002**. The aim is to provide free and compulsory education to all children in the age group of six to fourteen years in such a manner as the State may, by law, determine.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009

The Right of Children to Free and Compulsory Education Act 2009, also known as the **RTE Act**, was enacted by the Parliament of India in 2009 and it provides that every child has a right to **free and compulsory education till completion of elementary education in a neighborhood school**.

This Act places a legal obligation on the state and central governments to implement the fundamental rights of a child in accordance with the provisions of the RTE Act.

However, implementing this right requires State's financial and budgetary expenditures of enormous amounts to meet the demand of a high illiteracy rate, which so far has been inadequate.

➤ **Article 22**

Protection against arrest and detention - Article 22 provides safeguards against arrest and detention in following ways:

- ♦ No one can be detained in custody without providing grounds for arrest.
- ♦ The arrested and detained person has a right to consult and to be defended by a legal practitioner of his or her choice.
- ♦ A person who is arrested and detained in custody should be produced before the nearest magistrate within a period of twenty-four hours. The travel time is not counted towards the twenty-four hours time frame.
- ♦ No such person can be detained in custody beyond twenty-four hours without the authority of a magistrate.

The above safeguards do not apply to:

- ♦ a person from an enemy country
- ♦ to persons arrested or detained under preventive detention laws

Generally, preventive detention laws allow for detaining persons on suspicion; who otherwise have not been found guilty of any crime but their release may be detrimental to society like, they may commit more crimes if released or affect adversely investigations by the State or they are mentally ill and so on.

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However, preventive detention laws can be misused resulting in violations of human rights of the person detained.

Detention and Arrest:

Ordinarily, you may think that being arrested is the same as being detained but there is a difference between detention and arrest.

Detention Arrest

A person is arrested when she/ he is charged with a crime whereas if the police have reasonable suspicion against a person that she/he may have engaged in a crime or may commit crime, they may detain that person for questioning.

When a person is detained for questioning, she/he is not charged with a crime. The main difference between detention and arrest is whether the accused is charged with a crime or not.

c) Right against exploitation- Articles 23 and 24

➤ Article 23

Prohibition of traffic in human beings and forced labor - Article 23 prohibits human trafficking, begar and forced labor.

Begar- Begar is a Persian word. It is a practice where the worker is forced to give service to the master free of charge or at a nominal remuneration. It is a form of forced labor.

➤ Article 24

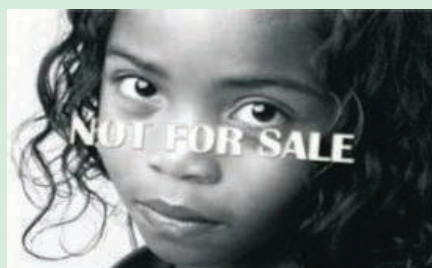
Prohibition of employment of children in factories, etc. - Article 24 prohibits employment of children below the age of **fourteen years** in factories, mining, and other hazardous employment.

Human Trafficking involves the following

ACT		Means		Purpose		
Recruitment Transport Transfer Harbouring Receipt of persons	+	Threat or use of force, coercion Abduction, Fraud Deception, Abuse of power of vulnerability, Giving payments or benefits	+	Exploitation including Prostitution of others, Sexual exploitation, Forced labour, Slavery or similar practices, Removal of organs, Other types of exploitations	=	Trafficking

Top 10 Countries Infamous for human Trafficking.

Digital image. Source: www.istdose.com



Other Examples of Human Trafficking

- forced labor
- forced sex workers
- forced organ transplantation
- forced surrogacy
- forced to work in factories
- hazardous activities
- forced into begging



d) Right to Freedom of Religion - Articles 25-28

➤ Article 25

Freedom of conscience and free profession, practice and propagation of religion -

Under Article 25, all persons have the right to freedom of conscience, and freedom to profess, practice and propagate religion as long as their acts do not threaten public order, morality and health.

- ♦ *For example*, on the issue concerning use of loudspeakers for religious purposes, Supreme Court has stated that no religion prescribed that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice-amplifiers or beating of drums.

In the name of religion nobody can be permitted to add to noise pollution or violate noise pollution norms. Even if there is religious practice to use voice amplifiers, it should not adversely affect rights of others including that of being nor disturbed in their activities. Noise Pollution (Regulation and Control) Rules, 2000 should be followed.'

Also, the wearing and carrying of kirpans is part of the profession of the Sikh religion and do not threaten public order, morality or health.

- ♦ State may regulate or restrict economic, financial, political or other secular activities that are associated with a religious practice.
- ♦ State can also provide social welfare and reforms in Hindu, Sikh, Jain, or Buddhist religious institutions.
- ♦ State can throw open their religious institutions like temples to all classes and sections of that religious society.

• Article 26

Freedom to manage religious affairs - Article 26 provides the right to every religious denomination, including their sub-sect or sects, to

- ♦ establish and maintain institutions for religious and charitable purposes;
- ♦ manage their own affairs in matters of religion;
- ♦ own and acquire movable (e.g., vehicles, furniture) and immovable (e.g., house, trees) property; and
- ♦ administer such property in accordance with law.

These rights are conditional; they should not endanger public order, morality and health.

➤ Article 27

Freedom as to payment of taxes for promotion of any particular religion - Article 27 prohibits forcing anyone to pay any taxes on revenues that are used in payment of expenses for the promotion or maintenance of any religion or sect.

For example, donations in temples that are used for the upkeep of the temple cannot be taxed.

➤ Article 28

Freedom as to attendance at religious instruction or religious worship in certain educational institutions – Article 28 states that:

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

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- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Trust- is a body registered under the Trust Act, 1882, now 1961 and is run on the basis of no profit no loss.

Article 28 prohibits religious instructions in educational institutions that are **wholly maintained out of State funds**.

For example, **government run schools** like Sainik Schools and Kendriya Vidyalaya schools cannot impart religious instructions to students.

However, some educational institutions are exempted from this rule, those which are **administered by the State but are established by endowments or trusts** that require religious instruction in such educational institutions.

Furthermore, **State recognized or State aided educational institutions** cannot force any student to take part in any religious instruction or to attend any religious worship conducted in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.

wholly funded by state	recognized by state	aided by state	administered by state but established under a trust
Institutions whose entire expenditure is borne by the state/ government.	Institutions that are recognized by the state for imparting instruction or awarding degrees under the state laws.	Institutions that are receiving aid out of the state funds.	Institutions whose day-to-day administration is in the hands of government
Government educational institutions -for instance Government schools and colleges	Without recognition the degree of such institutions shall not be recognized for the public employment.		
Religious instruction cannot be imparted in the educational institutions that are wholly funded by state	Cannot force students to take part in religious instruction/ religious worship. In the case of minors, consent of the parent is required.	Cannot force students to take part in religious instruction/ religious worship. In the case of minors, consent of the parent is required.	Institutions that were originally established by a trust which required religious instructions to be imparted, the religious instructions may be imparted in such institution irrespective of the fact that it is administered by the state.

These provisions and others make India a secular state.



e) Cultural and Educational Rights – Articles 29-30

➤ Article 29

Protection of interests of minorities - Article 29 provides minority sections of citizens who have distinct language, script or culture the right to conserve the same.

It also prohibits educational institutions, maintained by the State or receiving aid out of State funds, from denying admissions to any citizen on grounds of religion, race, caste, or language.

➤ Article 30

Right of minorities to establish and administer educational institutions - Article 30 provides all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice.

It also prohibits State from discriminating educational institutions, while granting them aid, on grounds of religion or language.

f) Right to Constitutional Remedies - Articles 32

Remedies for enforcement of fundamental rights - Article 32 guarantees the aggrieved ones, whose fundamental rights have been violated or denied, to petition directly to the Supreme Court for the enforcement of fundamental rights.

Unlike cases of other matters where one has to exhaust remedies of lower courts, in matters of fundamental rights violation one can approach the Supreme Court directly.

Similarly, **Article 226** authorizes High Courts to take up matters of fundamental rights violations directly for their enforcement.

Public Interest Litigation - is also known as **Social Action Litigation**.

Article 32 allows for the practice of Public Interest Litigation, which is a process by which even letters written to Supreme Court or High Courts by public-spirited persons or organizations alleging fundamental rights violations are converted into petitions.

The author of the letter alleges violations of fundamental rights of the weaker sections of Indian society who are unable to approach the court; they include people in custody, victims of police violence, forced bonded laborers, migrant and contracted laborers, child workers, rickshaw pullers, hawkers, pensioners, pavement dwellers, and slum dwellers.

Courts can also act upon newspaper reports alleging fundamental rights violations of victims.

3. Directive Principles - Part IV - Articles 36-51

Articles 36-51 in Part IV of the Constitution lays down the guiding principles of governance for the State are called the 'Directive Principles of State Policy'.

Given below are few salient features of the directive principles.

- It is the duty of the State to apply these principles in making laws and policies on social and human development.
- These principles are largely of the nature of economic and social rights.
- The provisions of directive principles are not enforceable by any court of law, but they provide guidance in carrying out and drafting laws and policies regarding human and social development.
- The Supreme Court has raised the status of many provisions of directive principles to that of



fundamental right by suggesting they violate one's right to life (Art. 21).

- Directive principles aim at promoting the welfare of the people. They intend to secure and protect social, economic and political justice of its citizens.
- These principles endeavor to minimize income inequalities and to eliminate inequalities based on status, facilities, and opportunities amongst both individuals and groups of people.

Directive principles of policies guide the State to achieve various goals as given in the table below.

'Directive Principles'

Right to adequate means of livelihood for both men and women.

Equal pay for equal work for both men and women.

Right to healthy working conditions for men, women and children.

Protection to children against exploitation and against moral and material abandonment.

Legal aid for securing justice - for those with economic or other disabilities.

Village panchayats vested with powers and functions as units of self-government.

Right to work, to education, and to public assistance in cases of unemployment, old age, sickness and disablement, etc.

Provision for just and humane conditions of work and for maternity relief.

Living wage and conditions of work to agricultural, industrial or other workers that ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Promoting cottage industries on an individual or co-operative basis in rural areas.

Participation of workers in management of industries.

Uniform civil code for the citizens - one uniform law for family law matters.

Provision for early childhood care and education to children below age of six years.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections and protection from social injustice and all forms of exploitation.

Raising level of nutrition, standard of living and improving public health and prohibition of the consumption of intoxicating drinks and drugs injurious to health.

Organization of agriculture and animal husbandry in a modern and scientific way and preserving and improving the breeds, prohibiting the slaughter of cows.

Protection and improvement of the environment and safeguarding of forests and wildlife.

Protection of monuments and places and objects of artistic or national importance.

Separation of judiciary from executive in the public services of the State.

Promotion of international peace and security, maintaining just and honorable relations between nations, fostering respect for international law and treaty obligations, and encouraging settlement of international disputes by arbitration.



Supreme Court has raised the status of many provisions of directive principles to that of fundamental rights by suggesting they also violate one's right to life (Art. 21).

Directive Principle	Raised to Fundamental Right as violates one's right to life (Art. 21).
Elementary education for children between age six and fourteen was a policy goal provision.	Right to education for children between age six and fourteen is now a fundamental right under Article 21A.

The Supreme Court in the case of **Mohini Jain case** ruled that right to education is a fundamental right that flows from right to life in Article 21 of the constitution.

Another example is that of right to livelihood, which is a directive principle often read with right to life, as a fundamental right. The Supreme court has often directed States to rehabilitate slum dwellers whenever they are evicted on grounds of encroachment.

Eviction without rehabilitation closer to their workplace amounts to violation of their right to livelihood and in turn the right to life. Livelihood can include basic shelter, food, education, occupation and medical care.

The Supreme Court in **Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors.**, popularly known as the 'Pavement Dwellers Case' held that 'right to livelihood' is borne out of 'right to life', as no person can live without means of living, that is, means of livelihood. It recognized right to livelihood to be part of Article 21.

The court also held that it is the duty of the authorities to provide slum dwellers with an alternative if their house is to be demolished.

4. Fundamental Duties- Part IV(A) - Article 51A

Part IV(A) - Article 51A of the Constitution prescribes fundamental duties of every citizen. In that, certain conduct and behavior are expected of the citizens. The salient features of fundamental duties are given below:

- The fundamental duties cannot be enforced in a court of law for violation of the duties, and no one can be punished for violation.
- Fundamental duties contain standards to be followed by the citizens.
- They remind citizens not to behave irresponsibly but help build a free, democratic and strong society.

It may be possible that, just like some provisions of the directive principles, courts may raise the status of these duties in future.

Fundamental Duties

Respecting the Constitution and institutions, the National Flag and the National Anthem.

Cherishing and following the noble ideals of the national struggle for freedom.

Upholding and protecting the sovereignty, unity, and integrity of India.

Defending the country and rendering national service when called upon to do so.



UNIT I

Promoting harmony amongst religious, linguistic and regional diversities and renouncing practices derogatory to women's dignity.

Valuing and preserving the rich heritage and culture.

Protecting the natural environment including forests, lakes, rivers and wildlife.

UNIT II

Developing the scientific temper, humanism and the spirit of inquiry and reform.

Safeguarding public property and abjuring violence.

Striving for excellence and raising the nation to higher levels of endeavor and achievement.

UNIT III

Providing opportunities for education to children by their parents between the age of six and fourteen years.

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Class Activities

Activity 1

There are different ways in which one can see or understand human rights. Write your views in 200 words on any one of the following:

- Are human rights anti-majoritarian (protection of minorities from the domination of the majority)?
- Are human rights a moral demand to resolve various kinds of injustices?
- Are human rights a tool for sloganeering and disruptions?

Activity 2

- ♦ Watch this 2016 award winning video on human rights from India by Anuj Ramachandran.

<https://developmenteducation.ie/feature/6-quick-activities-for-human-rights-day-december-10th/>

How after watching this video made you sensitive towards human rights?

After watching this video, write in 100 words how it has made you sensitive towards human rights?

Activity 3

- ♦ Go to the website of UN High Commissioner for Human Rights. Write a review of the site. You may include following points in the review:
 - What is it that you found interesting about the site?
 - What content on the site surprised you?
 - What information was useful to you?
 - Was there any idea or information that was missing that you want to be included on the site?



Exercise

Based on your understanding, answer the following questions:

1. 'Human rights and SDGs are two sides of the same coin.' Explain.
2. Explain states' obligations to respect, protect and fulfil human rights.
3. Identify any two features in the Preamble of the Indian Constitution that indicates its objective of protecting human rights.
4. Describe any three salient features of fundamental rights in the Indian Constitution.
5. What is right to equality? How is reservation or affirmative action for government jobs to Schedule Castes and Scheduled Tribes protected by the right to equality?
6. Why do you think it was necessary to abolish the practice of untouchability?
7. Identify any two kinds of right to freedoms along with any two grounds of restrictions that take away these freedoms.
8. Explain any one fundamental right of a person who is either accused or convicted of a crime.
9. Explain 'right to life and personal liberty' as given in the Indian Constitution.
10. Explain 'right to education' provided in the fundamental rights chapter of the Constitution.
11. Identify any one safeguard provided to someone if s/he is arrested and detained.
12. What is meant by human trafficking, that is prohibited by the Indian Constitution?
13. Describe 'right to freedom of religion' as provided in the Indian Constitution.
14. Explain judicial remedies that are available for the enforcement of fundamental rights.
15. What is meant by Public Interest Litigation (PIL)? Find out one PIL that was initiated on the basis of a letter written to the Supreme Court or on the basis of a newspaper report?
16. Describe any one salient feature of the Directive Principles of State Policy. Give one example of directive principle that has been elevated to fundamental rights.
17. Give any one example of fundamental duties provided in the Constitution.

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CHAPTER

5(B)

Human Rights Violations - Complaint Mechanism (Quasi - Judicial Bodies)

Learning Outcomes :

Students will be able to:

- name the various Human Rights Commissions in India
- identify the functions and powers of various Human Rights Commissions in India
- discuss the complaint mechanism of these Human Rights Commissions

The focus of this chapter is on the Human rights commissions and their complaint mechanisms.

A. What are Quasi-judicial Bodies?

The quasi-judicial bodies typically are public administrative agencies under the realm of the executive branch and are largely bestowed with authority similar to courts. These bodies have the power to resolve disputes and also impose punishments.

Examples of quasi-judicial institutions include:

- national and state human rights commissions,
- central and state information commissions,
- consumer redressal forums and commissions,
- income tax tribunals, and so on.

The most fundamental human rights bodies are the national human rights institutions that include the following:

- National Human Rights Commission (NHRC)
- National Commission for Minorities
- National Commission for Women (NCW)
- National Commission for Scheduled Castes
- National Commission for Scheduled Tribes, and
- National Commission for Protection of Child Rights (NCPCR)

These commissions are **independent or autonomous and transparent bodies** that are created under specific legislations to promote and protect human rights.

For example, the **National and State Human Rights Commissions** are governed by the **Protection of Human Rights Act, 1993**.

National commissions have jurisdiction over the entire nation whereas the parallel state commissions take matters of human rights violations from the respective states.

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B. Various Human Rights Commissions

1. NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

1.1 Introduction

The specific legislation called the Protection of Human Rights Act was enacted by the Parliament in 1993, which in turn established the National Human Rights Commission as an independent institution with powers and functions to promote and protect human rights.

This act also provides for the constitution of State Human Rights Commissions at state levels for access to complaint mechanisms at the state level.

1.2 Constitution

The National Commission is headed by the Chairperson who is a former Chief Justice of the Supreme Court. The other members of Commission are:

- ◆ one member who is a former judge of the Supreme Court, another member who is present or former Chief Justice of a High Court, and two other members with knowledge or experience in matters relating to human rights.
- ◆ Besides, there is a Secretary-General who is the Chief Executive Officer of the Commission who largely discharges administrative duties of the Commission.
- The Chairperson and the members are appointed by the President of India on recommendation of a committee consisting of the Prime Minister, the Speaker of the House of the People (Lok Sabha), Minister of Home Affairs at the center, Leader of Opposition in the Lok Sabha, Leader of Opposition in the Council of States (Rajya Sabha), and Deputy Chairman of the Rajya Sabha.
- The committee is required to consult the Chief Justice of India whenever a sitting judge of the Supreme Court or sitting Chief Justice of a High Court is appointed to the Commission.
- The government also appoints police officers and investigative staff and other administrative, technical and scientific personnel for the efficient functioning of the Commission.

The National Commission is based in New Delhi. The State Commissions also complement the working of the National Commission.

1.3 Functions of the Commission

The Commission is vested with the functions as given below.

Inquiry and Investigation - One of the Commission's roles is to conduct inquiry and investigation into the **alleged violation of human rights or abetment (aiding or supporting) or negligence in the prevention of such violation by a public servant.**

The complaint can be filed by the victim or his or her representative, or the court may direct the Commission with a complaint, and at times the Commission may initiate inquiry and investigation on its own (**Suo motu**).

Suo Motu means 'on its own motion' and relates to an action taken by a court of its own accord, without any request by the parties involved.

For example, the Commission may inquire suo motu based on some human rights violations news or report published through the media.



Suo motu inquiry is especially useful when the victims belong to weaker sections of the society and have limited access to justice delivery mechanisms.

1.4 Powers of the Commission

The Commission has the powers of a civil court.

In conducting an inquiry or investigation, the commission can utilize various powers including the following:

- summon and enforce the attendance of witnesses and examine them on oath;
- ask for production of any document before itself;
- receive evidence on affidavits;
- request public record from any court or office; and
- examine witnesses or documents.

On completion of Enquiry:

Once the inquiry is completed, the Commission can make recommendations to governmental authority in cases where **any public servant is the perpetrator of human rights violation**.

- The recommendation may include **payment of compensation to the victims** or suggest **initiation of proceedings for prosecution of the public servant**.
- The Commission can also **approach the Supreme Court or the High Court for directions and orders**.
- The Commission may also ask the State authority to provide **immediate interim relief to the victim**.

Intervening in court proceedings - The Commission may with the permission of the court intervene in court proceedings concerning human rights violations.

For example, the Commission can request the Supreme Court to transfer pending riot cases out of a state in which the riots had happened to ensure the witnesses are not threatened in any manner and that evidences are not damaged.

Inspection of jails, etc. - The Commission may also visit any jail or other governmental institutions, where prisoners are lodged or detained, to study the living conditions of the inmates and make recommendations to the government.

Awareness and Sensitization - The Commission can review various human rights laws either in the Constitution or other statutes and recommend measures to the government for their effective implementation.

The Commission can also evaluate various factors, including acts of terrorism, which prevent the enjoyment of human rights and recommend appropriate remedial measures to the government.

The Commission's role includes studying various international human rights laws and make recommendations for their effective implementation at the domestic level (within the State).

Furthermore, the Commission can undertake and promote research in the field of human rights as well as spread human rights literacy among various sections of society.

It can promote awareness of the safeguards available for the protection of human rights through publications, media, seminars, and other available means.

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Lastly, the Commission can encourage and support the efforts of non- governmental organizations and institutions involved with human rights work.

1.5 Complaint Mechanism

The complaint mechanism procedure with the National Human Rights Commission is easy and straightforward.

Any one aggrieved of human rights violation or their representatives can lodge a complaint with the Commission in any language.

The complaint can be filed online at www.nhrc.nic.in or by paper petition using the complaint format provided on the website.

The complaint can be sent either by Post or Fax or through E-mail.

There is no fee for filing a complaint.

The complaint must be filed within a year of the occurrence of the human rights violation.

Once the complaint is pending before the commission, one can check the status of the complaint online.

In-Class Exercise

National Human Rights Commission of India has prescribed a complaint format as given below. Use the format and prepare a complaint on any human rights violation either hypothetical or real that you may be aware of, or you may have read/heard in the news and so on. The NHRC guidelines given below in row three are for reference purpose. This complaint must be used for classroom exercise only and be submitted to the course instructor for evaluation.

Format for filing a complaint with the NHRC

A. Complainant's Details

1. Name:
2. Sex: Male / Female
3. State:
4. Full Address:
5. District:
6. Pin Code:

B. Incident Details

1. Incident Place(Village/Town/City):
2. State:
3. District:
4. Date of Incident:

C. Victim's Details

1. Name of the victim:
2. No. of victims:
3. State:
4. Full Address:
5. District:
6. Pin Code:
7. Religion:



8. Caste (SC/ST/OBC/General):

9. Sex:

10. Age:

11. Whether Disabled person:

D. Brief summary of facts/allegations of human rights involved:

E. Whether complaint is against Members of Armed Forces/ Para-Military: Yes/No

F. Whether similar complaint has been filed before any Court/State Human Rights Commission:

G. Name, designation & address of the public servant against whom Complaint is being made:

H. Name, designation & address of the authority/officials to whom the public servant is answerable:

I. Prayer/ Relief if any, sought:

Guidelines on how to file complaint with the NHRC

1. Complaint may be made to the Commission by the victim or any other person on his behalf.
2. Complaint should be in writing either in English or Hindi or in any other language included in the eighth schedule of the Constitution. Only one set of complaint needs to be submitted to the Commission.
3. Complaint may be sent either by Post or Fax or E-mail.
4. No fee is chargeable on such complaints.
5. The complaint shall disclose
 - (i) violation of human rights or abetment thereof; or
 - (ii) negligence in the prevention of such violations, by a public servant
6. The jurisdiction of the Commission is restricted to the violation of human rights alleged to have been committed within one year of the receipt of complaint by the Commission.
7. Documents, if any enclosed in support of the allegations in the complaint must be legible.
8. Name of the victim, his/ her age, sex, religion/ caste, State and District to which the incident relates, incident date etc. should invariably be mentioned in the complaint.
9. Please submit the complaint preferably in the enclosed format.
10. Following types of Complaint(s) are not ordinarily entertainable:
 - (i) Illegible
 - (ii) Vague, anonymous or pseudonymous.
 - (iii) Trivial or frivolous in nature.
 - (iv) The matters which are pending before a State Human Rights Commission or any other Commission.
 - (v) Any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.
 - (vi) Allegation is not against any public servant.
 - (vii) The issue raised relates to civil dispute, such property rights, contractual obligations, etc.
 - (viii) The issue raised relates to service matters.
 - (ix) The issue raised relates to labour/industrial disputes.
 - (x) Allegations do not make out any specific violation of human rights.
 - (xi) The matter is sub-judice before a Court/ Tribunal.
 - (xii) The matter is covered by judicial verdict/decision of the Commission.

As far as possible complainants are encouraged to make use of the format given above to file their complaints. The guidelines indicate the kind of information, which would facilitate in processing a complaint.



2. NATIONAL COMMISSION FOR MINORITIES

2.1 Introduction

National Commission for Minorities Act, 1992 was enacted by the Parliament to create the National Commission for Minorities to safeguard the human rights of minorities including protection against inequality and discrimination.

Minorities' human rights are enshrined in the Constitution as well as other laws enacted by Parliament and the State Legislatures.

The minorities here are referred to religious minorities of :

Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis).

Many states also have instituted the State Minorities Commissions and are located in the respective state capitals.

Persons who belong to the minority communities can approach the State as well as National Minorities Commission for remedying human rights violations.

2.2 Constitution

The National Minorities Commission consists of a Chairperson, a Vice-Chairperson and five other members who are nominated by the Central Government from amongst the minority communities who are persons of eminence, ability and integrity.

2.3 Functions of the Commission

The functions of the Commission include the following -

- evaluating the progress of the development of Minorities;
- monitoring the working of the safeguards provided in the Constitution and in other laws enacted by Parliament and the State Legislatures;
- making recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments;
- looking into specific complaints regarding deprivation of rights and safeguards of the Minorities and taking up such matters with the appropriate authorities;
- initiating studies on problems arising out of any discrimination against Minorities and recommending measures for their removal;
- conducting studies, research, and analysis on the issues relating to socio- economic and educational development of Minorities;
- suggesting appropriate measures in respect of any Minority to be undertaken by the Central Government or the State Governments; and
- making periodical or special reports to the Central Government on any matter pertaining to Minorities and in particular the difficulties confronted by them.

2.4 Powers

Like the National Human Rights Commission, the National Commission for Minorities is vested with powers of a civil court.



When the Commission tries any suit or hears a complaint, it has the powers to:

- 1) summon and enforce the attendance of any person and examine him or her on oath,
- 2) require the discovery and production of any document,
- 3) receive evidence of affidavits,
- 4) request any public record or copy from any court or office, and
- 5) issue commissions for the examination of witnesses and documents.

2.5 Complaint Mechanism

There are many grounds on which the Commission typically declines admitting the complaint.

Firstly, it does not entertain or admit cases or complaints that do not relate to Minority status or rights.

Secondly, the complaint should not be pending before another court or commission, i.e., matters that are sub judice.

Sub judice

Sub judice in Latin stands for 'under a judge'. It means that a particular case or matter is under trial or being considered by a judge or court.

Thirdly, where the complainant has not availed of other ordinary judicial/quasi-judicial/administrative institutions that are available for redressal, the Commission does not admit such matters unless the complainant has reasonable justification.

Fourthly, the complaint should not relate to events that are more than one-year old.

Fifthly, complaint should not be vague, anonymous, pseudonymous or frivolous.

Lastly, Commission does not entertain complaints that are not directly addressed to it.

Like, the NHRC, the National Commission for Minorities can also take action *sou motu* based on newspaper reports or other findings.

Applications of complaints are required to be sent to the Commission and addressed directly to the Secretary, National Commission for Minorities, New Delhi.

It does not charge any fee for lodging a complaint.

The updated contact details are available on the Commission's website at www.ncm.nic.in.

3. NATIONAL COMMISSION FOR WOMEN (NCW)

3.1 Introduction

In 1992, the National Commission for Women was established under the National Commission for Women Act, 1990.

3.2 Constitution

The Commission consists of a Chairperson and five Members who are nominated by the Central Government from amongst persons of ability, integrity, and standing who have had experience in



any one of these areas -law or legislation, trade unionism, management of an industry potential of women, women's voluntary organizations (including women activist), administration, economic development, health, education, or social welfare.

At least one member each belongs to the Scheduled Castes and Scheduled Tribes communities.

The member-secretary takes care of the administrative matters.

3.3 Functions

The commission has been charged with the following functions -

- to investigate and examine matters relating to the safeguards provided for women under the Constitution and other laws;
- to present annual and other reports to the Central Government about the working of the safeguards;
- to make recommendations to Central and states for the effective implementation of safeguards for improving the conditions of women;
- to review provisions of the Constitution and other laws affecting women and make recommendations about remedial legislative measures required to address inadequacies or shortcomings in the laws;
- to take up cases with the appropriate authorities about violation of women human rights as provided in the Constitution and other laws;
- to look into complaints and also take *suo moto* notice of matters on deprivation of women's rights; non-implementation of laws required to achieve equality and development; and non-compliance of policy decisions, guidelines or instructions pertaining to women welfare;
- to initiate special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and to identify the constraints and to recommend strategies;
- to undertake promotional and educational research and to suggest ways for ensuring due representation of women in all spheres and to identify factors responsible for impeding women's advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards, and for increasing their productivity;
- to participate and advice on the planning process of socio-economic development of women;
- to evaluate the progress of the development of women under the Union and any State;
- to inspect a jail, remand home, women's institution, or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- to fund litigation involving issues affecting a large body of women; and
- to make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil.

3.4 Powers

The Commission has investigating powers similar to that of a civil court; in that, the Commission can do the following -



- summon and enforce the attendance of any person and examining him or her on oath;
- require the discovery and production of any document;
- receive evidence on affidavits;
- request any public record or copy from any court or office; and
- issue commissions for the examination of witnesses and documents.

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Class Activity

Go to www.ncw.nic.in Write a report about the working of national commission for women. Examine the role of NCW in eradicating social evils against women and steps it has taken towards women empowerment.

4. NATIONAL COMMISSION FOR SCHEDULED CASTES & SCHEDULED TRIBES

4.1 Introduction

Article 338 of the Constitution of India provides for establishing a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and report to the President.

The two commissions instituted in fulfillment under Article 338 are:

- the National Commission for Scheduled Castes, and
- the National Commission for Scheduled Tribes

These are instituted to protect the human rights of Schedule Castes and Scheduled Tribes, prevent their exploitation, and to encourage and defend their social, educational, economic and cultural securities as provided in the Constitution and other legislations.

For example, State provides reservation or affirmative action programs for government jobs to backward classes like Schedule Castes and Scheduled Tribes who because of historical and continued disadvantages based on caste status and otherwise have not been adequately represented in the services under the State.

Examples of special laws for protection of minorities include the:

- Protection of Civil Rights Act, 1955, and
- Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4.2 Functions

Both Commissions have similar powers and functions as provided in Art. 338- to investigate and monitor all matters relating the safeguards provided for the Scheduled Castes and Scheduled Tribes in the Constitution and other laws;

- to evaluate the working of the safeguards;
- to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes;



- to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- to present to the President, annually and periodically, reports on the working of the safeguards and recommendations for the effective implementation of the safeguards and protection, as well as welfare, and socio-economic development of the Scheduled Castes and Scheduled Tribes.

4.3 Powers

Just like the other human rights commissions, the two commissions for Scheduled Castes and Scheduled Tribes have the powers of a civil court in trying a suit and commissions can do the following-

- summon and enforcing the attendance of any person from any part of India and examining him on oath;
- require the discovery and production of any document;
- receive evidence on affidavits;
- request any public record or copy from any court or office; and
- issue commissions for the examination of witnesses and documents.

Art.338 also mandates the Union and every State Governments to consult the Commissions on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

4.4 Complaint Mechanism

The Commissions receive complaints from an individual or group of persons alleging denial of the safeguards provided in the Constitution by an authority or an organization.

The Commissions follow up with the authorities and organizations against whom the complaint is lodged.

The websites of the Commissions are www.ncsc.nic.in for the Scheduled Castes and www.ncst.nic.in for the Scheduled Tribes.

5. NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

5.1 Introduction

The National Commission for Protection of Child Rights is an Indian statutory body established by an Act of Parliament, the Commission for Protection of Child Rights Act, 2005.

The National Commission for Protection of Child Rights (NCPCR) emphasises the principle of universality and inviolability of child rights and recognises the tone of urgency in all the child related policies of the country.

For the Commission, protection of all children in the 0 to 18 years age group is

Thus, policies define priority actions for the most vulnerable children. This includes focus on regions that are backward or on communities or children under certain circumstances, and so on.

NCPCR logo





The NCPCR believes that while in addressing only some children, there could be a fallacy of exclusion of many vulnerable children who may not fall under the defined or targeted categories.

In its translation into practice, the task of reaching out to all children gets compromised and a societal tolerance of violation of child rights continues. This would in fact have an impact on the program for the targeted population as well. Therefore, it considers that it is only in building a larger atmosphere in favour of protection of children's rights, that children who are targeted become visible and gain confidence to access their entitlements.

- For the Commission, every right the child enjoys is seen as mutually-reinforcing and interdependent. Therefore the issue of gradation of rights does not arise.
- A child enjoying all her rights at her 18th year is dependent on the access to all her entitlements from the time she is born. Thus policies interventions assume significance at all stages. For the Commission, all the rights of children are of equal importance.

5.2 Functions

The Functions of the National Commission for Protection of Child Rights are laid out in the Commission for Protection of Child Rights (CPCR) Act, 2005. The Commission shall perform all or any of the following functions:

1. Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
2. Present to be central government, annually and at such other intervals, as the commission may deem fit, reports upon working of those safeguards;
3. Inquire into violation of child rights and recommend initiation of proceedings in such cases;
4. Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;
5. Look into the matters relating to the children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;
6. Study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;
7. Undertake and promote research in the field of child rights;
8. Spread child rights literacy among various section of society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminar and other available means;
9. Inspect or cause to be inspected any juveniles custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organization; Where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;
10. Analyse existing law, policy and practice to assess compliance with Convention on the rights of the Child, undertake inquiries and produce reports on any aspects of policy or practice affecting



children and comment on proposed new legislation related to child rights.

11. Present to the Central Government annually and at such other intervals as the Commission may deem fit, reports upon the working of those safeguards.
12. Undertake formal investigation where concern has been expressed either by children themselves or by a concerned person on their behalf.
13. Promote, respect and serious consideration of the views of children in its work and in that of all Government Departments and Organisations dealing with Child.
14. Produce and disseminate information about child rights.
15. Compile and analyse data on children.
16. Promote the incorporation of child rights into the school curriculum, training of teachers or personnel dealing with children.

5.3 Powers

Inquire into complaints and take suo moto notice of matters related to:

1. Deprivation and violation of child rights.
2. Non implementation of laws providing for protection and development of children.
3. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities.

Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

The Commission shall not enquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

5.4 Complaint Mechanism

One of the core mandates of the Commission is to inquire into complaints of violations of child rights. The commission is also required to take suo moto cognisance of serious cases of violation of child rights and to examine factors that inhibit the enjoyment of rights of children.

Complaints may be made to the Commission in any language listed in the 8th Schedule of the Constitution.

- a. No fee shall be chargeable on such complaints.
- b. The complaint shall disclose a complete picture of the matter leading to the complaint.
- c. The Commission may seek further information/affidavit as may be considered necessary.

While making a complaint, please ensure that the complaint is:

- Clear and legible, not vague, anonymous or pseudonymous.
- Genuine, not trivial or frivolous.
- Not related to civil disputes such as property rights, contractual obligations and the like.
- Not related to service matters.



- Not pending before any other commission duly constituted under the law or sub-judice before a court/ tribunal.
- Not already decided by the Commission.
- Not outside the purview of the Commission on any other grounds.

Complaints may be addressed to:

National Commission for Protection of Child Rights

5th Floor , Chanderlok Building, 36 Janpath, New Delhi-110001

Phone: 011-23478200

Fax: 011-23724026

For Complaint: www.ebaalnidan.nic.in

Source:

<https://www.ncpcr.gov.in/about-commission>

<https://vikaspedia.in/education/child-rights/national-commission-for-protection-of-child-rights-ncpcr>

Exercise

Based on your understanding, answer the following questions:

1. Explain any one power or function of the National Human Rights Commission.
2. Who are minorities whose interest the National Commission for Minorities intends to protect?
3. Ms. Bagchee is a Jewish woman who has married outside her community, because of which she is disallowed to perform certain religious customs. What could be the grounds of disqualification of her complaint to the National Commission for Minorities?
4. Ms. Nisha Joseph is a Christian and her services were terminated by a school managed by State run non-governmental organization without any substantial reasons. What is the remedy available to her for redressal of this issue?
5. Smt. Savitri is troubled by the exploitation that is being faced by her deaf and dumb daughter who has been abandoned by her husband and in laws, allegedly due to her disabilities. Which forum can she approach for redressal of issues being faced by her? State its powers and functions.
6. Why were the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes created?
7. Ravi avails benefits of being a member of scheduled caste in his service under the Central Government. In a matter of promotion with his department he moved to the Central Administrative Tribunal. As the matter is pending for a long time, he decides to obtain a speedier redressal of his cause and moves to the National Commission for Scheduled Castes. Decide if the matter will be entertained by the Commission. Also set out the various grounds on which the Commission can reject a complaint made to it.



UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V

UNIT VI

UNIT VII

UNIT VIII

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