

## **What we do ??**

One of HRNCF TRUST prime motive is to develop healthy public police relations all over India. As in India there has always been a gap between people and police relationship. People in India are not that much aware about there rights and what kind of helps the can avail from police department, hence in many cases it has been seen that the proper channel of investigation into vital matters was lacking only because people don't have that much trust on police administration. But now with passing time and modernization of India people are getting aware of there rights and other services. That's especially seen in Indian metros where there has been lot of improvements in police practices and there work scenario has also improved. Now most of police departments have gone online with changing technology trends.

We always make it a point in all our meets in India which is attended by hundreds of our members and other guests to understand there fundamental rights and also as of now there has been new amendments in right to information act, so anyone can get information related to any matter pertaining to administrative departments related to that persons activities. it is to be noticed that in normal situations people don't report a crime to police due to the fear of being harassed later on by police and court proceedings related to that case. So it is our responsibility as a social service organization to let people know how they can proceed with taking the crime case to police and what suitable actions can be taken in this matter. Especially women in our society are more often seen not reporting crime to police and it is only because they don't know the rules and solutions. We also arrange road shows to spread awareness relating to public police relation.

We also have the support of government of India and various other social development organization who coordinate with us to make India crime free and make society more secure and health.

## ***Information And Requesting***

Hrncf Trust is a part of all crime investigation that will play an important role in national awakening in the coming future. For this purpose, various newspaper and News Channels are cooperating with us. Hrncf Trust is strong Anti Corruption and Crime investigation that provides vital / secret news various security nad intelligence agencies and also Ministry of home Affairs and Hon'ble President of India.

## ***Hrncf Trust Divisions***

1. Public Grievance Redressal Service
2. Crime & Corruption Investigation.
3. Cyber Crime Awareness Services
4. Security and Intelligence Services
5. Media Information
6. Education & Training of Law Civil Defence ,Martial Art and Journalism
7. Journalist Defence Services
8. Child Related Issues.

9. Human Right protection Organization.

10. Right to Information (RTI) Division

### **How Hrncf Trust Works**

Hrncf Trust first investigates/probes the Complaint/ problem of crime corruption / injustice impartially and reaches the truth. Then, without any delay, it inform the same to the President, Prime Minister, Home Minister, Chief Minister, Governor's, DGP and other concerned Police / Civil / Judicial grievances by drawing Government's attention towards behind this is effective redressal of public grievances by drawing Government's attention towardstheconcernedproblem.Overview

We are always looking for people interested in joining our organization.

### **Who can join ?**

Any person, who is disciplined, attained :he age to majority and willing to serve the nation (no restrictions on the basis of caste, creed religion, Party or Sex) may join Hrncf Trust to serve to society and nation by become member of any category. He will have to submit following documents along with the application form.

- (1) Four passport size photo
- (2) Photo copy of citizenship of India
- (3) Photo copy of education is minimum high school
- (4) Complete membership form with attested by any one authorized officer by Hrncf Trust.  
( See Important information colum on membership form)
- (5) Affidavit on Stamp paper of Rs. 10/- attested by Notary Officer.

### ***How can you join ?***

To join, we need an application duly filled and membership dues for the first year. Please visit join us page on website or contact Hrncf Trust Headquarter for more information.

### **Advantage of joining Hrncf Trust**

1. Hrncf Trust Membership will provided you an effective identify that will be useful to you n various field/spheres of life and also in collected vital news/ information Further Hrncf Trust Id card will help the Member in case of falling into kind of trouble.
2. Member will be able to effectively protest/stop any illegal/anti-social activity that comes in their knowledge.
3. Members may provide vital information to security/intelligence agencies. They can obtain information from police/civil administration regarding any matter social importance.
4. Hrncf Trust Administration will always assist / cooperate its Members. Special care will be given to legal protection of Members and on providing special news, their names will be suggested the Government for awards.
5. The talent / capability of Members will be groomed by providing adequate training / knowledge to the Members.
6. Members can put their problems / view and other sensational news assertively before public, media and Government through the medium of Hrncf Trust.
7. Hrncf Trust Members, in public interest, may cooperate with them.
8. Members may also take Hrncf Trust as their means of livelihood by attaining necessary and

practical training in various fields.

9. Reports of HrnCF Trust members will be published free of cost. Monetary reward for special / important news will also be provided.

10. Members will be provided with promotion on showing sincerity and exceptional performance.

11. Facilities like accidental insurance, medical insurance and travel facilities will be provided on showing outstanding performance.

12. Members will be invited at various important programmes / occasions and will be provided awards for their sincere work.

### **Definition of various Membership categories:**

1. Members will be provided with attractive I-cards / Certificates according to their membership categories.

2. Each Membership category will bear a definite authority and area of work.

3. HrnCF Trust Members, according to their membership category, will represent HrnCF Trust in their locality and will maintain effective communication / relation with Police / Civil Administration and Media.

4. Facilities, Training, Responsibilities / authorities and work will be provided / allocated according to the Membership category.

5. HrnCF Trust members can bring any matter of social interest in the cognizance of any person of administrative political status. members may also, in their capacity, give ultimatum to a person involved in anti-social and, anti-national activities and may also inspire his/her for his/her betterment.

6. Memberships higher categories may take up t.-e matters relating crime, corruption and other anti-social and unethical activities to various police / vigilance officers at State / District level.

7. HrnCF Trust Members are also delegated with the authority to take interview of various person of administrative and political status on various developmental work conducted by them. 24 hrs information causing of HrnCF Trust.

### **Membership Specification**

1. Cooperation with all department Government of India.

2. Registered with Ministry of MSME under UDYAM.

3. Registered by Government of India under trust act.

4. Registered Trademark by Govt of India.

5. ISO 9001 : 2015 certified organization.

6. Registered by NITI Aayog, Govt. of India under NGO Darpan.

### **HrnCF Trust Management**

HrnCF Trust under its strength, is having various teams of efficient, dedicated and patriotic workers spreading all over the country who are the expert of security and intelligence matters. Each and every member of our Organisation is, undoubtedly, a remarkable one. Believe us, We work for you.

### **RULES & REGULATIONS OF HRNCF TRUST OF INDIA**

The Members and Officers of Hrnct Trust are working on voluntary basis and no payment is given to them. Membership is non-transferable and once the payment is made, it is non-refundable.

Any kind of misbehavior or misconduct may result in rejection of membership of Hrnct Trust. All disputes subject to jurisdiction of How are only.

Hrnct Trust will not be responsible for any mis-use of Identity Card issued to the Members during the course of their Membership with Hrnct Trust.

On expiry, the Identity Cards must be submitted to the National Office. After expiry, renewal is a must for regular membership.

In case of change of address, Member should inform the same to the National Office.

In case of loss of the identity Card, inform the National Office in writing along with the F.I.R. immediately.

All Hrnct Trust members should contact their respective Area Committee / State Committee / National Committee. Office once in a month Compulsory.

Strict action will be taken against the Member, if found guilty floating the rules and regulations of Hrnct Trust, and are also punishable under the Trusty Act.

If you have any doubt, question or problem, please contact Hrnct Trust National Office.

All rights reserved to Hrnct Trust.

### **DECLARATION**

1. I hereby solemnly affirm and declare that: The particulars mentioned by me here in above are true & correct to the best of my knowledge and belief and nothing has been concealed or suppressed thereof. If anything found incorrect at any stage, my membership may be terminated.

2. I honestly declare that I will not involve myself directly or indirectly in any act which will be against the prestige of our Nation, Society, Hrnct Trust as well.

3. I will abide by the rules and regulations and Bye-Laws of the in force from time to time.

### **Our Activity**

To work for ensuring that basic human rights are respected everywhere.

To co-operate to avoid compromising on human rights for economic or political expediency.

To recognize democratic institutions as a fundamental human right.

To work towards the sovereignty and self determination of entities with historical, cultural and ecological identity.

To restrict cooperation with governing regimes that violate human rights.

To actively engage with the government of India and other countries to promote human rights education.

To bring diplomatic and commercial pressures on regimes that violate human rights, to ensure that they respect the basic rights of their citizens.

To keep the interests of disempowered communities foremost in all dealings with countries in which human rights violations occur.

To support the end of colonization and press for resolution of colonial conflicts through the U.N. frame work.

To develop a more distinctive and effective role for the international court of justice in the field of human rights.

To support through the U.N. framework, democratic and economic reforms in countries coming out of totalitarian control.

To promote a culture for educating the citizenry that cultivation and promotion of human rights culture is the sine qua non for the smooth functioning of the organs of a democratic state and for the kind of development that results into overall development of the society.

To train the young men and women for facing the challenges of the pluralistic society and the rising conflicts and tensions in the name of particularistic loyalties to caste, religion and culture.

To study the effects of draconian laws and unlawful use of state's machinery and force by the enforcement agencies.

To prepare case studies on the rising custodial deaths, killings, encounters and related issues for ensuring that human rights education must address the need of evolving new structures of knowledge and accountability to impart new skills and sensitivities amongst holder's of state power so as to make them more responsive to the culture of human rights and values of democracy.

To help stop legal social and economic discrimination against women and their exploitation in different ways.

To promote human rights education as a catalyst in bringing out attitudinal and social change among the management of fireworks, glass, stone crushing and related industries for reducing the prevalence of child labour in these and other hazardous industries to zero.

To create an environment as well as an understanding that human rights can easily become vulnerable to abuse of various structures and processes of power.

To ensure comprehensiveness and incorporation of national, regional and international perspectives related to human rights.

To study the philosophical and cultural basis and historical perspective on human rights.

To examine the inter-dependence of and linkages between human rights and democracy, pluralism, development, ecological balance, peace and harmony at the national and international levels.

To study the historical context, colonialism and post colonialism, post Independence national development, protection regime especially for the weak and marginalised groups including minorities and for women and children.

To study and prepare reports on the violation of human rights by the state and its agencies – the police and criminal Justice system inconsistency with human rights norms.

To suggest action for violation of rights by armed political groups and terrorists.

To work against intra – social violation of rights of the poor and weak by the dominant groups.

To effectively work for reducing gender inequalities, exploitations and injustices.

To provide legal aid and advice for the indigent and weaker sections of the society.

To work in close co-operation with national human rights commission and other statutory commission on women, minorities, SC and ST and linguistic minorities, NGOs and media organizations for promoting human rights education.

To study the texts, treaties, arrangements and structures innovated by the international community in the post world war period for the protection of human rights, effect of world war on the status and functioning of various institutions and structures organized for promotion and protection of human rights.

To promote the role of developing societies vis-a-vis human rights.

To study the causes of success and failure of institution like UN and its specialised bodies like UNHCR, UNHCHR, UNESCO, WHO, ILO vis-a-vis human rights.

To collect data related to the existing educational and training facilities in the areas of human rights and civil liberties in different parts of the world in general and the developing countries in particular for designing a need based Bachelor's, Master's and doctoral programmes in human rights and civil liberties.

To aid in organising conferences, seminars, meetings, discussions, debates, study courses, collection of statistics, exhibitions, shows, tour trips etc.

To publish books, encyclopaedias, monographs, journals and directories on human rights.

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### ***Aim & Objective***

To work for ensuring that basic human rights are respected everywhere.

To cooperate to avoid compromising on human rights for economic or political expediency.

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To bring diplomatic and commercial pressures on regimes that violate human rights, to ensure that they respect the basic rights of their citizens.

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To train the young men and women for facing the challenges of the pluralistic society and the rising conflicts and tensions in the name of particularistic loyalties to caste, religion, region and culture.

To study the effects of draconian laws and unlawful use of State's machinery and force by the enforcement agencies.

To prepare case studies on the rising custodial deaths, killings in encounters and related issues for ensuring that human rights education must address the need of evolving new structures of knowledge and accountability to impart new skills and sensitivities amongst holders of State power so as to make them more responsive to the culture of human rights and values of democracy.

To necessitate human rights education to evolve strategies and schemes for tackling such attitudes like employing bonded labour, practising untouchability, perpetrating sati and help members internalise more humane and egalitarian approach in their social relations.

To help stop legal social and economic discrimination against women and their exploitation in different ways.

To promote human rights education as a catalyst in bringing out attitudinal and social change among the management of fire works, glass, stone crushing and related industries for reducing the prevalence of child labour in these and other hazardous industries to zero.

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To publish books, encyclopaedias, monographs, journals and directories on human rights.

### ***Rights & Duties***

National Crime Investigation Bureau organisation's wants to say about the peoples's own Rights and Duties, The Constitution gives us six fundamental rights. The following are the fundamental rights given by our Constitution.

#### ***Right to Freedom***

Right to freedom is an important fundamental right. Every one is free to express his thoughts and ideas through speeches, writing or through newspapers. He is free to criticize and speak against the policies of the Government, if he does not agree with them. He is free to move about and carry on any trade or business in any part of India.

#### ***Right to Freedom of Religion:***

The State has no religion. It does not favor any religion. All religions are equal before the law. Every citizen is free to practice, propagate and worship any religion he likes. The State does not interfere with anybody's faith.

#### ***Right to Equality:***

All citizens are equal before the law. There is no discrimination between the rich and the poor, high or the low. There is no discrimination of caste, creed, religion, sex or place of birth. Every citizen can get the highest office for which he has the ability and the required qualifications.

#### ***Right to Education and Culture:***

Every child is free to receive education in any educational institution without distinction of caste, creed, religion and sex. He is free to receive education up to any level. The minority groups are free to preserve their own language and culture. They are free to give education to their children in any school.



### ***Right Against Exploitation :***

It means nobody can be forced to do work without wages. Nobody can take a beggar. It also prohibits to take work from anybody against his wishes and the children below 18 years of age to work in factories, mines and other risky occupations.

## ***10***

### ***Right to Constitutional Remedies :***

This right is the most important right and protects all the fundamental rights. When someone feels that his fundamental rights are being harmed in any way or he is being denied the fundamental rights, he can approach any court of law to seek justice. Supreme Court is the highest court of the country and is the guardian of our fundamental rights.

## **OUR DUTIES**

Rights and duties go side by side. Rights without duties are meaningless. If we do not do our duties properly, we should not expect rights. Therefore our Constitution has listed some fundamental duties for its citizens. We should carry out our duties for the smooth running of our country. Some of our fundamental duties are as follows.

We must obey the law of our country. We should enjoy our rights and freedom only up to the limit they do not interfere with the freedom and the rights of the others. We should defend our country in times of need and if need be, we should sacrifice our life and property for the sake of our country. We should protect our National Property. Railways, roadways, bridges, schools, colleges, post-offices, historical buildings and forests are all our national property. It is one of our fundamental duties that we must pay our taxes honestly and in time. Our Government is run by the income from our taxes.

### ***Vision & Mission***

The mission of “Human Real Needs Charitable Foundation Trust” is to build a multidisciplinary community engaged in the study and practice of human rights and justice that promotes the economic and political enfranchisement of each and every human being both locally and globally and further to ensure that Justice is delivered to any body and everybody in its right spirit and within adequate time.

It is a unique of its kind human rights center in the country that is truly interdisciplinary. Lawyers, law-students work side-by-side with scholars and practitioners across disciplines, including anthropology, sociology, government, public policy, the fine arts and in any every such field wherever humanity has a chance of losing its dignity. The Center’s motto is “Partners for Change at the Intersection of Academics and Advocacy,” representing its mission and unique position as an academic center that not only works across disciplines, but also collaborates with the communities outside the academy to affect innovative, enduring change in the lives of each and every effected individual, group, cast, creed, religion or any other group of any nature whatsoever.

## ***HRNCF TRUST CONSTITUTION WITH RULES AND REGULATIONS***

Preamble We, the human rights and defenders and promoters of Rule of Law and justice solemnly resolve and affirm the following:

1 - All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of universal brotherhood. Everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights, the UN Declaration on Protection of all Persons from Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. Everyone has the right to life, liberty and security of person, and no one shall be held in slavery or servitude and arbitrarily deprived of his property.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or to punishment. Arbitrary arrest or detention. Every one has the right to equality and equal protection before law. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law. In public trial, at which he has had all the necessary defense as per established recognized international norms and standards? No one shall be subjected to arbitrary interference, nor to attacks upon his honour and reputation. Everyone has the rights to the protection of the law against such interference or attacks. Everyone has the right to freedom of expression, conscience and religion, and to form associations and peaceful assemblies. All peoples have the right to self-determination so as to freely determine their political status and pursue their social, economic and cultural development as per stipulation of the UN Charted on Human Rights.

### **AIMS AND OBJECTS**

#### **11**

**The Human Real Needs Charitable Foundation Trust (Hrncf Trust) will strive to bring together all those who cherish democratic values in all spheres of life –social, economic and political –and take active steps to preserve, defend and strengthen democracy. The Hrncf Trust shall be a non-party, non-Governmental organisation (NGO). However, it shall strive to guide public opinion by propagating rational and constructive views on human rights, dedicating itself to the cause of the people and the victims of state oppression. With this end in view, the organisation shall make ceaseless efforts: To build a sound public opinion and to mobilise it in defence of human rights of all nationalities especially the people struggling for their right of self-determination.**

To work for structural changes to fulfil socio-economic and political aspirations of all nationalities, ensuring protection of their ethnic, religious and cultural identities. To secure recognition of the principles of universal brother-hood, socio- economical and political justice, and the dignity of the individual. And on basis, combat racism and eradicate untouchability, casteism, communalism, chauvinism, dowry, bride burning including Sati (immolation).

To educate people about their fundamental rights, civil liberties, prestige and fostering of democratic value by organising seminars to raise and awaken public consciousness. To secure recognition to the right of public dissent and generally to lend support to the struggling people who are fighting to defend their religious, cultural, linguistic and ethnic identities against the ruling classes' attempts to oppress these just and democratic struggles.

To comprehend national and international problems in their depth, complexity and essence and to counter misinformation/disinformation and false propaganda against their people engineered by the States concerned.

To establish local and overseas chapters and create liaison with national and international organisations with similar mission.

To strive for the independence and impartiality of the judiciary, freedom of the Press and other mass media.

To mobilize public opinion against draconian measures and black laws and to secure the rule of law, according to internationally established norms and standards.

To strive for the right to have access to information.

To work for such other things as may be necessary from time to time and/or incidental to the aforesaid objects.

## **RULES AND REGULATIONS**

### **GOVERNING COUNCIL**

There shall be a Governing body to be called Governing Council; it shall consist of not less than twenty-one members to be elected every year at the annual meeting shall. In addition, all the heads of the chapters shall be ex-official members of the Governing Council. The Governing Council every year shall form the Secretariat and Core Group not less than eleven members. The Secretariat and the Core Group shall generally be responsible for the fulfilment of the objects of the organisation and shall carry out the mandate as set out by the Governing Council. The Governing Council shall meet at least once a year.

### **GOVERNING COUNCIL MEMBERSHIP**

Every adult person shall be qualified to be a member of the Governing Council, if he/she is in agreement with this Constitution and accepts the rules and regulations. No office bearer of any political shall, however, be admitted to the membership of the Governing Council or any chapter thereof. And no member of any political party shall be eligible to be an office hearer of the Organisation.

### **FINANCE**

All the expenses of the organisation shall be met from the funds raised through membership fees and donations. No donation shall be accepted from Government or political parties or their representatives. Receipt of all founds shall be against official receipts of the Hrcnf Trust Funds shall be audited every year. Such audited reports shall be open to inspection by the members. Funds shall be audited every year. Such audited reports shall be open to inspection by the members.

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### ***Know Your Police***

### ***101 Things You Wanted To Know About The Police But Were Reluctant To Ask***

#### ***1. Why do we have a police force?***

We have a police force to provide citizens with a sense of safety and security. The police are there to maintain peace and order in society as well as prevent and detect crime. They are there as the law enforcers - to make sure that everyone, including the police force itself, follows the law at every step.

#### ***2. What are the police supposed to do?***

The police force has several duties: it must prevent and control crime, and detect and investigate it properly whenever it happens. It must also prepare an honest, evidence-base case for the prosecutor to present at court. The police force has a responsibility for maintaining overall law and order and for this purpose also gathers information about what is happening in and around the community it serves.

#### ***3. What is meant by police powers?***

The police have all sorts of different powers, all of which are given by law and they must use them only according to the procedure laid down in the law. So they can make arrests, carry out

search and seizures, investigate offences, question witnesses, interrogate suspects, disperse unruly crowds and maintain order in society, but they have to do it strictly in the way the law lays down and not any other way. They cannot act just as they wish or want to. Any abuse of power or negligence of duty will amount to a breach of discipline, civil wrong or a crime and the police officer is liable to be punished.

#### **4. Is there just one police force in India?**

No. Each state has its own police force under the control of the government of that state. So there are many police forces in the country. Police that work in parts of India that are directly under the control of the central government like the capital Delhi, Chandigarh, Puducherry, Daman and Diu, Lakshwadeep Islands, Dadra and Nagar Haveli and Andaman and Nicobar Islands come under the control of the central government.

#### **5. What are the paramilitary forces?**

Paramilitary forces like the Central Reserve Police Force (CRPF), the Border Security Force (BSF), the Assam Rifles, the Indo-Tibetan Border Police (ITBP) and the National Security Guard (NSG) are armed policing organisations established for special duties by the central government.

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They are structured along the lines of the army and thus called paramilitary. They help the police in counterinsurgency or anti-terrorist activities and in moments of civil unrest.

#### **6. Can anyone become a police officer?**

Yes, anyone can become a police officer. However, you have to fulfill the conditions and standards laid down for that particular rank. For example, to join as a constable you need to have at least passed high school. To join as a Sub Inspector you need to be a graduate.

#### **7. How can I become a police officer?**

There are three levels at which you can join the force. At the state level you can join either as a constable and go up to Deputy Superintendent of Police or you can join at Sub-Inspector level and get promoted all the way up to Superintendent of Police in charge of a district. Constables and sub-inspectors have to take a written entrance test. If you pass you have to go for a physical test. If that is cleared then you are called for an interview. Then you go through a medical check-up to see if you are medically fit and only then is the final selection done. IPS officers on the other hand are recruited at the central level and ranks begin as either Additional or Assistant Superintendent or Superintendent of Police.

#### **8. What is the IPS?**

IPS is short for Indian Police Service. It is one of the three all-India services of the government of India; the other two being the Indian Administrative Service (IAS) and the Indian Forest Service (IFS). It is a general pool from which police officers are drawn and sent out to serve in senior posts all over the country.

#### **9. How do I join the IPS ?**

First you have to sit for the preliminary examination conducted by the Union Public Service Commission (UPSC). Dates and venue are published from time to time in local and national newspapers. If you pass that you can sit for the main written examination. If you clear the written examination you are interviewed by an interview board. When you are selected you are asked to indicate which central service you would like to join - the Foreign Service, the Administrative Service, the Police, Forest or Revenue. Only if you score very high marks will get your choice of service, because allotments to different civil services are merit-based. **10. What training will I get as an IPS officer?**

In the IPS you go for a foundation training course at the Lal Bahadur Shastri Academy of Administration at Mussorie. This is followed by a basic training course at the National Police Academy at Hyderabad.

### **11. What kind of training do other ranks get?**

Most states also have their own training schools where non-IPS officers and constables go for training. Later, there is also in-service training given from time to time. Other ranks get outdoor physical training, and training in the use of weapons, first aid, riot control and unarmed combat. They also get classroom training on various criminal laws, about procedure, about how to conduct investigations and control crowds and deal with all the many situations they come across.

### **12. How many police stations are there in the country?**

There are 12,809 police stations in the country.

### **13. Do we have enough police officers?**

No. According to United Nations standards, there should be about 230 police for every 100,000 people. But in India there are only 125 police officers for every 100,000 population. This is one of the lowest police to population ratios in the world. There are many vacancies which are not filled up. Although 16.6 lakh police personnel is the sanctioned strength there are in fact only 14.2 lakh in service. That means there is a shortage of about 14.4%. But even that doesn't give the whole picture, because there are more police in big cities than in smaller ones. Many police officers are used in guarding a very small number of very important people. Administrative and traffic duties take up lots more police personnel

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so there are large short-falls in the numbers left on crime prevention, detection, and overall maintenance of law and order.

### **14. Are there women in the police force ?**

Yes, but there are less than 5% of them in the force.

### **15. Do women police officer have different duties?**

No. So far as rules and laws are concerned women police will do the same duties as men. But only women are posted at all-women police stations.

### **16. Are there any special reservations or quotas in the police force?**

Yes. There are special quotas for recruiting scheduled castes (13.7%), scheduled tribes (8.7%),

and other backward classes in every state. The central and state governments have their own rules about how many people may be recruited from these communities. However, there is no special reservation for minorities or for women. Muslims make up 7.6% of the police force.

### **17. Why is it necessary to have dalits, women, Muslims, Christians, tribals and others in the police force?**

It is important that a police force has a good mix of men and women and people from every religion, class, caste and tribe. This increases understanding of the behaviour and attitudes of different communities and their culture, and helps to remove prejudices.

### **18. How can I tell if a person is a police officer and not some other official?**

Police officers have a distinct uniform in khaki or blue with a cap, belt, and shoulder epaulettes that show their rank and which force they belong to. Police officers should also have a name tag displayed on the chest.

### **19. What are the different ranks in the police?**

The constable is at the lowest rung of the ladder. From here the ranks move up to the Head Constable (HC), Assistant Sub-Inspector (ASI), Sub-Inspector (SI), Inspector (IP), Assistant/Deputy Superintendent of Police (ASP/DySP), Additional Superintendent of Police (Addl SP), Superintendent of Police (SP), Senior Superintendent of Police (SSP), Deputy Inspector General of Police (DIG), Inspector General of Police (IGP), Additional Director General of Police (ADG) and finally the Director General of Police (DGP).

### **20. What is a beat constable?**

No, it is not a police officer who beats you! Just so you know, no policeman is allowed to use force with anyone except if they are resisting arrest or trying to escape. A beat police officer is called that because he has a regular specific area or route which he patrols - sometimes with another police officer - to check if everything is in order and nothing suspicious is going on. On night patrols the beat constable will sometimes call out or bang their lathis to indicate that he is on his rounds.

### **21. Do all police officers do all duties?**

No. Specific duties are assigned to every police officer from the level of a Constable right up to the level of the DGP. These duties are listed in the police manuals of every state. A junior officer cannot perform those duties assigned to his senior. For example, an SI cannot do a duty assigned to an SP. However, anything that can be done by a lower ranking officer can be done by a senior ranking officer as well.

### **22. Can a traffic police officer arrest me for an offence other than a traffic crime?**

Yes. A traffic cop is also a police officer basically given traffic duties. If he sees you committing any crime he can arrest you just like any other policeman can or like any private citizen can.



### **23. What is the CID?**

CID means the Criminal Investigation Department. This is sometimes called the special branch or the investigative branch. They are the investigative agency of the state police. They are called to investigate serious crimes like fraud, cheating, gang wars and crimes that have interstate implications.

### **24. Is the CID different from the police?**

No. CID personnel are selected from the police officers themselves.

### **25. Who is in charge of the police force?**

There is one chief of police in each state. He is called the Director General of Police or DGP for short. He is the top man. But even the DGP has to report to the government. His boss is the home minister in charge of the home department in the state or at the centre.

### **26. Why should the chief of police have to report to the minister?**

Every government has a duty to make sure that each one of us feels safe and secure and does not have to worry about his life or his loved ones or his property. The government gives this duty to the police. So, the police have to report to the government about how they are doing their job. In turn, the government also has a duty to the public to make sure that the police are honest, fair and efficient and do their work only according to the law and not according to what they feel they want to do.

### **27. Who gives money for policing?**

The police are paid by the tax-payer to provide a service. Salaries come out of the state government budget and the budget of the central government. But in the end, it all comes from the pocket of the tax-payer.

### **28. Where does the police get its money from?**

Every state has a budget that is allocated exclusively for providing police services. The police get the money from this budget.

### **29. Who approves the budget and what is most of it spent on?**

The budget is decided by the state legislature. In the case of the Union Territories the budget is approved by Parliament. The first draft is prepared by the DG of the administrative section. This draft is then sent to the DGP for approval. From there it goes to the home department. Then the finance ministry approves it and sends it for Cabinet approval as part of the state budget and then it goes to the legislature for discussion. After discussion in the legislature, the police budget for the year is finally approved. In the state budget the biggest portion of all money given for policing is spent on salaries. Other items of expenditure are on training, investigation, infrastructure, housing, etc.

### **30. How do we know that the money the police get is properly spent?**

There is an annual audit of accounts and monies spent by the police conducted by the Comptroller and Auditor General (CAG). These accounts are submitted to Parliament and state legislatures. Once examined, they are available on the website of the home/police department or

in the Parliament library. You can also use the Right to Information Act to ask for annual police spending. Since policing is done using tax-payer's money which means your money, you should take an interest to ensure that this money is properly spent.

### **31. What laws govern the police?**

The police act of 1861 governs the police in most states. A few states have their own police act. But all police acts are modelled on that old law. Very recently some states have revised their acts and created new police laws. There are also other criminal laws like the CrPC and the IPC as well as local laws which govern the work and functioning of the police.

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### **32. What is the CrPC and the IPC And BNS BNSS ?**

The CrPC is short for Code of Criminal Procedure. When a crime is committed, there are always two procedures which the police have to follow to investigate the offence. One from the victim's and the other from the accused's. These procedures are detailed in the CrPC. IPC is short for Indian Penal Code. Certain types of human behaviour are not allowed by the law and such type of behaviour will get the person some negative consequences. Such types of behaviour are called "crimes" or "offences" and the consequences of which are called "punishment". The behaviour and actions, which are termed as offences, along with the punishment for each offence are mainly contained in the IPC.

### **33. What does a Police Act say?**

Police acts usually talk about what the police can and cannot do; how the police force will be organised; what ranks there will be; who will supervise the force; who will make appointments; what punishment and disciplinary actions the police will face for doing wrong. It also lays down some rules for the public to follow.

### **34. Why does the Police Act have offences by the public in it?**

These few offences are put in to make sure that everyone keeps roads and public spaces clean, uncluttered, safe, decent and free from disease. For instance, the police can immediately arrest a person for letting animals roam around on the road, slaughtering them, or being cruel to them. People who obstruct the road, dirty it, put goods out for sale on the road without a licence, are indecent, drunk or riotous, or neglect to make sure that dangerous places like wells were kept safe by fencing, etc can also be arrested immediately.

### **35. What does 'rule of law' mean?**

It means that we, all of us, high or low, rich or poor, man or woman, even the government and public servants like the police, have to obey the law and must live according to the laws that are laid down in our country under our Constitution. No one is above the law. It also means that every action by the police has to be according to the law and, if not, the police will be accountable before the law. It also means that the laws that are made must be reasonable, just and apply to all of us in a fair way.

### **36. Can a police officer be punished if he has done wrong?**

Yes. A police officer just like anyone else can be punished if he breaks the law. In fact, because

he is a person entrusted with upholding the law he should be punished more severely for breaking it.

### **37. How is a police officer punished?**

There are many means of punishing a police officer who has done wrong. If he has committed a crime then he can be brought before the courts and tried just like anyone else. If he has been rude, behaved badly or not done his duty as he should, then his senior officers can punish him by giving him a warning, or even cutting his pay, reducing his rank, suspending and transferring him.

### **38. Police officer do dangerous work. Are they insured?**

Yes, Police Officers are insured. All police personnel have to pay towards their group insurance cover. This taken from their salary. Families of Police officers, who died in the line of duty, are also paid an ex-gratia lump sum. Police officers do work in dangerous environments. Many get killed or wounded, in fact on an average over 800 police officers have been killed in the line of duty this year. The last decade was worse with the average standing at over 1,000 per year. Most of those who die on duty are constables.

### **39. Dose the police officer have to obey any and all orders given to him by his senior or by any other person who is competent to give that order like a district collector or minister?**

No. A Police officer must obey orders only when they are lawful. He will be held responsible for any thing wrong he does even if he has been ordered to do it. He can never excuse his behavior by saying that some one in authority told him to do something which was wrong and unlawful.

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That will not protect him.

### **40. Is a police officer always on duty?**

Yes. The 1861 Police Act makes it clear that a police officer is "considered to be always on duty". But that does not mean that he is never allowed to rest. It just means that wherever he is, in or out of uniform, he must act to uphold the law. He cannot say "I am not on duty" if he witnesses a crime taking place or hears a call for help.

### **41. Can I hire a police officer for my own security?**

Actually, you can, if there is a grave threat to you. Sometimes the state will arrange security; sometimes the security has to be paid for by you. According to the Police Act if you need extra police persons deployed to an area and the authorities agree to it you can pay for the additional police arrangements for a limited period of time. So, for example, for a large marriage or private occasion the police may agree to provide a few extra hands in that area at your cost. But if an area is crime prone or there is a public rally or event taking place, it would be the duty of the police to provide extra people and no question of payment would arise.

### **42. Are the police automatically allowed to take free rides on public transport or take things from the market people without paying?**

In some places police officers are given passes to take rides on public transport and that too

when they are on duty. But otherwise no police officer is allowed to take free rides. Likewise for market places; no police officer is allowed to take goods from a market stall just because he is a police officer. Like all citizens he too has to pay for his purchases.

**43. Do I have to listen to every order of the police officer?**

Yes, if it is a lawful order that is related to his duties. In fact, everyone has a duty to assist a police officer in doing his duty; especially if the police officer is trying to stop a fight or prevent a crime or trying to stop someone from escaping his custody. In fact, if you have information about a crime it is your duty to pass that information on to the police. It is also a duty not to shelter or harbour any proclaimed offender. You also have a duty to give evidence in a court of law if you know or have seen something in a case.

**44. Do I have to go with a police officer if he asks me to come with him somewhere?**

No. However, if the police officer is asking you to come along to be a witness to something he is doing as part of his duty, like arresting a person, seizing property, or examining a crime scene, then you must go along and help. Traditionally, that is called being a pancha- a person who can tell the court independently what he saw at that moment.

**45. Suppose a police officer asks me to come to the police station, do I have to go?**

No. It is good to cooperate with the police but it is not necessary to go to the station unless the police officer is formally arresting you. Otherwise, if he just wants to question you or is making inquiries about a crime he has to summon you in writing. Until that is done you cannot be forced to go to the station. Where any woman is concerned or a child below 15 is involved, the police can question them only in their homes.

**46. Do I have to answer all the questions the police officer asks?**

Yes. It is always better to answer questions honestly in a straightforward manner and inform the police of any facts you may know. If you do not know something, then the police officer cannot force you to make any statement, or put words in your mouth. It is always better to make sure that someone else is there with you when you are being questioned.

**47. Does the police officer have a duty to help me when I am in distress?**

Yes. In 1985, guidelines for the code of conduct for the police were issued by the Ministry of Home Affairs and communicated to all chief

secretaries of all states/union territories and heads of central police organisations. This requires the police to give any assistance to all without regard to wealth and social standing. According to the code their general duty to provide security to all without fear or favour includes keeping the welfare of people in mind, being sympathetic and considerate toward them, being ready to offer individual service and friendship.

**48. Can I ask the police to help me out with family problems?**

It depends on the problem. If what is happening is a crime like violence in the family, badly beating a woman or a child, or incest, or trespass, of course the police must help you and cannot

turn you away and say it is a private affair. But if adult children are disobedient, say they run away to get married, then it is no business of the police to chase after them or force them to return. That is purely a family matter.

**49. If a police officer will not help or there is no police officer around, can the public catch a thief or wrongdoer and punish him there and then?**

Yes and no. You can make what is called a "citizen's arrest" and catch the wrongdoer and take him to the nearest police station. That is all. But you cannot beat up the wrong-doer or join a crowd that is doing that. Members of the public only have a right to act to protect themselves which is called the right to defence but that too has to be reasonably used. It cannot turn into a one-sided beating or horrible humiliation and a police officer who allows that or joins in is likely to face disciplinary or criminal charges.

**50. What can I do if the police officer does not help me?**

Wilful breach or neglect of duty by a police officer is punishable with imprisonment. If the police officer is not helpful and you have been harmed, then you can complain about it to his senior. In such a case he may be found guilty. for dereliction of duty.

**51. Can the police do anything they want?**

Not at all. They can only do what is lawful. In fact, they are very strictly governed by many, many rules. These include their own regulations, the procedures laid down by the criminal codes, the orders given by the Supreme Court and the guidelines of the human rights commissions.

**52. But supposing police officers do not obey them?**

You can complain to his senior or to the magistrate depending on how serious the matter is. It is always better to complain in writing and get a receipt.

**53. What can I complain of?**

You can complain of any wrong-doing by a police officer because he is a public servant bound to do his duty at all times. He cannot neglect his duty, or delay doing it.

**54. But suppose the police officer is rude and insulting to me?**

Again, you can complain to his senior if it is a matter of breach of duty or discipline. But if it is anything more serious than that or amounts to a crime then you can file a complaint against him at a police station or go straight to the local judicial magistrate and file a complaint.

**55. But if I file a complaint with the local police station they may refuse to take it against their own officer?**

Yes, that does happen often. But it need not be the end of the matter. You can take a complaint about rude or discourteous behaviour or neglect of duty or abuse of police power to the chief of police or if it amounts to a crime you can take it to the nearest magistrate.

56. But it is so difficult to take matters to court and it also takes very long! To make it simpler to bring complaints against the police and to make the process easier and quicker some states have set up police complaints authorities. They are special bodies who only look at complaints about the police from the public. In addition, anyone who has a complaint against the police can take it

to the many other commissions that have been set up at the national level and in the states. These include: the National Human Rights Commission and state human rights commissions; the

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Scheduled Castes and Scheduled Tribes Commission; the National Commission for Women and similar state commissions; and the Commission for Children. For issues related to corruption there is the Central Bureau of Investigation, the Central Vigilance Commission, Lok Ayuktas and the State Vigilance Departments. These commissions will look into your complaint, make inquiries and according to their powers can direct an FIR to be registered against the policeman or order compensation to be given to the victim.

### **57. Suppose I want to tell the police about a crime, what do I do?**

If it is a serious crime like theft, housebreaking, eve-teasing, assault, molesting a child, rape, kidnapping, trafficking, and even rioting you can immediately file an FIR directly with the head of the local police station and they are bound to take it down in writing and give you a copy. You can even go to the magistrate with your complaint and he will register it.

### **58. What is an FIR?**

That is the just short form for First Information Report. A victim, witness or any other person knowing about a "cognisable" offence can file an FIR. What you say in the FIR will start the police making inquiries about the matter and gathering facts to see if there is a case that can be made out.

### **59. Do I have to go only to the local police station or can I file my FIR with any police station?**

You can file an FIR in any police station. But it is better to go to the local police station in whose jurisdiction the crime occurred because they can swing into action quicker. If you file in any other police station the police are bound to make an entry of the complaint and send it to the concerned police station. They cannot refuse to file your FIR saying that the crime did not happen in their jurisdiction.

### **60. Can the police refuse to file my complaint?**

Yes and no. In India crimes are divided into those that are "cognisable" and "noncognisable". A "cognisable" crime is for example murder, rape, rioting, dacoity, etc. which means that the police can take notice of them directly, register an FIR and begin to make inquiries. A "non-cognisable" crime is for example cheating, fraud, forgery, bigamy, selling underweight or adulterated food or creating a public nuisance, which means that the investigation will start only when a magistrate has taken the complaint on record and directs the police to investigate. The way of understanding this rough division is that crimes that need a more urgent response can be complained of directly to the police and others go to the magistrate. So, even if the police cannot take your complaint on board they should at the very least listen to you, enter your matter in the daily diary, give you a signed copy of the entry, free of cost, and direct you to take it to the magistrate.

### **61. Suppose my complaint is about a "cognisable" offence but the station house officer refuses to register it. Then what can I do?**

You can still get it registered by taking the complaint to a senior officer/head of district police or to the nearest judicial magistrate and they will order it to be registered. To make sure that your complaint is on record and will be followed up, hand deliver the complaint or if you send it by post, register AD it. In any case, always get a receipt that proves that it has been received and keep that safely. That will show that the complaint has been actually received by the concerned officer. That takes care of your complaint but you should also complain about the difficulty you have had in registering your matter in the first place. That way the officer is less likely to do it again.

### **62. What must be put down in an FIR?**

The FIR is your version of the facts as you know them or as they have been told to you. It is always better if you know the facts first-hand but it is not necessary that you yourself have seen the offence. Whichever it is, you must only give correct information. Never exaggerate the facts or make assumptions or implications. Give the place, date and time of the occurrence. Carefully, describe the role

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of every person involved: where they were, what they were doing, the sequence of what was being done by each person, any kind of injury or damage to property that has been done. Do not forget to mention the kinds of weapons involved. It is best to get all these facts and circumstances recorded as soon as possible. If there is some delay in recording a complaint make sure the reason for the delay is also written down.

### **63. How can I be sure that the police have written what I told them correctly?**

Remember that the FIR is your version of what you know. It is not the police version of anything. The police are just there to take it down accurately without adding anything or taking out anything. To make sure of this, the law actually requires the police officer to read the FIR out to you and it is only once you agree with what is written that you need to sign it. The police must also give you a true copy of it free of cost. The FIR is recorded in the FIR register and a copy goes to a senior officer and to the magistrate.

### **64. What happens once my FIR is filed?**

The FIR sets the police investigations in motion. As part of that, the police may speak to victims and witnesses, record statements including dying declarations, check out the crime scene, send articles for forensic examination and bodies for post-mortem as necessary, question several people and with each lead make further investigations. Once investigations are complete, the officer in charge must make a full record of it. This is called a challan or chargesheet.

### **65. What is a challan or chargesheet?**

After all investigations are done the officer in charge will look at the facts and decide if there is enough evidence to show that a crime has been committed and record it in the chargesheet for the prosecution and the court. If all the elements of a crime are not made out it will be a waste of time to bring the accused to court. The prosecution and the court

will examine the chargesheet independently to see if a possible crime is made out.

**66. Will the police automatically arrest everyone named in the FIR?**

No, and they should not. Just because someone is named in an FIR is no reason to arrest a person. It is only when there is sufficient ground for believing that a person may have committed a crime that the police can arrest him.

**67. Can the police close my complaint and not take further action?**

Yes. If after making their own inquiries the police decide that there are no facts that support the idea that a crime was committed or there is not enough evidence to support allegations or acknowledge that a crime has been committed but the people who did it are not known - then they can close the case after giving reasons to the court. They must also inform you of their decision. You, then, have a chance of opposing the closure before the court.

**68. Will I be kept informed of the progress of my case?**

There is nothing specific in the law which requires the police officer to keep you informed about the progress of a case. But it is good practice to tell a complainant how the case is going provided it does not compromise the investigation.

**69. What can I do if the police are not investigating the matter or are doing so very slowly or refusing to examine the most obvious lines of inquiry?**

There is an important principle in law that no one can interfere with police investigation. That said, if the police refuse to move forward or do it excessively slowly or wilfully disregard obvious lines of inquiry you can certainly complain to senior officers or to the nearest magistrate who can order the police officer to investigate and he can as well call for the record of investigation. Again it is important for you to ensure that everything is done in writing and a record of receipt kept with you.

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**70. Can I call a police officer whenever I want?**

Yes and no. The police are overworked and their numbers are few, so the public cannot constantly call them up with frivolous complaints and unsubstantiated information. However, of course you can call the police if you are in trouble, if a crime has occurred or is occurring, if there is likelihood of some riot, if some people are fighting and there is likelihood of disorder, or if you have serious information to give them. But you cannot call the police for things that are not connected with their job. Sometimes people play mischief and call the police even if nothing has happened. You can be punished for such pranks.

**71. Can a police officer come into my home unasked and search my home and take things away?**

Only in certain very limited circumstances. If the police come to your house for questioning they may enter only at your invitation. However, even if the police have



reasonable grounds for believing that you are hiding a suspect or criminal, or you have stolen property or an illegal weapon in your home, they can only enter your house with a search warrant from a magistrate. But if the suspect, criminal or object needs to be obtained without any delay and there is fear it will be lost without seizure then they can enter your house without a warrant.

### **72. You mean the police can just enter my house and take away anything?**

No. It is only when there is real urgency - for example there is a real possibility that a suspect will run away or if evidence is likely to be destroyed - that the police can enter your house without a warrant. With or without a warrant there is a whole procedure to be followed. The police must have at least two independent local witnesses with them. The search must be made in the presence of the owner. The owner cannot be told to leave. The police must list what they are taking. The witnesses, police and owner must sign, verifying what is being taken. A copy must be left with the owner. If there are purdah women in the house a woman officer must be part of the search party and they must conduct the search with strict regard to decency.

### **73. What is a search warrant?**

People's homes and offices are private places and cannot be open to searches and entry from any authority without some really good reason. So the law requires anyone wanting to enter to explain why they find it necessary to disturb that right. The police therefore have to go before a magistrate and explain the reasons for their thinking there are goods, papers or people that are hidden in the premises which will help them solve a crime. If the magistrate is convinced that the police officer is not on a "fishing inquiry" he will give the authority. The authority is very limited and gives the name and rank of the particular officer allowed to enter that particular place and is issued under the sign and seal of the court.

### **74. If I am walking down the street, can a police officer stop me and ask me anything he likes?**

No. In general the police are not supposed to interfere with people going about their lawful business. But if they think that someone is loitering in a place especially after dark, he is entitled to stop and ask your name and what you are doing. If there is something suspicious or fishy about the whole thing then you can be arrested. Police use this power often as a means of rounding up suspected persons and habitual offenders. The over-use of this power has often been discussed by reform committees and condemned.

### **75. Can the police stop me from being part of a procession or street meeting?**

No one can stop you from taking part in a peaceful procession. But ideally a procession must have prior permission from the local police. If they feel that a procession is likely to become disorderly or violent then they can refuse permission to hold it in the first place. If the procession later becomes disorderly then the police can stop it, ask the people to leave and take action if they do not disperse. On the one hand, the police have a duty to make sure that things remain peaceful. On the other hand, they have a duty to facilitate citizens in exercising their fundamental right to hold peaceful public meetings.

**76. Can the police use force in breaking up a street meeting or procession?**

Yes. Whatever the police do has to be reasonable. They are not there to punish people. They are there to ensure public safety and that law and order are not breached. So the rule is that the police must only use force as a last resort in controlling a crowd. If it must be used at all, it must be minimal, proportionate to the situation and discontinued at the earliest possible moment. In fact, the police cannot use any force without the executive magistrate okaying it. The magistrate has to be present and give the order to use force. Then the police will decide how much force is needed.

**77. Can the police fire at will?**

Not at all. Deadly force is meant to be used in only the very rarest of instances when all other means of control have been tried and exhausted. Again, there must be a magistrate present who approves such action.

**78. So what can the police do if the crowd is unruly and throwing stones or damaging property?**

The police have a duty to protect life and property but there is a sequence to how they must go about their actions. First, plenty of warnings to the crowd to disperse must be given with time for the crowd to obey. Then teargas may be used or a lathi charge resorted to after another warning. Lathis cannot rain down blows on head and shoulders but must be aimed below the waist. If the police are going to have to resort to firing there has to be a clear and distinct warning that firing will be effective. Here too the rule is to use minimal force. So firing must aim low and at the most threatening part of the crowd with a view not to cause fatalities but to disperse the crowd. As soon as the crowd show signs of breaking up the firing must stop. The injured must be assisted to the hospital immediately. Of course, every individual officer has to make a report of his role for the record.

**79. Can the police hold me in a secret place or not tell anyone that they have got me?**

No. The police are known to do this often but this is against the law. As soon as the police take you into their custody, your physical well-being and the protection of your rights becomes their responsibility. If you come to any harm or your rights are not respected but violated in any way the police are responsible. This is an important legal point to keep in mind. Next, the fact that the police are duty-bound to make a record of all those who come to the station in their station's general diary will indicate what time you were brought in for questioning and when the arrest was made. This will also be in the case diary of the investigating officer. The police control room must also display an updated list of all those arrested in the last 12 hours. Finally, the fact that you are entitled to a lawyer during your interrogation means, at a minimum, that the place of custody must be known and accessible to friends or relatives.

**80. Can the police officer hold me at the police station or can I leave when I want?**

Unless you have been formally arrested for good reason you cannot be held in custody against your will. If the police have summoned you for questioning you have a duty to cooperate with them and help them with their inquiries. But the questioning has to be prompt and efficient and cannot go on and on. The police cannot make you wait endlessly at the police station. In any case, you can leave when you want.

**81. Suppose the police officer does not let me go, what can I do?**

Keeping you in custody against your will even for a moment if you are not under formal arrest is a serious offence. It is called illegal detention and either you or your family or friends can complain about the officer to his senior or even the magistrate. Most importantly, you can go to the high court or even the Supreme Court immediately through your lawyer, family or friend and file a habeas corpus petition seeking your immediate release.

**82. What does habeas corpus mean?**

This is a very old remedy against people being picked up by agents of powerful rulers and being helpless to protect themselves. It

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literally means "produce the body". It is a most practical remedy against wrongful detention. The courts - either the high court or the Supreme Court, deal with it on an urgent basis. Once the court gets an application indicating a disappearance that shows that the victim was last seen in the custody of the police, the court will ask the police to produce the person before it immediately and release him if the detention cannot be justified. If the detention has been illegal then the court can even grant compensation to the victim.

**83. Is there any other way of finding out about a person who has been arrested illegally and I don't know where he is kept?**

Yes. You can file a Right to Information application at the police station asking for the whereabouts of the person. Since the information is relating to the life and liberty of a person, the police are bound to give you the information within 48 hours.

**84. Can a police officer arrest me without giving reason?**

No. Police can make arrests only if there are good grounds for the arrest. Say if a person is caught red handed in the middle of some wrong-doing, or if many circumstances in the investigation point the finger of suspicion towards him, or a person is found to be helping someone else with a crime before during or after its occurrence, then he can be arrested. There has to be a "good reason" for making an arrest. Just because someone has named someone else in an FIR cannot be a reason for arrest. There has to be something more in the form of evidence to arrest you. Experts have repeatedly pointed out that as many as 60% of all arrests are unnecessary or unreasonably made.

**85. If the police suspect me of committing a crime can they also arrest my family members?**

No, never. There is no guilt by association. Each person's guilt or innocence has to be judged by their own individual actions and not because they are close to or related to someone else who is a suspect. No one's freedom can be taken away except for a specific lawful reason. The police cannot threaten family members or friends or take them into custody as bargaining tools. This kind of hostage-taking would amount to the serious crimes of illegal detention or kidnapping, at a minimum. No matter how difficult the case is that the police are trying to solve, they cannot resort to illegal practices in order to put pressure on the suspect to give himself up or make a confession. The only people who can be arrested are those against whom there is a reasonable ground for thinking they have committed a crime.

**86. Are there special rules for arrest and treatment of women in custody?**

Absolutely! No woman can be arrested between sunset and sunrise unless there are very special reasons for doing so. Even then, special permission must be given in writing by a magistrate after the magistrate is satisfied that there are reasons for allowing this. A woman police officer has to be present with the police making the arrest. The woman has to be kept in a separate lock-up in the police station and any examination, body search, etc. has to be done by a woman officer or doctor. It is in the best interests of the police officers themselves to make sure that all procedures relating to women are carefully followed and records are meticulously kept. The law says that if a woman in custody complains of rape, it will be accepted unless the police officer can show that it did not happen.

**87. What about children? Is there some special procedure for them?**

Under the general law, children under 7 years cannot be accused of a crime, so naturally they can not be taken into police custody. However, the procedure for questioning, apprehension, custody, release, bail, of children up to the age of 18 is governed by the Juvenile Justice [Care and Protection of children] Act, 2002. Each police station must have a juvenile police unit with specially trained officers. They are responsible for the care and well-being of the child who must not be kept in the lock-up at all. Instead, the child must immediately be handed back to the parents on bail and their assurances. If the parents are not available, or it is felt that the child is at risk of falling into bad company, then the child must be sent to the local observations home till he / she is brought before the

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juvenile court. The main principle that governs the treatment of a child in conflict with the law is that all processes must have a child-friendly approach "in the best interest of the child for their ultimate rehabilitation".

**88. If the police arrest me, can they keep me for as long as they like?**

Absolutely not. The longest time anyone can be kept in custody in a police station is for 24 hours. That is the maximum. The police must produce anyone in their custody before the magistrate with all the necessary papers that justify the arrest before the 24 hours are up and not later than that.

### **89. How then, are people arrested on Friday evening and kept in custody until the following Monday?**

The excuse for continuing with this illegal practice is for the police to say that there is no magistrate available over the weekend. But in reality there is always a magistrate on duty available 24 x 7. A person in custody whose 24 hour time limit is ending after regular court hours can always be produced before the magistrate at his home. The magistrate can not be refuse to see the suspect.

### **90. How will anyone know where I am?**

The law has plenty of safeguards against you getting lost in the system. As soon as the police have arrested you they have to do several things. They must prepare what is called a "memo of arrest" and send that to the local magistrate. They must make sure you know you can immediately get a lawyer - your own or from the legal aid system. They must inform a family member or friend of your choosing about where you are. All these things have been fixed by law to reduce the chances of abuse of power by the police. If the police do not follow these rules they will have to answer to the courts.

### **91. What use is a "memo of arrest" to me?**

It is a safeguard against illegal detention. The memo of arrest must have your name, time, date and place of arrest, reasons for the arrest and what the suspected offence is. It has to be signed by the police, two witnesses and you to make sure that the record gives a truthful account of the facts. It is given to the magistrate and when the magistrate meets you for the first time he will double-check if what has been said is correct. The police also have to make up an "inspection memo".

### **92. What is an inspection memo?**

It is a short description of your physical condition when you were taken into custody. It is expected to record your general physical condition and note major and minor injuries. Again, it has to be signed by you and the arresting officer and a copy is given to you. But the difference between this memo and the memo of arrest is that you have to request for it. Otherwise it need not be done. This procedure is meant to ensure that there is no beating or torture in custody. But it is not clear who has to examine you. If the arresting officer himself is examining you there is little protection that a piece of paper can give. However, since an approved doctor's certificate has also to be given to the magistrate with all the other papers at the first appearance, a doctor must examine you and make a statement about your physical condition before you are first produced before a magistrate.

### **93. How am I supposed to know all this?**

By law, at the time of arrest the police are supposed to inform you of all your rights. In addition, the guidelines mentioned above, which are sometimes called the D.K. Basu guidelines after the Supreme Court case that shaped them, have to be displayed on boards in all police stations and chowkis.

### **94. Can the police officer beat me in custody?**

No. He cannot beat you, slap you, threaten or intimidate you in custody. It is against the law and the police officer can be punished for it.

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**95. Can the police officer force me to make a confession?**

No. The police officer has a right to question you but he cannot force you to say anything you have no information about, anything you do not want to say, or confess to some crime that you have not committed. A confession made to a police officer will not in any case be admissible in court.

**96. Can the police do their jobs of arresting the guilty with so many restrictions?**

First of all it is not the job of the police to decide who is guilty or who is not. The police are only to apprehend or catch suspects and accused people. But they cannot behave as if the person is already guilty and they have the right to punish them. That is a job for the courts. Meanwhile, people in custody must be given every protection from false accusations and mistreatment. That is why the "restrictions" are there. Actually they are not restrictions at all, but just procedures designed to make sure that everyone has a fair chance before the courts.

**97. But aren't there too many rights for the accused person? What about the victims?**

A lot of people think that no one is looking after the victim. But actually the whole might of the state is behind the victim. It is on behalf of victims that the state goes about looking for the criminal. It is on behalf of the victims that the state appoints a prosecutor to argue before the court. It is on behalf of the victim that the state punishes the guilty. But the accused stands alone. He may not be guilty at all. So to balance the power of the state against one individual who has to defend himself, the law has created safeguards and given facilities like free legal aid to those who cannot afford it.

**98. Can I get bail from the police?**

It depends. If you have been arrested for a bailable offence then you can get bail from the police. But if you are arrested for a non-bailable offence then the police cannot release you on bail.

**99. Is it important to know what is a "bailable" and "non-bailable" offence?**

Yes. Bailable offences are less serious offences in which bail is a right. In such cases you must get bail immediately from the police. Non-bailable offences are serious offences where bail is a privilege and only the courts can grant it.

**100. Will I never get bail if I am accused of a non-bailable offence?**

No, not necessarily. You can get bail even for non-bailable offences. You have to make an application for bail before the court. The court will look at the seriousness of the offence, whether you will run away if released on bail, whether you will threaten witnesses or tamper with the evidence. If the court feels that you will not do any of the above then it will grant you bail.

**101. Does that mean I am now free?**

No. You will still have to face the trial during which time the court will decide whether you are guilty or innocent.

## **Police Public Friendship**

The main aim of Human Real Needs Charitable Foundation Trust is to develop relationship between Police, Public and Media for Control Criminal Activities like Anti Nation activity, Smuggling, Organize Ganges, Fake Currency, Illegal Arms, Terrorism activity, Sexual Harassment, Child Labour, Bonded Labour and all type of criminal activities, Our main moto is highlight the exemplary deeds & achievements of both Policemen & Media personnel, before the common masses. We are providing a common platform for a) Police, b) Media c) Public for better understanding, coordination & support for their die hard efforts in highlighting/ eradicating Corruption/ Scams & other social evils from the society. You can also support and contribute towards the better and safe society,

## **What we do??**

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One of Hrncf Trust prime motive is to develop healthy public police relations all over India. As in India there has always been a gap between people and police relationship. People in India are not that much aware about there rights and what kind of helps the can avail from police department, hence in many cases it has been seen that the proper channel of investigation into vital matters was lacking only because people don't have that much trust on police administration. But now with passing time and modernization of India people are getting aware of there rights and other services. That's especially seen in Indian metros where there has been lot of improvements in police practices and there work scenario has also improved. Now most of police departments have gone online with changing technology trends.

We always make it a point in all our meets in India which is attended by hundreds of our members and other guests to understand there fundamental rights and also as of now there has been new amendments in right to information act, so anyone can get information related to any matter pertaining to administrative departments related to that persons activities. it is to be noticed that in normal situations people don't report a crime to police due to the fear of being harassed later on by police and court proceedings related to that case. So it is our responsibility as a social service organization to let people know how they can proceed with taking the crime case to police and what suitable actions can be taken in this matter. Especially women in our society are more often seen not reporting crime to police and it is only because they don't know the rules and solutions. We also arrange road shows to spread awareness relating to public police relation.

We also have the support of government of India and various other social development organization who coordinate with us to make India crime free and make society more secure and health.

## **Crime Information**

Human Real Needs Charitable Foundation Trust (Hrncf Trust) is a reputed Secret Crime Informer and Intelligence workers organization in India. In the post it was tasked with all intelligence but in recent times it has focused on internal security. The Hrncf Trust is national

basic Secret Information provider & Intelligence worker's organization. Who are you dedicated to do some they respected intelligence work for there own country to make crime free Platform for Citizen of India.

We Proved secrete information for Fake Currency, Narcotics, Drugs. Antics, Illegal Post, Stamp Paper and Weapons to CBI, Vigilance, Crime Branch, Home ministry, Ministry of Defence, Central government, State government, Local Police and its Administration

Hrncf Trust working against all type of Crime to make our Society Care free and safe. Hrncf Trust is a Anti- Crime workers Organization who are devoted or dedicated to do Something respected work for their own Country to make Crime and Corruption free platform for the Coming Generation in the near future.

We take urgent step & Investigation for Crime, Corruption, Human Right Protection, Child Labor, Woman Protection, Bonded labor all Illegal works under Indian Penal Act. We Provide Crime Information to honorable president, prime minister, Home minister, chief minister, chief Justice, lok sabha president, Supreme Court, High Court, Income Tax Department, Vigilance Department, Crime Branch C.B.I. Raw, I.B, C.I.D, Print Media, Electronic Media, Senior Journalist, Police and its administration etc.

We proved Secrete Informants for taken fake Currency, Narcotics, Drugs, Antics, Illegal, Post Tickets, Stamp Paper and Illegal weapons to C.B.I. Vigilance, Crime Branch. Home Ministry, Ministry of Defence, State and Central Government, Local Police and its and Administration Officers. To take urgent step for Anti-Corruption Investigation. To take urgent step to remove the difficulties, if rises during the process. To Inculcate the Investors of our country the spirit of lawman ship, the Solidarity, the honesty, the sincerity, and the truth in the interest of their profession. To help local, national and even international law enforcements officials in their constant effort to curtail the activities of crime syndicate, rockets, organized gangs, smugglers and law breaking in general.

## ***Social Detective***

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Human RealNeeds Charitable Foundtion Trust is India's no.1 Social Detective agency, We work honestly for making our Country "Crime free Nation" as per society need we Research / Survey and Social Detective work and submitting report to President of India, Prime Minister of India, Chief Ministers, Police Officers, CBI, IB, Human Rights Commission, Supreme Court, High Court, Governor and all responsible departments.

## **Our Working Sector**

[Battered Women](#)

[Child Abduction](#)

[Child Abuse](#)

[Child Sexual Abuse](#)



[Serial Murders](#)  
[Computer Crimes](#)  
[Crime Prevention](#)  
[Domestic Violence](#)  
[Domestic Violence Prevention](#)  
[Drunk Driving](#)  
[Female Serial Killers](#)  
[Forgery](#)  
[Fraud](#)  
[Fraud in Science](#)  
[Gangs](#)  
[Graffiti](#)  
[Hackers and Hacking](#)  
[Health Care Fraud](#)  
[Homicide](#)  
[Human Trafficking](#)  
[Kidnapping](#)  
[Mail and Wife Fraud](#)  
[Mass Murder](#)  
[Music Piracy](#)  
[Neighborhood Crime](#)  
[Organized Crime](#)  
[Sex Racketeering](#)  
[Restorative Justice](#)  
[Securities Fraud](#)  
[Serial Killers](#)  
[Sexual Harassment](#)  
[Social Worker with Criminals](#)

## Crime Information

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## Human Rights Protection

### *(Division of Human Real Needs Charitable Foundation Trust)*

To follow, adopt & promote Universal Declaration of Human Rights of United Nations and Indian Constitution & National-International Law. To promote art & culture, maintain, encourage, assist help centers for promotion of Human Rights.

To promote social progress and better standards of life and activity in cooperation with the Government of India and other countries to promote human rights education. To establish and conduct centres of treatment and rehabilitation for the victims of violators of Human Rights. To work for ensuring that basic Human Rights are respected everywhere and to keep the interest of disempowered communities foremost in all dealings with countries in which Human Rights violations occur.

To support through the UN framework, democratic and economic reforms in countries coming out to totalitarian control and to restrict cooperation with governing regimes that violate Human Rights. To support and implement any other issues other than what has been mentioned above with respect to Human Rights.

### *The Part of Human Rights*

- Human Rights
- Citizen Rights
- Civil Rights
- Women Rights
- Rights to Freedom
- Rights to Education
- Rights to Voice
- Rights to Legal
- Rights to Food

## Child Rights Protection

### *Founders Vision*

Human Real Needs Charitable Foundation Trust (Hrncf Trust) is not a conventional NGO or a typical institution, it is the ray of hope in millions of hearts, the first dream in their eyes, the first smile on their faces. It is the sky and wings together for innumerable children, excluded from human identity and dignity, with a desire to fly in freedom. It is the tears of joy of a mother who finds her rescued child back in her lap after years of helplessness and hopelessness. It is a battle to open the doors of opportunities, a fire for freedom and education in the hearts and souls of thousands of youth committed to wipe out the scourge of slavery and ignorance from the face of mankind.

Hrncf Trust is the first lamp lit by those who didn't believe in cursing the darkness, they dared to hold fire in their hands, determined to dig out spring from stones. In an age of ignorance, neglect and denial on the issue of child servitude, these ordinary youth had a vision to see beyond heavens. Equipped with a strong will to demolish age-old myths and misconceptions about child labor, they fought mighty criminals, slave masters and mafia with exemplary courage.

Beginning its operation in 31st January 2014, a mass movement was ignited to create a child friendly society where all children are free from exclusion and exploitation and receive free education of good quality. The movement engaged itself in identifying, liberating, rehabilitating and educating children in servitude through direct intervention, community participation, partnerships and coalitions, promoting ethics in trade, unionizing workers, running campaigns (on issues, such as education, trafficking, forced labour, decent work, building child friendly villages) and mobilizing the masses on a common action.

Hrncf Trust has triggered a ripple effect in India and in international community. The tide is turning in favour of children, a ray has multiplied itself into a sun which is constantly supplementing brightness and warmth to the lives of unprivileged children. We need more support... Hrncf Trust calls you to join hands in bringing a smile, the smile of freedom, love and peace, on the face of every child in this world.

### *What are Child Rights?*

A right is as an agreement or contract established between the persons who hold a right (often referred to as the "rights-holders") and the persons or institutions which then have obligations and responsibilities in relation to the realization of that right (often referred to as the "duty-bearers".) Child rights are specialized human rights that apply to all human beings below the age of 18.

Universally child rights are defined by the United Nations and United Nations Convention on the Rights of the Child (UNCRC). According to the UNCRC Child Rights are minimum entitlements and freedoms that should be afforded to all persons below the age of 18 regardless of race,

colour, gender, language, religion, opinions, origins, wealth, birth status or ability and therefore apply to all people everywhere. The UN finds these rights interdependent and indivisible, meaning that a right can't be fulfilled at the expense of another right.

The purpose of the UNCRC is to outline the basic human rights that should be afforded to children. There are four broad classifications of these rights. These four categories cover all civil, political, social, economic and cultural rights of every child.

### ***Right to Survival***

A child's right to survival begins before a child is born. According to Government of India, a child life begins after twenty weeks of conception. Hence the right to survival is inclusive of the child rights to be born, right to minimum standards of food, shelter and clothing, and the right to live with dignity. Right to Protection: A child has the right to be protected from neglect, exploitation and abuse at home, and elsewhere

### ***Right to Participation***

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A child has a right to participate in any decision making that involves him/her directly or indirectly. There are varying degrees of participation as per the age and maturity of the child. Right to Development: Children have the right to all forms of development: Emotional, Mental and Physical. Emotional development is fulfilled by proper care and love of a support system, mental development through education and learning and physical development through recreation, play and nutrition.

### ***What is Child Protection?***

UNICEF considers child protection as the prevention of or responding to the incidence of abuse, exploitation, violence and neglect of children. This includes commercial sexual exploitation, trafficking, child labour and harmful traditional practices, such as female genital mutilation/cutting and child marriage. Protection also allows children to have access to their other rights of survival, development, growth and participation. UNICEF maintains that when child protection fails or is absent children have a higher risk of death, poor physical and mental health, HIV/AIDS infection, educational problems, displacement, homelessness, vagrancy and poor parenting skills later in life. According to the Integrated Child Protection Scheme (ICPS) Child Protection is about keeping children safe from a risk or perceived risk to their lives or childhood. It is about recognizing that children are vulnerable and hence reducing their vulnerability by protecting them from harm and harmful situations. Child protection is about ensuring that children have a security net to depend on, and if they happen to fall through the holes in the system, the system has the responsibility to provide the child with the necessary care and rehabilitation to bring them back into the safety net.

### ***CHILD PROTECTION***

PREVENTION	INTERVENTION	REHABILITATION
Law and Policies	Laws and Policies	Laws and Policies
Processes and Protocols	Access and Assistance	Long term care until age 18
Mechanisms and Systems	Immediate Relief (SOS attention)	Skills and Training
Monitoring	Restoration of rights/Status Quo	
Sensitization and Awareness	Punish violators	
Building		

### *Understanding the Difference*

It is important to understand the difference between these two concepts. Child rights are a set of principles or ideals. They are entitlements and some of them are justifiable in a court of law, but they are not tangible. Protection is one of these rights. But Child Protection is more than a right. It is a framework or system by which the rights of a child can come to be. The framework consists of various duty bearers such as the departments of the government, police, school, civil society, who all have roles to play to ensure that a child's rights are met, and in the case that a

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child's rights are violated that the violator be brought to justice and care be provided to the child. Child protection is not only treatment, but should also be preventive. Risk management needs to take place to reduce the risk of violation of child rights in any given circumstance or space.

Child protection is hence the means through which all other rights of a child can be upheld. For example a child has a right to live a normal childhood in a family environment. The child protection framework need to first take steps to ensure families are able to survive by providing them when health, education, and food for free or at minimal cost. The next step is to address the needs of children who have fallen through the cracks such as destitute, abandoned, and orphan children. The framework includes the mechanisms to relocate these children into caring families either through adoption or foster care and provide these children with access to health and education services. Hence the framework is not a single ministry or single government body it is the interlinking functions of all ministries and sectors.

## ***(A DIVISION OF HUMAN REAL NEEDS CHARITABLE FOUNDATION TRUST)***

**Is one of the many initiatives of Human Real Needs Charitable Foundation Trust. It is meant to help improve the quality of services being provided by various government and private enterprises. You can express your displeasure and let other people know the issues with various companies. You can share others experiences and submit your own complaints about consumer harassment. You can also discuss the various posts by posting and reading comments. If you want to know how different companies are faring, search for complaints regarding them in the search box. The concerned companies can also look up the problems their customers are facing and thus address the issues. Our Members can report to us about any wrongdoings by any individual. Business establishment/ Company etc and get rewarded for exposing such malpractices**

### ***Consumer Rights in India***

When one plans to get involved into a contract or agreement for buying or hiring any good or services, both the parties are bound by terms and conditions of the contract as well as rules of parliament. The consumer rights are also defined in terms of legislation like Sale of Goods Act and Supply of Goods and services etc. They put terms into a contract which cannot be excluded or taken away nor can be waived even.

There is a quite good reason behind these terms. The consumer has a disadvantage when he goes for buying goods, and to come over this imbalance, the legislation described before as well as some other legislation have been enforced.

The seller also has some terms to follow, for instance, the right to return goods that have not been used, within a specified time for a refund if one does not like the product he has purchased. These terms are additional to the statutory rights, which are there and cannot be taken away.

Customers consist of a number of consumer rights and it can be seen that one's statutory rights are more "powerful" as compared to the contractual rights one has agreed to and therefore one should use this as opposed to having a warranty (one should be aware of that a warranty might cover something that GA cannot protect you from). If a dispute pops up (faulty goods are used as an example), one does not have to argue that he has a contract that claims that goods should have satisfactory quality –which legislation already implies. If one is to argue some contractual term, it is required for him to prove it. Besides, using the consumer rights or legislative rights compels the store to take the law for consideration, and not act in the way that they are doing one a favor by offering some remedy out of the goodness of their own hearts i.e. replacing or repairing or refunding. For example, one buys a faulty mobile phone back to a store, and the reason for return is put forward as "refund under 14 day store policy. Then, answer is big NO! , and the reason is that the law was not complied with.

If one has a dispute with a retailer, he should also inform it to Consumer Direct. As much as this service is disliked, it does have any useful function - it gathers data on complaints that Trading Standards can have. Before consumer direct, it is difficult for TSOs to have an idea of where the problems arose. Now, with a national database, this kind of data can be collected and used and what else can it be used for?

The effect of this is pretty important. However, initially, if any action was taken against a retailer, it used to be in the civil courts by the buyer, and was sorted on the individual basis. It is possible that a prosecution might be brought against the seller that depends on the problem, but this would have happened on the individual complaint. If there are a number of considerably small complaints against a retailer, then the actions can be taken as a whole and there are very high penalties for that.

There is a need of awareness of consumer rights and it depends upon one that whether he follows advice and get his problems solved, but one should be aware that it might be one's cotton socks that it would happen over and over again. It can happen with anyone or everyone, or one can take a stand, enforce his rights and make the companies behave for doing what they ought to do in the first place.

### ***Right to Safety***

According to the Consumer Protection Act 1986, the consumer right is referred to as 'right to be protected against marketing of goods and services which are hazardous to life and property'. It is applicable to specific areas like healthcare, pharmaceuticals and food processing, this right is spread across the domain having a serious effect on the health of the consumers or their well being viz. Automobiles, Housing, Domestic Appliances, Travel etc. When there is violation of the right then there occur medical malpractice lawsuits in the country. It is estimated every year that thousands or millions of citizens of India are killed or seriously injured by immoral practices by doctors, hospitals, pharmacies and the automobile industry. Still the government of India, known for its callousness, does not succeed in acknowledging this fact or making a feeble effort for maintaining statistics of the mishaps.

The Government of India needs to have world class product testing facilities to test drugs, food, cars or any other consumable product that can prove to be a menace to life. It does not happen coincidentally that Tata Nano is sold in India for half of what it costs in a country which is industrially developed, this is a classic case of requirement of a cheap product that outweighs the need for safety of family and self. The developed countries like the United States have stalwart agencies which oversee the protection of consumer products, the Food and Drug Administration (FDA) for food and drugs, the National Highway Traffic Safety Administration (NHTSA) for automobiles and the Consumer Product Safety Commission (CPSC) for various other consumer products etc. This right needs each product which can potentially be a danger to our lives to be marketed after adequate and complete verification as well as validation. India is 50 years away, for empowering this right adequately and completely.

### ***Consumer Law***

India has developed specific routes for asserting the rights of consumers. The Consumer Protection Act of 1986 defines consumer law in India. This legislation helps to protect consumers from any kind of exploitation by availing the means for hearing and considering and

finally settling disputes. This Act also stipulates the goods and service providers' responsibilities. In the year 1987, the provisions of this Act became binding legally.

### *Consumer Courts*

To lessen the time period taken to sort out consumer disputes, the Act permits the creation of quasi-judicial bodies to be formed at district level, state as well as central government levels. There are at present 604 District Forums along with 34 State Commissions, with the National Consumer Disputes Redressed Commission functioning at the final level. India boasts itself to be the only country having specific courts for hearing consumer grievances as per the CUTS Centre for Consumer Action Research and Training.

### *Marketing*

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This Act provides consumers protection against the marketing of services and goods that might be injurious to life or property. It also provides consumers the right to have accurate information about a product or service's quantity, purity, quality, standard and potency. There should be a competitive price at which goods and services should be offered to the consumers.

### *Defective Goods*

A consumer having possession of a product which is defective can seek recompense from a jurisdictional Consumer Forum. This forum would need the manufacturer to come over the defect, give a replacement product, and refund the consumer's money or should pay compensation for the defect cause loss or any injury to the consumer. In case the product found is hazardous, then the forum may order the manufacturer for desisting in its manufacture.

## ***RTI Activist***

### *About RTI*

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a– RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

### *Our Aim and Objectives*

Human Real Needs Charitable Foundation Trust has been formed with a sincere and genuine effort to bring all the RTI activists together for all the RTI activists and activities. It is a Front to look into all the matters related with RTI activists, including their training, guidance, support and security related aspects. Aims and objectives of the RTI Activists Cell are-



To work in the field of Right to Information  
To make a sincere and genuine effort through this Forum to bring all the RTI activists together to work in a cohesive manner  
To act as a nodal body for all the RTI activists and activities  
To look into all matters related with RTI activists  
To work for the training of the RTI activists  
To provide guidance and support to the RTI activists  
To look into all kinds of security related aspects of RTI activists  
To create awareness of the RTI Act among the common masses  
To keep a watchful eye at the RTI Act  
To keep advocating for the further betterment of the legal provisions of the RTI Act  
To try to make Right to Information a mass movement  
To do all such works as Seminars, work-shops, representations, public meetings etc. to fulfil the above needs  
To do Publication work for the above-mentioned cause  
To give awards to the deserving RTI activists.

### ***Summary of RTI Act 2005***

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

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WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramount of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

### ***Civil Defense***

Civil Defence Cell is a unit of Human Real Needs Charitable Foundation Trust, This Organization is a sincere effort to reach out to people and let them know about the Civil Defence, its Structure and Functions. Major aim is to motivate people to join civil defence and serve the country.

## ***The Cell***

The Civil Defence Cell is a part of Human Real Needs Charitable Foundation Trust, Hrncf Trust is a large organization of volunteers from all walks of life dedicated to serve society during calamities in order to save lives and property and mitigate hardships. It is an example of National integration where people from various communities in the country irrespective of their creed or cast, join hands for a common cause and that is to serve their fellow citizens in the times of distress arising out of calamities'. Both men and women work shoulder to shoulder.

## ***Areas Covered***

The Civil Defence Cell is Operational over a vast geographical area the comprises of vital locations like Dams , Industrial belts, National High-Ways, Power Stations and Rail Lines. Following are the States coming under the operational area.

Delhi  
Uttar Pradesh  
Madhya Pradesh  
West Bengal  
Karnataka  
Andhra Pradesh  
Gujrat  
Manipur  
Bihar  
Jharkhand  
Rajasthan

## ***What is Civil Defence***

It is the mobilization of Civilian efforts to avoid and minimize the suffering to human beings caused either by man or nature.

## ***When does Civil Defence operate***

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It is an organization that never sleeps. In times of calamity it goes into action and in the times of peace it also goes into actions such as training and practice to learn modern tactics and keep the skills sharp. Civil Defence operates at time of calamities & social activities.

## ***Civil Defence Activities***

The Civil Defence Organization was actually formed as Air-Attack-Precaution organization whos goal was to minimize the human & capital damage taking place after enemy's Air attack. Initially Civil Defence used be functional only at time of War. Post world war-2, Civil Defence Service was extended to Peace time. Today Civil Defence organization holds a

lions share in Preventive & Responsive activities at time of Natural and Man-made calamities. Some of them are mentioned below.

NATURAL	MAN MADE
Earthquakes	Wars
Floods	Railway/Air/Road accidents
Cyclons	Mine collapse
Landslide	Panic Situations
Draughts	

In the peace time, Civil Defence Organizations also conducts social activities like

- Blood Donation Camps
- Pulse Polio campaign
- Ganesh Visarjan
- Durga Puja Visarjan
- Tree Plantation
- Event Rallies
- Air Raid Safety Demonstrations
- Hi-rise Rescue Demonstrations

Civil Defence Organization is a voluntary organization being run For the People-By the People, with a complete support from Government.

*Voluntaring at Civil Defence is Service to the Nation !*

## Human Right

Human rights are commonly understood as "inalienable fundamental [rights](#) to which a person is inherently entitled simply because she or he is a human being." [1] Human rights are thus conceived as [universal](#) (applicable everywhere) and [egalitarian](#) (the same for everyone). These rights may exist as [natural rights](#) or as [legal rights](#) , in both [national](#) and [international law](#) . [2] The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of [states](#) and in the activities of non-governmental organizations, has been a cornerstone of [public policy](#) around the world. The idea of human rights [3] states, "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights." Despite this, the strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and justifications of human rights to this day. Indeed, the question of what is meant by a "right" is itself controversial and the subject of continued philosophical debate.

Many of the basic ideas that animated the [human rights movement](#) developed in the aftermath of the [Second World War](#) and the atrocities of The Holocaust, culminating in the adoption of the Universal Declaration of Human Rights in Paris by the [United Nations General Assembly](#) in 1948.

The ancient world did not possess the concept of universal human rights.[5] Ancient societies had "elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights".[6] The modern concept of human rights developed during the [early Modern period](#), alongside the European secularization of [Judeo-Christian ethics](#). [7] The true forerunner of human rights discourse was the concept of [natural rights](#) which appeared as part of the medieval [Natural law](#) tradition that became prominent during the [Enlightenment](#) with such philosophers as [John Locke](#), [Francis Hutcheson](#), and [Jean-Jacques Burlamaqui](#), and featured prominently in the political discourse of the [American Revolution](#) and the [French Revolution](#). From this foundation, the modern human rights arguments emerged over the latter half of the twentieth century. Gelling as social activism and political rhetoric in many nations put it high on the world agenda.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 1 of the [United Nations Universal Declaration of Human Rights](#) (UDHR)

### ***INTERDEPENDENT AND INDIVISIBLE***

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

### ***History of concept***

Main article: [History of human rights](#)

The modern sense of human rights can be traced to [Renaissance](#) Europe and the [Protestant Reformation](#), alongside the disappearance of the [feudal](#) authoritarianism and religious conservatism that dominated the [Middle Ages](#). Human rights were defined as a result of European scholars attempting to form a "secularized version of Judeo-Christian ethics".[7] Although ideas of rights and liberty have existed in some form for much of human history, they do not resemble the modern conception of human rights. According to Jack Donnelly, in the ancient world, "traditional societies typically have had elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternative to, rather than different formulations of, human rights".[6] The most commonly held view is that concept of human rights evolved in the West, and that while earlier cultures had important ethical concepts, they generally lacked a concept of human rights. For example, McIntyre argues there is no word for "right" in any language before 1400.[5] Medieval charters of liberty such as the English [Magna Carta](#) were not charters of human rights, rather they were the foundation [10] and constituted a form of limited political and legal agreement to address specific political circumstances, in the case of Magna Carta later being recognised in the course

of early modern debates about rights.[11] One of the oldest records of human rights is the [statute of Kalisz](#) (1264), giving privileges to the Jewish minority in the [Kingdom of Poland](#) such as protection from discrimination and hate speech.[12] The basis of most modern legal interpretations of human rights can be traced back to recent European history. The [Twelve Articles](#) (1525) are considered to be the first record of human rights in Europe. They were part of the peasants' demands raised towards the [Swabian League](#) in the [German Peasants' War](#) in Germany.

The earliest conceptualization of human rights is credited to ideas about [natural rights](#) emanating from [natural law](#). In particular, the issue of universal rights was introduced by the examination of the rights of indigenous peoples by Spanish clerics, such as [Francisco de Vitoria](#) and [Bartolomé de Las Casas](#). In the [Valladolid debate](#), [Juan Ginés de Sepúlveda](#), who maintained an Aristotelian view of humanity as divided into classes of different worth, argued with Las Casas, who argued in favor of equal rights to freedom of slavery for all humans regardless of race or religion. In Britain in 1683, the English [Bill of Rights](#) (or "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown") and the Scottish [Claim of Right](#) each made illegal a range of oppressive governmental actions. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the [United States Declaration of Independence](#) and the French [Declaration of the Rights of Man and of the Citizen](#) respectively, both of which established certain [legal rights](#). Additionally, the [Virginia Declaration of Rights](#) of 1776 encoded into law a number of fundamental [civil rights](#) and civil freedoms.

Declaration of the Rights of Man and of the Citizen approved by the [National Assembly of France](#), August 26, 1789.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness

—United States Declaration of Independence, 1776

These were followed by developments in philosophy of human rights by philosophers such as [Thomas Paine](#), [John Stuart Mill](#) and [G.W.F. Hegel](#) during the 18th and 19th centuries. The term human rights probably came into use some time between Paine's *The Rights of Man* and [William Lloyd Garrison's](#) 1831 writings in [The Liberator](#), in which he stated that he was trying to enlist his readers in "the great cause of human rights".

In the 19th century, human rights became a central concern over the issue of slavery. A number of reformers, such as William Wilberforce in Britain, worked towards the abolition of slavery. This was achieved in the British Empire by the Slave Trade Act 1807 and the Slavery Abolition Act 1833. In the United States, all the northern states had abolished the institution of slavery between 1777 and 1804, although southern states clung tightly to the "peculiar institution". Conflict and debates over the expansion of slavery to new territories constituted one of the reasons for the southern states' secession and the American Civil War. During the reconstruction period immediately following the war, several amendments to the United States Constitution were made. These included the 13th amendment, banning slavery, the 14th amendment, assuring full citizenship and civil rights to all people born in the United States, and the 15th amendment, guaranteeing African Americans the right to vote.

Many groups and movements have achieved profound social changes over the course of the 20th century in the name of human rights. In Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labor. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the African American Civil Rights Movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars.

The World Wars, and the huge losses of life and gross abuses of human rights that took place during them, were a driving force behind the development of modern human rights instruments. The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation and diplomacy, and improving global welfare. Enshrined in its charter was a mandate to promote many of the rights later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role; this was to be the United Nations. The United Nations has played an important role in international human-rights law since its creation. Following the World Wars, the United Nations and its members developed much of the discourse and the bodies of law that now make up international humanitarian law and international human rights law.

## *Philosophy*

Main article: Philosophy of human rights The philosophy of human rights attempts to examine the underlying basis of the concept of human rights and critically looks at its content and justification. Several theoretical approaches have been advanced to explain how and why human rights have become a part of social expectations.

One of the oldest Western philosophies of human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Other theories hold that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution (associated with Hume). Human rights are also described as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls) – a social contract. The two theories that dominate contemporary human rights discussion are the interest theory and the will theory. Interest theory argues that the principal function of human rights is to protect and

promote certain essential human interests, while will theory attempts to establish the validity of human rights based on the unique human capacity for freedom.

### *Criticisms*

The strong claims made by human rights to universality have led to persistent criticism. Philosophers who have criticized the concept of human rights include Jeremy Bentham, Edmund Burke, Friedrich Nietzsche and Karl Marx. Political philosophy professor Charles Blattberg argues that discussion of human rights, being abstract, demotivates people from upholding the values that rights are meant to affirm.[15] The Internet Encyclopedia of Philosophy gives particular attention to two types of criticisms: the one questioning universality of human rights and the one denying them objective ground.[16] Alain Pellet, an international law scholar, criticizes "human rightism" approach as denying the principle of sovereignty and claiming a special place for human rights among the branches of international law;[17] Alain de Benoist questions human rights premises of human equality.[18] David Kennedy had listed pragmatic worries and polemical charges concerning human rights in 2002 in Harvard Human Rights Journal.

### *Classification*

Human rights can be classified and organized in a number of different ways, at an international level the most common categorisation of human rights has been to split them into civil and political rights, and economic, social and cultural rights.

Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

### *Indivisibility*

A. UDHR included both economic, social and cultural rights and civil and political rights because it was based on the principle that the different rights could only successfully exist in combination:

The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights.

—International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, 1966

This is held to be true because without civil and political rights the public cannot assert their economic, social and cultural rights. Similarly, without livelihoods and a working society, the public cannot assert or make use of civil or political rights (known as the full belly thesis).

The indivisibility and interdependence of all human rights has been confirmed by the 1993 Vienna Declaration and Programme of Action:

All human rights are universal, indivisible and interdependent and related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

—Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993

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This statement was again endorsed at the 2005 World Summit in New York (paragraph 121).

Although accepted by the signatories to the UDHR, most do not in practice give equal weight to the different types of rights. Some Western cultures have often given priority to civil and political rights, sometimes at the expense of economic and social rights such as the right to work, to education, health and housing. Similarly the ex Soviet bloc countries and Asian countries have tended to give priority to economic, social and cultural rights, but have often failed to provide civil and political rights.

### *Categorization*

Opponents of the indivisibility of human rights argue that economic, social and cultural rights are fundamentally different from civil and political rights and require completely different approaches. Economic, social and cultural rights are argued to be:

positive, meaning that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights)

resource-intensive, meaning that they are expensive and difficult to provide

progressive, meaning that they will take significant time to implement

vague, meaning they cannot be quantitatively measured, and whether they are adequately provided or not is difficult to judge

ideologically divisive/political, meaning that there is no consensus on what should and shouldn't be provided as a right

socialist, as opposed to capitalist

**non-justiciable, meaning that their provision, or the breach of them, cannot be judged in a court of law**

aspirations or goals, as opposed to real 'legal' rights

Similarly civil and political rights are categorized as:

negative, meaning the state can protect them simply by taking no action

cost-free

non-ideological/non-political

capitalist

justiciable

justiciable

real 'legal' rights

Olivia Ball and Paul Gready argue that for both civil and political rights and economic, social and cultural rights, it is easy to find examples which do not fit into the above categorisation.

Among several others, they highlight the fact that maintaining a judicial system, a fundamental



requirement of the civil right to due process before the law and other rights relating to judicial process, is positive, resource-intensive, progressive and vague, while the social right to housing is precise, justiciable and can be a real 'legal' right.

### *Three generations*

Another categorization, offered by Karel Vasak, is that there are three generations of human rights: first-generation civil and political rights (right to life and political participation), second-generation economic, social and cultural rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition. This categorisation is at odds with the indivisibility of rights, as it implicitly states that some rights can exist without others. Prioritisation of rights for pragmatic reasons is however a widely accepted necessity. Human rights expert Philip Alston argues:

If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important.

He, and others, urge caution with prioritisation of rights:

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[T]he call for prioritizing is not to suggest that any obvious violations of rights can be ignored.  
—Philip Alston

Priorities, where necessary, should adhere to core concepts (such as reasonable attempts at progressive realization) and principles (such as non-discrimination, equality and participation).

—Olivia Ball, Paul Gready

Some human rights are said to be "inalienable rights". The term inalienable rights (or unalienable rights) refers to "a set of human rights that are fundamental, are not awarded by human power, and cannot be surrendered."

### *International protection*

Main article: International human rights law

In the aftermath of the atrocities of World War II, there was increased concern for the social and legal protection of human rights as fundamental freedoms. The foundation of the United Nations and the provisions of the United Nations Charter provided a basis for a comprehensive system of international law and practise for the protection of human rights. Since then, international human rights law has been characterized by a linked system of conventions, treaties, organisations, and political bodies, rather than any single entity or set of laws.

### *United Nations Charter*

Main article: United Nations Charter

The provisions of the United Nations Charter provided a basis for the development of international human rights protection.[23] The preamble of the charter provides that the members

"reaffirm faith in fundamental human rights, in the equal rights of men and women" and Article 1(3) of the United Nations charter states that one of the purposes of the UN is: "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".[24] Article 55 provides that:

The United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; c) international cultural and educational cooperation; d) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Of particular importance is Article 56 of the charter: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." This is a binding treaty provision applicable to both the Organisation and its members and has been taken to constitute a legal obligation for the members of the United Nations.[23] Overall, the references to human rights in the Charter are general and vague. The Charter does not contain specific legal rights, nor does it mandate any enforcement procedures to protect these rights.[25] Despite this, the significance of the espousal of human rights within the UN charter must not be understated. The importance of human rights on the global stage can be traced to the importance of human rights within the United Nations framework and the UN Charter can be seen as the starting point for the development of a broad array of declarations, treaties, implementation and enforcement mechanisms, UN organs, committees and reports on the protection of human rights.[25] The rights espoused in the UN charter would be codified and defined in the International Bill of Human Rights, composing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

### *Universal Declaration of Human Rights*

Main article: Universal Declaration of Human Rights

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"It is not a treaty...[In the future, it]

may well become the

international Magna Carta."

Eleanor Roosevelt with the

Spanish text of the Universal

Declaration in 1949.

**A. Universal Declaration of Human Rights (UDHR)** was adopted by the United Nations General Assembly[9] in 1948, partly in response to the atrocities of World War II. Although the

UDHR was a non-binding resolution, it is now considered by some to have acquired the force of international customary law which may be invoked in appropriate circumstances by national and other judiciaries. The UDHR urges member nations to promote a number of human, civil, economic and social rights, asserting these rights as part of the "foundation of freedom, justice and peace in the world." The declaration was the first international legal effort to limit the behaviour of states and press upon them duties to their citizens following the model of the rights-duty duality.

...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

—Preamble to the Universal Declaration of Human Rights, 1948

The UDHR was framed by members of the Human Rights Commission, with former First Lady Eleanor Roosevelt as Chair, who began to discuss an International Bill of Rights in 1947. The members of the Commission did not immediately agree on the form of such a bill of rights, and whether, or how, it should be enforced. The Commission proceeded to frame the UDHR and accompanying treaties, but the UDHR quickly became the priority. Canadian law professor John Humphrey and French lawyer René Cassin were responsible for much of the cross-national research and the structure of the document respectively, where the articles of the declaration were interpretative of the general principle of the preamble. The document was structured by Cassin to include the basic principles of dignity, liberty, equality and brotherhood in the first two articles, followed successively by rights pertaining to individuals; rights of individuals in relation to each other and to groups; spiritual, public and political rights; and economic, social and cultural rights. The final three articles place, according to Cassin, rights in the context of limits, duties and the social and political order in which they are to be realized. Humphrey and Cassin intended the rights in the UDHR to be legally enforceable through some means, as is reflected in the third clause of the preamble:

...Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

—Preamble to the Universal Declaration of Human Rights, 1948

Some of the UDHR was researched and written by a committee of international experts on human rights, including representatives from all continents and all major religions, and drawing on consultation with leaders such as Mahatma Gandhi. The inclusion of civil, political, economic, social and cultural rights was predicated on the assumption that all human rights are indivisible and that the different types of rights listed are inextricably linked. This principle was not then opposed by any member states (the declaration was adopted unanimously, Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, Yugoslavia.); however, this principle was later subject to significant challenges.

The Universal Declaration was bifurcated into treaties, a Covenant on Civil and Political Rights and another on social, economic, and cultural rights, due to questions about the relevance and propriety of economic and social provisions in covenants on human rights. Both covenants begin

with the right of people to self-determination and to sovereignty over their natural resources. This debate over whether human rights are more fundamental than economic rights has continued to the present day.

The drafters of the Covenants initially intended only one instrument. The original drafts included only political and civil rights, but economic and social rights were also proposed. The disagreement over which rights were basic human rights resulted in there being two covenants. The debate was whether economic and social rights are aspirational, as contrasted with basic human rights which all people possess purely by being human, because economic and social rights depend on wealth and the availability of resources. In addition, which social and economic rights should be recognised depends on ideology or economic theories, in contrast to basic human rights, which are defined purely by the nature (mental and physical abilities) of human beings. It was debated whether economic rights were appropriate subjects for binding obligations and whether the lack of consensus over such rights would dilute the strength of political-civil rights. There was wide agreement and clear recognition that the means required to enforce or induce compliance with socio-economic undertakings were different from the means required for civil-political rights.

This debate and the desire for the greatest number of signatories to human-rights law led to the two covenants. The Soviet bloc and a number of developing countries had argued for the inclusion of all rights in a so-called Unity Resolution. Both covenants allowed states to derogate some rights.[citation needed] Those in favor of a single treaty could not gain sufficient consensus.

### *International treaties*

In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human-rights law.

Since then numerous other treaties (pieces of legislation) have been offered at the international level. They are generally known as human rights instruments. Some of the most significant, referred to (with ICCPR and ICESCR) as "the seven core treaties", are:

Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, entry into force: 1969)

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 1979, entry into force: 1981)

United Nations Convention Against Torture (CAT) (adopted 1984, entry into force: 1984)

Convention on the Rights of the Child (CRC) (adopted 1989, entry into force: 1989)

Convention on the Rights of Persons with Disabilities (CRPD) (adopted 2006, entry into force: 2008)

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW or more often MWC) (adopted 1990, entry into force: 2003)

### *Customary international law*

Main article: Customary international law

In addition to protection by international treaties, customary international law may protect some human rights, such as the prohibition of torture, genocide and slavery and the principle of non-discrimination.

### *International humanitarian law*

Main articles: Geneva Conventions and International humanitarian law

A. Geneva Conventions came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions safeguard the human rights of individuals involved in armed conflict, and build on the Hague

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Conventions of 1899 and 1907, the international community's first attempt to formalize the laws of war and war crimes in the nascent body of secular international law. The conventions were revised as a result of World War II and readopted by the international community in 1949.

### *United Nations system*

Structure of the United Nations Human

Rights Bodies and Mechanisms

Main article: United Nations

Under the mandate of the UN charter, the and the multilateral UN human rights treaties, the United Nations (UN) as an intergovernmental body seeks to apply international jurisdiction for universal human-rights legislation.[37] Within the UN machinery, human-rights issues are primarily the concern of the United Nations Security Council and the United Nations Human Rights Council, and there are numerous committees within the UN with responsibilities for safeguarding different human-rights treaties. The most senior body of the UN in the sphere of human rights is the Office of the High Commissioner for Human Rights. The United Nations has an international mandate to:

achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, gender, language, or religion.  
—Article 1–3 of the United Nations Charter

### **Political bodies** **Security Council**

Main article: United Nations Security Council

A. United Nations Security Council has the primary responsibility for maintaining international peace and security and is the only body of the UN that can authorize the use of force. It has been criticised for failing to take action to prevent human rights abuses, including the Darfur crisis, the Srebrenica massacre and the Rwandan Genocide.[38] For example, critics blamed the presence of non-democracies on the Security Council for its failure regarding.

On April 28, 2006 the Security Council adopted resolution 1674 that reaffirmed the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and committed the Security Council to action to protect civilians in armed conflict.

## **General Assembly**

### **The UN General Assembly**

Main article: United Nations General Assembly

United Nations General Assembly, under Article 13 of the UN Charter, has the power to initiate studies and make recommendations on human rights issues.[41] Under this provision, the general assembly passed the Universal Declaration of Human Rights in 1948, and since then a wide variety of other human rights instruments.[41] The assembly has several subsidiary organs that deal with specific human rights issues, such as the Special Committee on Decolonisation and the Special Commission against Apartheid (no longer operational). In addition the general assembly has set up a number of subsidiary organs that consider human rights issues in a number of high-profile contexts: such as the UN Council on Namibia, the Special Committee to Investigate Israeli Practices in the Occupied territories and the Committee on the Exercise of the Inalienable rights of the Palestine People.

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### ***Human Rights Council***

Main article: United Nations Human Rights Council

**A. United Nations Human Rights Council**, created at the 2005 World Summit to replace the United Nations Commission on Human Rights, has a mandate to investigate violations of human rights.[43] The Human Rights Council is a subsidiary body of the General Assembly[44] and reports directly to it. It ranks below the Security Council, which is the final authority for the interpretation of the United Nations Charter.[45] Forty-seven of the one hundred ninety-one member states sit on the council, elected by simple majority in a secret ballot of the United Nations General Assembly. Members serve a maximum of six years and may have their membership suspended for gross human rights abuses. The Council is based in Geneva, and meets three times a year; with additional meetings to respond to urgent situations. Independent experts (rapporteurs) are retained by the Council to investigate alleged human rights abuses and to provide the Council with reports.

The Human Rights Council may request that the Security Council take action when human rights violations occur. This action may be direct actions, may involve sanctions, and the Security Council may also refer cases to the International Criminal Court (ICC) even if the issue being referred is outside the normal jurisdiction of the ICC.

## *Treaty bodies*

In addition to the political bodies whose mandate flows from the UN charter, the UN has set up a number of treaty-based bodies, comprising committees of independent experts who monitor compliance with human rights standards and norms flowing from the core international human rights treaties. They are supported by and are created by the treaty that they monitor, With the exception of theCESCR, which was established under a resolution of the Economic and Social Council to carry out the monitoring functions originally assigned to that body under the Covenant, they are technically autonomous bodies, established by the treaties that they monitor and accountable to the state parties of those treaties - rather than subsidiary to the United Nations. Though in practise they are closely intertwined with the United Nations system and are supported by the UN High Commissioner for Human Rights (UNHCHR) and the UN Center for Human Rights.

The Human Rights Committee promotes participation with the standards of the ICCPR. The eighteen members of the committee express opinions on member countries and make judgments on individual complaints against countries which have ratified an Optional Protocol to the treaty. The judgments, termed "views", are not legally binding.

The Committee on Economic, Social and Cultural Rights monitors the ICESCR and makes general comments on ratifying countries performance. It will have the power to receive complaints against the countries that opted into the Optional Protocol once it has come into force. It is important to note that unlike the other treaty bodies, the economic committee is not an autonomous body responsible to the treaty parties, but directly responsible to the Economic and Social Council and ultimately to the General Assembly. This means that the Economic Committee faces particular difficulties at its disposal only relatively "weak" means of implementation in comparison to other treaty bodies.[49] Particular difficulties noted by commentators include: perceived vagueness of the principles of the treaty, relative lack of legal texts and decisions, ambivalence of many states in addressing economic, social and cultural rights, comparatively few non-governmental organisations focused on the area and problems with obtaining relevant and precise information.

The Committee on the Elimination of Racial Discrimination monitors the CERD and conducts regular reviews of countries' performance. It can make judgments on complaints against member states allowing it, but these are not legally binding. It issues warnings to attempt to prevent serious contraventions of the convention.

The Committee on the Elimination of Discrimination against Women monitors the CEDAW. It receives states' reports on their performance and comments on them, and can make judgments on complaints against countries which have opted into the 1999 Optional Protocol.

The Committee Against Torture monitors the CAT and receives states' reports on their performance every four years and comments on them. Its subcommittee may visit and inspect countries which have opted into the Optional Protocol.

The Committee on the Rights of the Child monitors the CRC and makes comments on reports submitted by states every five years. It does not have the power to receive complaints.

The Committee on Migrant Workers was established in 2004 and monitors the ICRMW and makes comments on reports submitted by states every five years. It will have the power to receive complaints of specific violations only once ten member states allow it.

The Committee on the Rights of Persons with Disabilities was established in 2008 to monitor the Convention on the Rights of Persons with Disabilities. It has the power to receive complaints against the countries which have opted into the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Each treaty body receives secretariat support from the Human Rights Council and Treaties Division of Office of the High Commissioner on Human Rights (OHCHR) in Geneva except CEDAW, which is supported by the Division for the Advancement of Women (DAW). CEDAW formerly held all its sessions at United Nations headquarters in New York but now frequently meets at the United Nations Office in Geneva; the other treaty bodies meet in Geneva. The Human Rights Committee usually holds its March session in New York City.

### ***Regional human rights regimes***

Main article: Regional human rights regimes

International human rights regime's are in several cases "nested" within more comprehensive and overlapping regional agreements. These regional regimes can be seen as relatively independently coherent human rights sub-regimes.[51] Three principle regional human rights instruments can be identified, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights (the Americas) and the European Convention on Human Rights. The European Convention on Human Rights has since 1950 defined and guaranteed human rights and fundamental freedoms in Europe.[52] All 47 member states of the Council of Europe have signed the Convention and are therefore under the jurisdiction of the European Court of Human Rights in Strasbourg.

### ***Civil Right***

The following are some of the important civil rights.

#### ***Right of Life***

It is the most fundamental of all civil rights. Man must live first before he can do anything. The State must make adequate provision for the personal safety of its citizens. This right also implies the right to self-defense and prevention of suicide.

#### ***Right to Liberty***

This right implies free movement. Every citizen has complete freedom to move within the State. None can be detained arbitrarily without trial and there must be provision for redress of wrongful arrest: In India if anybody is arrested by the government, he must be ordinarily put before the nearest magistrate within 24 hours of his arrest.

#### ***Right to Property***



Property in democracy is regarded as a sacred institution. It creates a sense of possession and an incentive to work. It is reward for one's ability and is essential for the good of man and society. Machiavelli once said, "Man may forget the murder of his father but he will never forget the loss of his property". The communists, of course, advocate the abolition of property. However, all democratic States guarantee this right to their citizens.

### ***Right to Contract***

The right to contract means that every citizen can live, work, earn and freely contract on the basis of equality with other citizens. Contract is a mutual agreement between two or more parties imposing some obligations on each other. This contract is the essential basis of society.

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### ***Right to Freedom of Speech***

Right to freedom of speech is a primary necessity of man. There can be no society unless its members are free to express their opinion and exchange their views without restraints. The citizens have, therefore, the right to freely criticize the policies and actions of authorities.

### ***Freedom of Press***

The right to freedom of press is closely associated with right to freedom speech. It means the right to publish what a man can lawfully speak. Opinion of the citizens can be published in newspaper and pamphlets. Newspapers are the most powerful organ in modern democracy to mould public opinion. Free discussions and criticisms are essential for the success of democracy.

### ***Right to Form Association***

Man lives in group and forms associations. He has different aspects of life and each aspect may be represented in an association. This is what is called the "split" personality of man. The State is regarded as a political association. However, it is not the only association in the society. There are other associations like cultural, educational, philanthropic and religious associations in a society. Men have right to form associations.

### ***Right to Religion and Conscience***

Religion is deeply rooted in the nature of man. An individual should be free to follow any religion he likes. He should have complete liberty of belief and worship. The State has nothing to do with the religions of citizens. Many of the modern States are, therefore, secular States.

### ***Right to Culture and Language***

Every citizen will follow and develop his own culture and language. The minorities in a democracy should be allowed to protect their rights and privileges. In the Indian Constitution, there is provision for educational and cultural rights. A citizen in India is allowed to preserve his language, script and culture. He is also free to be admitted in any educational institution situated in the country.

### ***Right to Equality***

It means the absence of legal discrimination against any individual, group, class or race. All should be equal in the eyes of law and all should get equal protection of law. The State should not discriminate against any citizen on grounds of religion, race, language, caste or sex. Right to Equality is a fundamental right in the Indian Constitution.

### ***Right to Family***

The last but not the least, is the right to family. The family system brings some social virtues in man. Family is often called the "cradle of civic virtues". The right to family is therefore, one of the elementary rights and it provides for the right to marriage, the right to maintain the purity of such marriage, the right to custody and control of children and the right of inheritance.

These are some of the important civil rights of a citizen in a modern State. These rights are not absolute. They can be restricted for the interest of the State. Even the rights to life, liberty and property are restricted by the state during war and emergency. During the time of war and emergency, it is the duty of all citizens to protect and uphold the sovereignty of the State, even if they have to sacrifice their lives.

## **Consumer Right**

### ***Right to Safety***

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Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfill long term interests. Before purchasing, consumers should insist on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc

### ***Right to be Informed***

Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

### ***Right to Choose***

Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices

### ***Right to be Heard***

Means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The Consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers

### ***Right to Seek Redressal***

Means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. Many a times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organisations in seeking redressal of their grievances.

### ***Right to Consumer Education***

Means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

## **Women Right**

### ***10 Legal Rights every woman must know***

Knowing the times that we are in, we give you, yet again, an overview of some important legal rights for women that every one must be aware of.

#### ***Free legal aid***

Exercise your right to free legal aid. Often, women go to the police station unaccompanied by a lawyer to get their statement recorded, and they stand the risk of being misquoted or their statement being tampered with. The police may also treat the entire episode lightly and not lodge an

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FIR. So, it is necessary to have a lawyer with you while you lodge the FIR. "According to a Delhi High Court ruling, whenever a rape is reported, the SHO has to bring this to the notice of the Delhi Legal Services Authority. The legal body then arranges for a lawyer for the victim," says Saumya Bhaumik, women rights lawyer.

#### ***Right to privacy while recording statement***

Under section 164 of the Criminal Procedure Code, a woman who has been raped can record her statement before the district magistrate when the case is under trial, and no one else needs to be present. Alternatively, she can record the statement with only one police officer and woman

constable in a convenient place that is not crowded and does not provide any possibility of the statement being overheard by a fourth person. The cops have to, by law, upkeep the woman's right to privacy. It's important for the person to feel comfortable and not be under any kind of stress while narrating the incident.

### ***Time doesn't matter***

The police cannot refuse to register an FIR even if a considerable period of time has elapsed since the incident of rape or molestation took place. If the police tells you that they can't lodge your FIR since you didn't report it earlier, do not concede. "Rape is a horrifying incident for any woman, so it's natural for her to go into shock and not want to report it immediately. She may also fear for her safety and the reputation and dignity of her family. For this reason, the Supreme Court has ruled that the police must register an FIR even if there has been a gap between the report and the occurrence of the incident," says Tariq Abeed, advocate, Supreme Court.

### ***Email to the rescue***

According to the guidelines issued by the Delhi Police, a woman has the privilege of lodging a complaint via email or registered post. If, for some reason, a woman can't go to the police station, she can send a written complaint through an email or registered post addressed to a senior police officer of the level of Deputy Commissioner or Commissioner of Police. The officer then directs the SHO of the police station, of the area where the incident occurred, to conduct proper verification of the complainant and lodge an FIR. The police can then come over to the residence of the victim to take her statement.

### ***Cops can't say no***

A rape victim can register her police complaint from any police station under the Zero FIR ruling by Supreme Court. "Sometimes, the police station under which the incident occurs refuses to register the victim's complaint in order to keep clear of responsibility, and tries sending the victim to another police station. In such cases, she has the right to lodge an FIR at any police station in the city under the Zero FIR ruling. The senior officer will then direct the SHO of the concerned police station to lodge the FIR," says Abeed. This is a Supreme Court ruling that not many women are aware of, so don't let the SHO of a police station send you away saying it "doesn't come under his area".

### ***No arrests after sunset***

According to a Supreme Court ruling, a woman cannot be arrested after sunset and before sunrise. There are many cases of women being harassed by the police at wee hours, but all this can be avoided if you exercise the right of being present in the police station only during daytime. "Even if there is a woman constable accompanying the officers, the police can't arrest a woman at night. In case the woman has committed a serious crime, the police has to get it in writing from the magistrate explaining why the arrest is necessary during the night," says Bhaumik.

### ***You can't be called to the police station***

Women cannot be called to the police station for interrogation under Section 160 of the Criminal Procedure Code. This law provides Indian women the right of not being physically present at the police station for interrogation. "The police can interrogate a woman at her residence in the presence of a woman constable and family members or friends," says Abeed. So, the next time you're called to the police station for queries or interrogation when you have faced any kind of harassment, quote this guideline of the Supreme Court to exercise your right and remind the cops about it.

### *Protect your identity*

Under no circumstances can the identity of a rape victim be revealed. Neither the police nor media can make known the name of the victim in public. Section 228-A of the Indian Penal Code makes the disclosure of a victim's identity a punishable offense. Printing or publishing the name or any matter which may make known the identity of a woman against whom an offense has been committed is punishable. This is done to prevent social victimisation or ostracism of the victim of a sexual offense. Even while a judgment is in progress at the high court or a lower court, the name of the victim is not indicated, she is only described as 'victim' in the judgment.

### *The doctor can't decide*

A case of rape can't be dismissed even if the doctor says rape had not taken place. A victim of rape needs to be medically examined as per Section 164 A of the Criminal Procedure Code, and only the report can act as proof. "A woman has the right to have a copy of the medical report from the doctor. Rape is crime and not a medical condition. It is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion and the doctor can't decide on this," explains Bhaumik.

### *Employers must protect*

It is the duty of every employer to create a Sexual Harassment Complaints Committee within the organisation for redressal of such complaints. According to a guideline issued by the Supreme Court, it is mandatory for all firms, public and private, to set up these committees to resolve matters of sexual harassment. It is also necessary that the committee be headed by a woman and comprise 50% women as members. Also, one of the members should be from a women's welfare group.

### *Child Right*

They are abandoned. They do not get a chance to step in a school. They are left to fend for themselves on the streets. They suffer from many forms of violence. They do not have access to even primary healthcare. They are subjected to cruel and inhumane treatments every day. They are children – innocent, young and beautiful – who are deprived of their rights.

In the history of human rights, the rights of children are the most ratified. The United Nations Convention on the Rights of the Child (UNCRC) defines Child Rights as the minimum entitlements and freedoms that should be afforded to every citizen below the age of 18 regardless of race, national origin, colour, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics.

These rights encompass freedom of children and their civil rights, family environment, necessary healthcare and welfare, education, leisure and cultural activities and special protection measures. The UNCRC outlines the fundamental human rights that should be afforded to children in four broad classifications that suitably cover all civil, political, social, economic and cultural rights of every child:

### ***Right to Survival***

Right to be born

Right to minimum standards of food, shelter and clothing

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Right to live with dignity

Right to health care, to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy

### ***Right to Protection***

Right to be protected from all sorts of violence

Right to be protected from neglect

Right to be protected from physical and sexual abuse

Right to be protected from dangerous drugs Right to Participation

Right to freedom of opinion

Right to freedom of expression

Right to freedom of association

Right to information

Right to participate in any decision making that involves him/her directly or indirectly Right to Development

Right to education

Right to learn

Right to relax and play

Right to all forms of development – emotional, mental and physical

### ***Impact of the Convention of the Child Rights***

A milestone in the international human rights legislation, the ‘Convention on the Rights of the Child’ has been instrumental in putting all the issues pertaining to children issues on the global as well as national agenda. In addition to this, it has extensively mobilized actions for the realization of the rights and development of children worldwide.

It was not an overnight initiative that resulted in the adoption of the Child Rights. It took several years of movements and activism on shaping favourable, positive and constructive attitudes toward children, and also inciting actions to improve their well-being. The enormous efforts

involved toward the implementation of the Convention, the significant amount of resources committed to this cause, and the overall effectiveness of the systems put in place for the execution process have a bearing on the success of child well-being outcomes.

Over the last 20 or so years, implementation of the Convention and its effect on child well-being varied from country to country and from one region of the world to the other. Based on analysis, there has been outstanding progress at a global level in addressing the issues related to children. These include progress in access to services, reaching their fullest potential through education, enactment of laws that upholds the principle of the best interests of child, and child survival.

Though a noteworthy progress has been achieved, yet in developing countries, particularly India, there is still a long way to go in realising the rights of children. Though all the relevant rules and policies are in place, there is a lack in enforcement initiatives. As barriers, there are several factors that forbid effective implementation of the laws. Due to relatively low success in achieving concrete child development outcomes in India, the condition of underprivileged kids and underprivileged youth is harsh and needs urgent attention. There is a need to intensify efforts for children welfare at all levels to implement the rules and provisions of the Convention and contribute to create a world suitable for children.

### *Child Rights and the world*

People from across the world striving for social justice have often directed their efforts toward the most vulnerable in society—the children. From Princess Diana's charitable work on behalf of children to the efforts of activists like Grace Abbott and the youngest Nobel laureate in history—Ms. Malala Yousafzai, these famous children's right activists have put commendable efforts in helping improve the lives of the youngest citizens.

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2014 Nobel Peace Prize awardees—Ms. Malala Yousafzai and Mr. Kailash Satyarthi have reminded us all of the need to keep on advancing in providing opportunities that has an important effect on all children. The opportunities are meant to be meaningful enough to allow them to learn and gain the mindsets and skills that would empower them to be free, develop themselves, their communities and the world.

Mr. Kailash Satyarthi's struggle to liberate children from child labour had cost him many life threats, including bullet wounds by those who exploit young boys and girls for economic gain. Wearing flak jackets, and armed with strong determination, he and his team raided many illegal factories and mines to rescue the children who are sold into servitude. It has been 30 years now since he started his movement. A movement that has one clear purpose—no child shall be a slave.

On the other hand, when one thinks of Ms. Malala Yousafzai, the first thing that pops in one's mind is education. The second is—education for girls. In 2009, when she was just 11, she wrote to BBC about the norm of banning female education under the Taliban regime in the Swat Valley (her hometown). Her article gained tremendous momentum worldwide. She started her fight for

the education of girls at that small age and began to speak publicly and to the press, which caused her and her family receive constant death threats.

“I strongly feel that this is a big honour to hundreds of millions of the children who have been deprived of their childhood and freedom and education.” – Mr. Kailash Satyarthi. “I speak not for myself but for those without voice... those who have fought for their rights... their right to live in peace, their right to be treated with dignity, their right to equality of opportunity, their right to be educated.” – Ms. Malala Yousafzai.

### *The Right to Education*

The father of modern education—John Amos Comenius proposed – “all persons should be educated, so we could have peace in the world”. Visionaries of the world understood that peace meant guaranteeing every person certain rights that are conditional for humanity—education being one of the most important.

The addition of the Right to Education (RTE) in the Universal Declaration of Human Rights in 1948 was the beginning of a remarkable expansion of educational opportunities around the world. The parliament of India enacted the Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) on August 2009. The same got enforced on April 1st 2010.

As per the act, education is a fundamental right of every child who is between 6 and 14 years old. The act also states that until the completion of elementary education, no child shall be held back, expelled or required to pass a board examination. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age.

As a charity for child rights, Smile Foundation has been providing education to marginalized children in poor rural and urban communities in 25 states of the country. Its flagship programme - Mission Education exemplifies the global struggle for universal education. The programme has succeeded in bringing more than 200,000 children to school since its start in the year 2002.

Underprivileged kids lag at all stages of education. When earning a livelihood and taking care of the members of the family becomes a primary matter of concern in one’s life, education stands a little or, very often, no chance of pursuance. For the millions of underprivileged people in India, education is a high-priced luxury, and this negative outlook continues on with every new generation. Poverty damages childhood with significant effects on a child’s physical and mental health, as well as educational achievement. It limits the expectations of the child’s ability to perform well in school, constantly reminding him/her of the miniscule chance he/she has to overcome adversity and poverty.

With its development interventions that are focused on social welfare of children, Smile Foundation has raised those expectations among the hardest-to-reach children. Recent mark-sheets of the students in all ME centres has shown Smile Foundation primary school students outperforming their peers, with a very high passing rate. Last year, 51% of the total beneficiaries in Mission Education centres across India were girls. Also, 87% of the total eligible students are successfully mainstreamed in private and government schools.



## Disability Right

The government has proposed 108 amendments to the Persons with Disabilities Act, the overarching disability legislation in India. Disabled rights groups are demanding a new law instead that would guarantee civil and political rights to disabled people and expand the definition of disability

The Ministry of Social Justice and Empowerment of the Government of India has been holding national consultative meetings on proposed amendments to the Persons with Disabilities Equal Opportunities, Protection of Rights and Full Participation Act (PWD Act). Meetings have been held in Delhi, Guwahati and most recently in Kolkata on March 13, 2010. The debate centres on whether there should be amendments to the existing law, or whether there should be a new law.

The Persons with Disabilities Equal Opportunities, Protection of Rights and Full Participation Act, (PWD Act) of 1995 had heralded a new dawn in the lives of disabled people in India. For the first time in the history of independent India, a separate law had been formulated which talked about the multiple needs of disabled people. Very soon, though, activists as well as disabled people felt that the law had too many loopholes. However, this Act did help disabled people to come together, forming groups as they started making demands to implement this law.

To the delight of disability groups, India ratified the UN Convention on the Rights of Persons with Disabilities (Disability Convention) in October 2007. This Convention marks a formal shift from the archaic medical model to the social model, and promotes the rights of people living with disabilities. Article 1 encapsulates the overall objective of the Convention which is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

The Convention recognises that persons with disability are right-holders instead of passive recipients of government schemes. In contrast, the PWD Act has a different foundation. The PWD Act was enacted in order to implement the Proclamation on the Full Participation and Equality of People with Disabilities, an instrument that did not expressly recognise rights, but laid emphasis on the need to eliminate physical and social barriers so as to promote the participation of people living with disabilities. The PWD Act, thus, does not internalise any of the core principles that form the bedrock of the Disability Convention.

### *Retain or recast?*

There is a definite need to review the existing legislative framework in India to examine whether it adequately promotes the rights contained in the Convention. The Disability Convention imposes two key legislative obligations: (1) to ensure that the rights contained in the Convention are realised and (2) to ensure that existing laws and practices that are discriminatory towards people living with disabilities are repealed or amended to bring them in line with the Convention.

Since its ratification by India, there has been much discussion of the manner in which Indian laws must be modified or harmonised to give effect to the obligations under the Convention. While the Ministry of Social Justice and Empowerment (MOSJE) has proposed 108 amendments to the PWD Act including 50 new provisions, the Disabled Rights Group (DRG) led by Javed

Abidi has unequivocally stated that the PWD Act has served its time and that there is a need for a new law.

Consultations on this issue at national and zonal levels are going on throughout India right now. Advocate Kanchan Pamnani, who is blind herself, says that the old law will need more than 300 amendments to make it suitable to our times, and obviously it is better to frame a new one than make 300 changes in the old one. Shukla Bhadury, mother of two disabled children agrees. She says it is ridiculous that government is even considering so many amendments. “Even in the amendments, punitive actions are not mentioned,” comments Sritama, a law student and member of Campaigners for Inclusion. “Any law without punitive action will not work in this country,” she says.

Let’s examine the differences between the Disability Convention and the present PWD Act to see why such passionate pleas to repeal this law are coming from all quarters.

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### **Purpose**

It is clear from the objectives of the Convention that civil and political rights and economic, social, and cultural rights stand on the same footing and that the state must make efforts to realise both. The PWD Act barely provides for civil and political rights and the amendments proposed by the MOSJE, too, neglect these rights.

### ***Construction of disability***

The PWD Act adopts a narrow definition of disability and confines it to “blindness; low vision; leprosy-cured; hearing impairment; locomotor disability; mental retardation; and mental illness”. As opposed to this, the Disability Convention recognises that “disability is an evolving concept” and avoids listing specific conditions and severities and broadly casts “persons with disabilities” to “include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

### ***Foundational principles (Article 3)***

The core human rights principles stated in Article 3 of the Disability Convention are respect for inherent dignity and individual autonomy; non-discrimination, full and effective participation and inclusion; respect for difference; equality of opportunity; accessibility, gender equality; respect for the evolving capacity of children with disabilities and their right to preserve their identities.” These general principles have been well etched in several provisions of the Convention.

The amendments proposed by the MOSJE merely replicate Article 3 without incorporating the provisions which further the principles such as those relating to civil and political rights, rights of women and girls with disabilities, and several other rights stated below.

### *Extent of application (Article 4(1)(e))*

The Disability Convention requires the state to address discrimination on the basis of disability even in the private sector. The amendments proposed to the chapter on discrimination fail to expressly prohibit discrimination on the basis of disability or spell out the consequences for the same.

### *Recognised rights*

The Disability Convention expressly recognises the following rights:

Right to equality and non-discrimination. It also recognises the need to provide for reasonable accommodation in order to further the right to equality.

Right of women and girls with disabilities to full and equal enjoyment of all human rights and fundamental freedoms.

Right of children with disabilities to full and equal enjoyment of all human rights and fundamental freedoms. A child's right to express views on matters affecting him/her is also recognised.

Right to access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, in urban and rural areas.

Right to life.

Right to protection and safety in situations of risk, armed conflict, humanitarian emergencies, and natural disasters.

Right to recognition before law. The right to legal capacity is also included.

Right to access justice with procedural and age-appropriate accommodations.

Right to liberty and security of person.

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Right not to be subjected to cruel, inhuman or degrading treatment or punishment.

Protection from exploitation, violation and abuse, gender-based and otherwise.

Right to respect for physical and mental integrity.

Right to freedom of movement and the right to acquire and change a nationality.

Right to live in the community and choose place of residence.

Right to freedom of expression.

Right to privacy.

Right to marry and found a family.

Right to retain fertility and other reproductive rights.

Right to education.

Right to the enjoyment of the highest attainable standard of health.

Prohibition on discrimination on the basis of disability in employment.

Right to an adequate standard of living including adequate food, clothing, and housing.

Right to participate in political and public life including the right to vote and to be elected.

Right to participate in cultural life

While most of the above rights can be gleaned from the Indian Constitution, a glance at the existing PWD Act shows that it can hardly be termed a rights-based legislation. It recognises only the right to education, provides for reservations in employment and for half-hearted

measures to reduce physical barriers. It also prohibits establishments from discriminating against an employee because of his/her disability.

These abovementioned rights must be codified in the form of a statute that is more likely to be invoked by people living with disabilities and can also be used to ensure that the state fulfils its obligations towards each of the rights. The amendments proposed by the MOSJE fail to provide for a majority of civil and political rights such as the right to recognition before law, right to privacy, right to marry, right against torture etc. Discrimination has been addressed only in transport and in-built environment. Clause 46A (2) of the proposed amendments leaves it to the government to frame ‘policies’ to ensure equal access to education, health, employment and other public services. It fails to expressly prohibit discrimination on the basis of disability.

Further, the rights that appear in the PWD Act do not measure up to the standards set out in the Convention. For instance, Sections 44-46 of the PWD Act require establishments and the government to take “special measures” to enable people with disabilities to gain better access to public transport, buildings, and roads. However, such measures could be undertaken only if it were “within the limits of their economic capacity”. A mere deletion of these words without fleshing out how rights may be realised will be unfruitful.

Without a strong implementation mechanism, the few rights that have been added on will be deprived of meaning. For instance, the Act empowers the Disability Commissioner to “recommend” necessary action to appropriate authorities in order to address “deprivation of rights”. This recommendation is of no binding value and the authority can reject it thus rendering the office of the Commissioner toothless as before.

### **Conclusion**

The PWD Act will require a complete overhaul. The Act must be recast to comprehensively provide for all the rights recognised under the Convention. In a letter to the minister of social justice and empowerment, (<http://uncrpdandlaw.nilehsingit.org/blog/letter-to-hon-ble-minister-for-social-justice-and-empowerment>) the Disability Rights Group has said that the amendments proposed by the ministry do not mirror the rights-based framework of the Convention. In the past, the Juvenile Justice Act, 1986, was re-enacted in the form of the Juvenile Justice (Care and Protection of Children) Act, 2000 to give effect to India’s obligation under the UN Convention on the Rights of the Child.

Involvement of stakeholders is inherent in a rights-based approach and their exclusion will be discordant with the soul and spirit of the Disability Convention. The form that the harmonisation should take must be thoroughly discussed and debated in consultation with various stakeholders and the government cannot afford to take the decision unilaterally.

With strong voices rising from within the disability sector, can the state remain inattentive to this demand? “It’s the decision of our lives, and we will not allow a few officers in the ministry to force down their opinion on us anymore, whatever comes,” says Rajarshi Chakrobarti, secretary of Swabalamban, a West Bengal-based organisation with more than 1,500 disabled members.

## ***Rights to Freedom***

The right to freedom is one of the most important fundamental right that have been granted to us by the founders of Indian Constitution. This right allow every citizen of India to be free from the ancient form of slavery. This fundamental right is described in the constitution as:

### ***All citizens shall have the right-***

To freedom of speech and expression

To assemble peaceably and without arms

To form associations or unions

To move freely throughout the territory of India

To reside and settle in any part of the territory of India

To practise any profession, or to carry on any occupation, trade or business.

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of \_16[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of \_16[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of \_16[the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in \_17[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, \_18[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, - the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

## ***Senior Citizen Right***

## *Growing Population*

The population of the elderly persons has been increasing over the years. As per the UNESCO estimates, the number of the aged(60+) is likely to 590 million in 2005. The figure will double by 2025. By 2025, the world will have more elderly than young people and cross two billion mark by

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2050. In India also, the population of elder persons has increased form nearly 2 crores in 1951 to 7.2 crores in 2001. In other words about 8% of the total population is above 60 years. The figure will cross 18 % mark by 2025.

## *Problems of The Aged*

Problems of the aged as follows:

Economic problems, include such problems as loss of employment, income deficiency and economic insecurity.

Physical and physiological problems, include health and medical problems, nutritional deficiency, and the problem of adequate housing etc.

Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

## *International Efforts*

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guideline for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively.

In 1992, the U.N.General Assembly adopted the proclamation to observe the year 1999 as he International Year of the Older Persons.

The U.N.General Assembly has declared "1st October" as the International Day for the Elderly, later rechristened as the International Day of the Older Persons.

The U.N.General Assembly on December 16, 1991 adopted 18 principles which are organized into 5 clusters, namely-independence, participation, care, self-fulfillment, and dignity of the older persons.

These principles provide a broad framework for action on ageing. Some of the Principles are as follows

Older Persons should have the opportunity to work and determine when to leave the work force. Older Persons should remain integrated in society and participate actively in the formulation of policies which effect their well-being.

Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.

Older Persons should be able to pursue opportunities for the full development of their potential and have access to educational, cultural, spiritual and recreational resources of society.

Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.

### ***National Efforts***

#### ***(I) Constitutional Protection:***

Art. 41 : Right to work, to education and to public assistance in certain cases : The State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

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Art. 46 : Promotion of educational and economic interests of ..... and other weaker sections : The State shall promote with special care the educational and economic interests of the weaker sections of the people.....and shall protect them from social injustice and all forms of exploitation.

However, these provision are included in the Chapter IV i.e., Directive Principles of the Indian Constitution. The Directive Principles, as stated in Article 37, are not enforceable by any court of law. But Directive Principles impose positive obligations on the state, i.e., what it should do. The Directive Principles have been declared to be fundamental in the governance of the country and the state has been placed under an obligation to apply them in making laws. The courts however cannot enforce a Directive Principle as it does not create any justiciable right in favour of any individual. It is most unfortunate that state has not made even a single Act which are directly related to the elderly persons.

#### ***(II) Legal Protections:***

##### ***Under Personal Laws:***

The moral duty to maintain parents is recognized by all people. However, so far as law is concerned, the position and extent of such liability varies from community to community.

### **(I) Hindus Laws:**

Amongst the Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property, was recognized even in early texts. And this obligation was not dependent upon, or in any way qualified, by a reference to the possession of family property. It was a personal legal obligation enforceable by the sovereign or the state. The statutory provision for maintenance of parents under Hindu personal law is contained in Sec 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only, and daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

### **(II) Muslim Law:**

Children have a duty to maintain their aged parents even under the Muslim law. According to Mulla :

(a) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.

(b) A son though in strained circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.

(c) A son, who though poor, is earning something, is bound to support his father who earns nothing. According to Tyabji, parents and grandparents in indigent circumstances are entitled, under Hanafi law, to maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. Both sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, however, is dependent on their having the means to do so.

### **(III) Christian And Parsi Law:**

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

### **(III) Under The Code of Criminal Procedure:**

Prior to 1973, there was no provision for maintenance of parents under the code. The Law Commission, however, was not in favour of making such provision. According to its report:

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The Cr.P.C is not the proper place for such a provision. There will be considerably difficulty in the amount of maintenance awarded to parents apportioning amongst the children in a summary proceeding of this type. It is desirable to leave this matter for adjudication by civil courts.

The provision, however, was introduced for the first time in Sec. 125 of the Code of Criminal Procedure in 1973. It is also essential that the parent establishes that the other party has sufficient means and has neglected or refused to maintain his, i.e., the parent, who is unable to maintain



himself. It is important to note that Cr.P.C 1973, is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents.

#### **(IV) Governmental Protections:**

1. The Government of India approved the National Policy for Older Persons on January 13, 1999 in order to accelerate welfare measures and empowering the elderly in ways beneficial for them. This policy included the following major steps :

Setting up of a pension fund for ensuring security for those persons who have been serving in the unorganized sector,

Construction of old age homes and day care centers for every 3-4 districts,

Establishment of resource centers and re-employment bureaus for people above 60 years,

Concessional rail/air fares for travel within and between cities, i.e.,30% discount in train and 50% in Indian Airlines.

Enacting legislation for ensuring compulsory geriatric care in all the public hospitals.

2. The Ministry of Justice and Empowerment has announced regarding the setting up of a National Council for Older Person, called agewell Foundation. It will seek opinion of aged on measures to make life easier for them.

3. Attempts to sensitise school children to live and work with the elderly. Setting up of a round the clock help line and discouraging social ostracism of the older persons are being taken up.

4. The government policy encourages a prompt settlement of pension, provident fund (PF), gratuity, etc. in order to save the superannuated persons from any hardships. It also encourages to make the taxation policies elder sensitive.

5. The policy also accords high priority to their health care needs.

6. According to Sec.88-B, 88-D and 88-DDB of Income Tax Act there are discount in tax for the elderly persons.

7. Life Insurance Corporation of India (LIC) has also been providing several scheme for the benefit of aged persons, i.e., Jeevan Dhara Yojana, Jeevan Akshay Yojana, Senior Citizen Unit Yojana, Medical Insurance Yojana.

8. Former Prime Minister A.B.Bajpai was also launch ‘Annapurana Yojana’ for the benefit of aged persons. Under this yojana unattended aged persons are being given 10 kg food for every month.

9. It is proposed to allot 10 percent of the houses constructed under government schemes for the urban and rural lower income segments to the older persons on easy loan.

#### ***The policy mentions:***

The layout of the housing colonies will respond to the needs and life styles of the elderly so that there is no physical barriers to their mobility; they are allotted ground floor; and their social interaction with older society members exists.

Despite all these attempts, there is need to impress upon the elderly about the need to adjust to the changing circumstances in life and try to live harmoniously with the younger generation as far as possible.

It may be pointed out that recently the Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 cannot be confined only seven types of medical conditions defined as 'disability' in the Act. The seven medical conditions are blindness, low vision, leprosy-cured, hearing impaired, locomotor disability, mental retardation and mental illness. A Division Bench comprising Justice F.M.Ibrahim and Justice K.Venkataraman said : "We feel that the court cannot shut its eyes if a person knocks at its doors claiming relief under the Act. In a welfare State like India, the benefits of benevolent legislation cannot be denied on the ground of mere hyper technicalities. It may be noted that this Act is not directly related to aged person but seven medical conditions which prescribed in this Act are the common symptom of the aged person.

### *Need For A Change In Approach:*

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a 'Grihastha' and switch over to the third stage of human life which was known as 'Vanpristha' which referred to the devotion of the next 25 years of life by the 'Vanpristhi' by mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received from society during the first 50 years of life.

Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness this vast human resource for promoting the involvement and participation of senior citizens in socio-economic development process on a much larger scale. This participation must result in an end to their social isolation and an increase in their general satisfaction with their life. Any attempt to secure the help of the elderly in offering their service to the nation must simultaneously ensure some sort of package of services aimed at arranging for them a better quality of life and a well-designed social security network for the senior citizen. The society and the state in India need to accept the challenge of their effectively focusing their attention on the following twin issues of:

- (i) How to provide a fair-deal to the senior citizens so that they are able to peacefully, constructively and satisfactorily pass their lives; and
- (ii) How to utilize the vast treasure of knowledge and rich life experience of the older people so that they are able to utilize their remaining energies and contribute to the all round development of their nation.

Palliative Care: Need of the hour : According to a pilot survey, 70% of city's elderly population is undergoing some kind of medication. The average spending per day ranges between Rs. 3 to 200. However, nearly half of the money goes waste. The reason is absence of proper palliative

care in the country. World Health Organization has marked October 7 as a day to create awareness about the importance and need for hospice and palliative care. “Access to the best quality care, while facing terminal illness is a human right. Ironically, many people in the world are denied this right. The bitter side is that government in many countries does not even realize the important of this right” said geriatric physician Dr. Abhishek Shukla.

### *The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007*

THE ACT WILL be enforced by the State government concerned. The date on which the Act will come into force will be notified by the State government concerned in the Official Gazette.

Under Clause 5(1) of the Bill, a senior citizen or a parent may apply for maintenance under Clause 4 of the bill. (A senior citizen is an Indian citizen who is at least 60 years old. A parent could be father or mother, whether biological, adoptive or step father or step mother, whether or not the father or the mother is a senior citizen). If the senior citizen or parent is incapable, any other person or a voluntary organization authorized by the senior citizen or parent can apply for maintenance on their behalf. The Tribunal may take cognizance suo motu (that is, it can act on its own cognizance). These two provisions are welcome since most senior citizens or parents do not have the energy (they do not have the money anyway) to apply for maintenance.

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The said Tribunal may, when a proceeding regarding monthly allowance for the maintenance under this section is pending, order such children or relative to pay a monthly allowance for the interim maintenance of the senior citizen including parent. The State government is required to constitute within a period of 6 months from the date of commencement of the law (Act), Tribunals for the purpose of adjudicating and deciding upon the order for maintenance under Clause 5.

According to Clause 4(1), the senior citizen including parent is entitled to apply for maintenance under Clause 5 if he is unable to maintain himself from his own earnings or out of the property owned by him. A parent or grand-parent can make an application for maintenance against one or more of his children who are majors (‘children’ includes son, daughter, grandson and grand-daughter). The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. A childless senior citizen, on the other hand, can make an application against his relative ("relative" means any legal heir of the childless senior citizen who is a major and is in possession of or would inherit the property after the childless senior citizen's death; property means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property).

Thus Clause 4 makes a reference to grand-parent while Clause 5 does not. In other words, Clause 5 is silent about how the application for maintenance should be made by a grand-parent (who is not yet 60) under Clause 4. I wish the learned law-makers took notice of this inconsistency lest vested interests should exploit this well-intended provision.

If the senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the relative shall provide the basic amenities and basic physical needs to the senior citizen and such relative refuses or fails to provide such amenities and physical needs, Clause 23 (1) says the said transfer of property shall be declared void by the Tribunal, if the senior citizen so desires. This is a welcome provision since it protects naïve senior citizens from exploitation by relatives who intend to renege on their promise subsequently.

The State government is also required to prescribe a comprehensive action plan for protecting the life and property of senior citizens. This is also a welcome provision since the vulnerable senior citizen can be easily harmed or hurt. In fact the senior citizen may be even carted away somewhere to ensure that none else including the voluntary organization and the Tribunal come to know of their whereabouts. Fortunately Clause 24 of the Bill takes care of this aspect. According to this Clause, ‘Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousands rupees or with both’. I suggest registration of senior citizens with the jurisdictional police station be mandated. The NGO concerned may be requested to visit senior citizens at least every quarter under intimation to the jurisdictional police station.

Obviously, the Bill, in its present form, will meet the needs of only parents and senior citizens from educated families, propertied classes and the urban areas. It cannot cater to the needs of parents and senior citizens belonging to the poorer sections of society or hailing from villages. One may find three generations living in the same village and at times even under the same roof! If the son is also indigent, how can he maintain his parent and grand parent? How would the Tribunal adjudicate such disputes? The son will be only too happy if he is put behind bars because he is at least assured of two square meals a day.

Understandably, given its limited resources, one cannot expect the government to do a thorough job here. But it can at least ameliorate the situation. How? It should allow income tax sops to those who take care of parents / grand-parents / senior citizens. This is only fair because if tax is collected from citizens, they should be provided social security by the government when they grow old. When the government is not able to provide social security, it should at least encourage the citizens to provide it by allowing income tax sops. After all, a citizen taking care of his aged parents or senior citizens is providing them social security which strictly speaking the government should have provided. Our government taxes individuals a la the US government but unlike the US government does not provide social security to all citizens. I have pointed out this anomaly in my article, “Why Tirupur has raced ahead of Ludhiana?” dated, Nov 20, 2007. All that the government has to do is rob Peter and pay

Paul. It is also unfortunate that the government has not made any serious attempt to cover the senior citizens under “Group Health Insurance Scheme”. It believes that insurance coverage is mostly required in critical illness and at places where adequately-equipped hospitals are not

available (!). Well, for a start, let the government convince me that AIIMS, New Delhi, is adequately equipped to treat indigent senior citizens.

The Bill does not cover old age pension perhaps because State governments are implementing the Old Age Pension Scheme. But the amount of pension and the eligibility criteria are not uniform across the States, under the said Scheme. The Bill should have mandated the State governments to pay old age pension to the senior citizens adequately and uniformly across the country. This should not be difficult because all that the government has to do is rob Peter and pay Paul. It has to deny income tax sops to those who do not maintain parents / grand parents / relatives; it has to deny old age pension to those parents / grand parents / relatives who are being maintained by their children / relatives. Lastly, the government, while drafting Bills, uses the word 'may' (instead of the word 'shall') even where provisions of a mandatory nature are involved. What leads to this howler? Is it ignorance or lack of conviction on the part of the government?

Note: Union Social Justice and Empowerment Minister Meira Kumar tabled the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 in the Lok Sabha. The Bill proposes to make it obligatory on the persons who inherit the property of their aged relatives to maintain them. It also aims to make provisions for setting up old age homes to take care of indigent older persons. It aims to set up an appropriate mechanism for need-based maintenance to parents and senior citizens, better medical facilities and old age homes in every district. It seeks for institutionalisation of a suitable mechanism for the protection of the life and property of older persons. Describing ageing as a major challenge and the need to give more attention to the care and protection of the older person, the statement of objects and reasons said many older persons, particularly widowed women, are now forced to spend their twilight years all alone and face emotional neglect and lack physical and financial support. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance, the statement said.

### *A critique of the Maintenance of Parents Bill 2007*

On May 8, 2007, the Indian Express carried a critique of the UPA government's Maintenance and Welfare of Parents and Senior Citizens Bill 2007, which was introduced in the Lok Sabha in March. M. R. Madhavan, who works with the PRS Legislative Research at the Centre for Policy Research focuses on larger policy problems with the Bill, while also zeroing in on specific provisions that arouse his concern:

"The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007, which was introduced in Lok Sabha in March, aims "to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto." While it is difficult to contest the objective of ensuring a comfortable life for senior citizens, a number of provisions in the Bill may not be easy to implement.

The Bill neatly sidesteps the directive in the Constitution (Article 41), which directs the state to provide public assistance in cases of old age. The Bill does state that, "The state government may

establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent”. Note the use of “may” instead of “shall” — there is no obligation on the state governments to establish these. Even without this clause, there was never any prohibition on them from providing old age homes. Also, one wonders why a Bill should specify details such as the minimum size of an old age home.

Instead, the Bill places the obligation of maintaining a senior citizen on his or her children, grandchildren or any legal heirs. The process and amount differs from the existing provision in the Code of Criminal Procedure (Section 125), under which a first class magistrate may order a person to provide a monthly maintenance to his parents (or wife, including divorced wife or children), limited to Rs 500.

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The Bill provides that the children of a senior citizen have the obligation to maintain a senior citizen to the extent that he “may lead a normal life”. In case of a childless senior citizen, the obligation is on a relative who is in possession of the senior citizen’s property or who would inherit his property. The maximum monthly allowance is to be specified by state governments, subject to a limit of Rs 10,000.

Some of the definitions in the Bill are confusing. Senior citizens are defined as “any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen”. This implies that every parent, including those below sixty years of age, would be

considered a “senior citizen”. Relative “means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.” How does one determine who would inherit the property? Does this mean that the senior citizen has to reveal the contents of his will, and does not have the freedom to change it later? If he is allowed to change his will, consider the case of the person who is initially named in the will, forced to provide a maintenance, and who finds on the death of the senior citizen that there is another will that disinherits him.

So what does a senior citizen do if he wants maintenance? He applies to the ‘Maintenance Tribunal’. The application may also be made by any other person or organisation authorized by him. However, the Bill clarifies that such an “organisation” means “any voluntary organisation registered under the Societies Registration Act, 1860, or any other law for the time being in force”. It seems to ignore the fact that the Societies Registration Act does not define “voluntary organisation”.

One might be tempted to believe that the purpose of permitting such organisations is to assist a senior citizen. However, the Bill makes it clear that “no party to a proceeding before a tribunal or

appellate tribunal shall be represented by a legal practitioner". That is, one may not use the services of a legally qualified person in obtaining one's legal entitlements under this law.

Regarding the maintenance tribunal, the Bill states that "the state government may... constitute for each sub-division one or more tribunals... The tribunal shall be presided over by an officer not below the rank of sub-divisional officer of a state". There are two points to note here. First, the use of "may", leaving the state governments the option of not forming such tribunals. Second, the job is entrusted to the SDO, who has a number of other responsibilities.

To conclude, one is not arguing against the idea of providing a safety net for senior citizens. The point is that any law that provides for such a net should be implement able. Other than the various loopholes discussed, the big issue is whether parents would take their children to the tribunal, given various social pressures. A better approach may be to design a social security system, including financial products such as pension schemes and reverse mortgages that enable the elderly to live a dignified life."

This is a powerful critique of the Bill, which is scheduled to be debated during the current session of Parliament. To my mind, there is only one existing precedent for such a law, which is the Singaporean Maintenance of Parents Act. Significantly, that law is backed by governmental programmes of pension, healthcare and other forms of support for the elderly, which adds weight to Madhavan's core argument. Hopefully, these issues will be aired during the Parliamentary debates on this law.

## **Senior Citizen Right**

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Older Persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being.

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Older Persons should be able to live in dignity and security and should be free from exploitation and mental and physical abuse.

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Despite all these attempts, there is need to impress upon the elderly about the need to adjust to the changing circumstances in life and try to live harmoniously with the younger generation as for as possible.

It may be pointed out that recently the Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 cannot be confined only seven types of medical conditions defined as ‘disability’ in the Act. The seven medical conditions are blindness, low vision, leprosy-cured, hearing impaired, locomotor disability, mental retardation and mental illness. A Division

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Bench comprising Justice F.M.Ibrahim and Justice K.Venkataraman said : “We feel that the court cannot shut its eyes if a person knocks at its doors claiming relief under the Act. In a welfare State like India, the benefits of benevolent legislation cannot be denied on the ground of mere hyper technicalities. It may be noted that this Act is not directly related to aged person but seven medical conditions which prescribed in this Act are the common symptom of the aged person.

### **Need For A Change In Approach:**

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a ‘Grihastha’ and switch over to the third stage of human life which was known as ‘Vanpristha’ which referred to the devotion of the next 25 years of life by the

‘Vanpristhi’ by mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received from society during the first 50 years of life.

Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness this vast human resource for promoting the involvement and participation of senior citizens in socio-economic development process on a much larger scale. This participation must result in an end to their social isolation and an increase in their general satisfaction with their life. Any attempt to secure the help of the elderly in offering their service to the nation must simultaneously ensure some sort of package of services aimed at arranging for them a better quality of life and a well-designed social security network for the senior citizen. The society and the state in India need to accept the challenge of their effectively focusing their attention on the following twin issues of:

(i) How to provide a fair-deal to the senior citizens so that they are able to peacefully, constructively and satisfactorily pass their lives; and

(ii) How to utilize the vast treasure of knowledge and rich life experience of the older people so that they are able to utilize their remaining energies and contribute to the all round development of their nation.

Palliative Care: Need of the hour : According to a pilot survey, 70% of city’s elderly population is undergoing some kind of medication. The average spending per day ranges between Rs. 3 to 200. However, nearly half of the money goes waste. The reason is absence of proper palliative care in the country. World Health Organization has marked October 7 as a day to create awareness about the importance and need for hospice and palliative care. “Access to the best quality care, while facing terminal illness is a human right. Ironically, many people in the world are denied this right. The bitter side is that government in many countries does not even realize the importance of this right” said geriatric physician Dr. Abhishek Shukla.

### ***The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007***

THE ACT WILL be enforced by the State government concerned. The date on which the Act will come into force will be notified by the State government concerned in the Official Gazette.

Under Clause 5(1) of the Bill, a senior citizen or a parent may apply for maintenance under Clause 4 of the bill. (A senior citizen is an Indian citizen who is at least 60 years old. A parent could be father or mother, whether biological, adoptive or step father or step mother, whether or not the father or the mother is a senior citizen). If the senior citizen or parent is incapable, any other person or a voluntary organization authorized by the senior citizen or parent can apply for maintenance on their behalf. The Tribunal may take cognizance suo motu (that is, it can act on its own cognizance). These two provisions are welcome since most senior citizens or parents do not have the energy (they do not have the money anyway) to apply for maintenance.

The said Tribunal may, when a proceeding regarding monthly allowance for the maintenance under this section is pending, order such children or relative to pay a monthly allowance for the interim maintenance of the senior citizen including parent. The State government is required to

constitute within a period of 6 months from the date of commencement of the law (Act), Tribunals for the purpose of adjudicating and deciding upon the order for maintenance under Clause 5.

According to Clause 4(1), the senior citizen including parent is entitled to apply for maintenance under Clause 5 if he is unable to maintain himself from his own earnings or out of the property owned by him. A parent or grand-parent can make an application for maintenance against one or more of his children who are majors ('children' includes son, daughter, grandson and grand-daughter). The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. A childless senior citizen, on the other hand, can make an application against his relative ("relative" means any legal heir of the childless senior citizen who is a major and is in possession of or would inherit the property after the childless senior citizen's death; property means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property).

Thus Clause 4 makes a reference to grand-parent while Clause 5 does not. In other words, Clause 5 is silent about how the application for maintenance should be made by a grand-parent (who is not yet 60) under Clause 4. I wish the learned law-makers took notice of this inconsistency lest vested interests should exploit this well-intended provision.

If the senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the relative shall provide the basic amenities and basic physical needs to the senior citizen and such relative refuses or fails to provide such amenities and physical needs, Clause 23 (1) says the said transfer of property shall be declared void by the Tribunal, if the senior citizen so desires. This is a welcome provision since it protects naïve senior citizens from exploitation by relatives who intend to renege on their promise subsequently.

The State government is also required to prescribe a comprehensive action plan for protecting the life and property of senior citizens. This is also a welcome provision since the vulnerable senior citizen can be easily harmed or hurt. In fact the senior citizen may be even carted away somewhere to ensure that none else including the voluntary organization and the Tribunal come to know of their whereabouts. Fortunately Clause 24 of the Bill takes care of this aspect. According to this Clause, 'Whoever, having the care or protection of senior citizen leaves, such senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousands rupees or with both'. I suggest registration of senior citizens with the jurisdictional police station be mandated. The NGO concerned may be requested to visit senior citizens at least every quarter under intimation to the jurisdictional police station.

Obviously, the Bill, in its present form, will meet the needs of only parents and senior citizens from educated families, propertied classes and the urban areas. It cannot cater to the needs of parents and senior citizens belonging to the poorer sections of society or hailing from villages. One may find three generations living in the same village and at times even under the same roof! If the son is also indigent, how can he maintain his parent and grand parent? How would the

Tribunal adjudicate such disputes? The son will be only too happy if he is put behind bars because he is at least assured of two square meals a day.

Understandably, given its limited resources, one cannot expect the government to do a thorough job here. But it can at least ameliorate the situation. How? It should allow income tax sops to those who take care of parents / grand-parents / senior citizens. This is only fair because if tax is collected from citizens, they should be provided social security by the government when they grow old. When the government is not able to provide social security, it should at least encourage the citizens to provide it by allowing income tax sops. After all, a citizen taking care of his aged parents or senior citizens is providing them social security which strictly speaking the government should have provided. Our government taxes individuals a la the US government but unlike the US government does not provide social security to all citizens. I have pointed out this anomaly in my article, "Why Tirupur has raced ahead of Ludhiana?" dated, Nov 20, 2007. All that the government has to do is rob Peter and pay Paul. It is also unfortunate that the government has not made any serious attempt to cover the senior citizens under "Group Health Insurance

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Scheme". It believes that insurance coverage is mostly required in critical illness and at places where adequately-equipped hospitals are not available (!). Well, for a start, let the government convince me that AIIMS, New Delhi, is adequately equipped to treat indigent senior citizens.

The Bill does not cover old age pension perhaps because State governments are implementing the Old Age Pension Scheme. But the amount of pension and the eligibility criteria are not uniform across the States, under the said Scheme. The Bill should have mandated the State governments to pay old age pension to the senior citizens adequately and uniformly across the country. This should not be difficult because all that the government has to do is rob Peter and pay Paul. It has to deny income tax sops to those who do not maintain parents / grand parents / relatives; it has to deny old age pension to those parents / grand parents / relatives who are being maintained by their children / relatives. Lastly, the government, while drafting Bills, uses the word 'may' (instead of the word 'shall') even where provisions of a mandatory nature are involved. What leads to this howler? Is it ignorance or lack of conviction on the part of the government?

Note: Union Social Justice and Empowerment Minister Meira Kumar tabled the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 in the Lok Sabha. The Bill proposes to make it obligatory on the persons who inherit the property of their aged relatives to maintain them. It also aims to make provisions for setting up old age homes to take care of indigent older persons. It aims to set up an appropriate mechanism for need-based maintenance to parents and senior citizens, better medical facilities and old age homes in every district. It seeks for institutionalisation of a suitable mechanism for the protection of the life and property of older persons. Describing ageing as a major challenge and the need to give more attention to the care and protection of the older person, the statement of objects and reasons said many older persons, particularly widowed women, are now forced to spend their twilight years all alone and face emotional neglect and lack physical and financial support. Though the parents can claim

maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance, the statement said.

### *A critique of the Maintenance of Parents Bill 2007*

On May 8, 2007, the Indian Express carried a critique of the UPA government's Maintenance and Welfare of Parents and Senior Citizens Bill 2007, which was introduced in the Lok Sabha in March. M. R. Madhavan, who works with the PRS Legislative Research at the Centre for Policy Research focuses on larger policy problems with the Bill, while also zeroing in on specific provisions that arouse his concern:

"The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007, which was introduced in Lok Sabha in March, aims "to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto." While it is difficult to contest the objective of ensuring a comfortable life for senior citizens, a number of provisions in the Bill may not be easy to implement.

The Bill neatly sidesteps the directive in the Constitution (Article 41), which directs the state to provide public assistance in cases of old age. The Bill does state that, "The state government may establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent". Note the use of "may" instead of "shall" — there is no obligation on the state governments to establish these. Even without this clause, there was never any prohibition on them from providing old age homes. Also, one wonders why a Bill should specify details such as the minimum size of an old age home.

Instead, the Bill places the obligation of maintaining a senior citizen on his or her children, grandchildren or any legal heirs. The process and amount differs from the existing provision in the Code of Criminal Procedure (Section 125), under which a first class magistrate may order a person to provide a monthly maintenance to his parents (or wife, including divorced wife or children), limited to Rs 500.

The Bill provides that the children of a senior citizen have the obligation to maintain a senior citizen to the extent that he "may lead a normal life". In case of a childless senior citizen, the obligation is on a relative who is in possession of the senior citizen's property or who would inherit his property. The maximum monthly allowance is to be specified by state governments, subject to a limit of Rs 10,000.

VSome of the definitions in the Bill are confusing. Senior citizens are defined as "any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen". This implies that every parent, including those below sixty years of age, would be

considered a “senior citizen”. Relative “means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.” How does one determine who would inherit the property? Does this mean that the senior citizen has to reveal the contents of his will, and does not have the freedom to change it later? If he is allowed to change his will, consider the case of the person who is initially named in the will, forced to provide a maintenance, and who finds on the death of the senior citizen that there is another will that disinherits him.

So what does a senior citizen do if he wants maintenance? He applies to the ‘Maintenance Tribunal’. The application may also be made by any other person or organisation authorized by him. However, the Bill clarifies that such an “organisation” means “any voluntary organisation registered under the Societies Registration Act, 1860, or any other law for the time being in force”. It seems to ignore the fact that the Societies Registration Act does not define “voluntary organisation”.

One might be tempted to believe that the purpose of permitting such organisations is to assist a senior citizen. However, the Bill makes it clear that “no party to a proceeding before a tribunal or appellate tribunal shall be represented by a legal practitioner”. That is, one may not use the services of a legally qualified person in obtaining one’s legal entitlements under this law.

Regarding the maintenance tribunal, the Bill states that “the state government may... constitute for each sub-division one or more tribunals... The tribunal shall be presided over by an officer not below the rank of sub-divisional officer of a state”. There are two points to note here. First, the use of “may”, leaving the state governments the option of not forming such tribunals. Second, the job is entrusted to the SDO, who has a number of other responsibilities.

To conclude, one is not arguing against the idea of providing a safety net for senior citizens. The point is that any law that provides for such a net should be implement able. Other than the various loopholes discussed, the big issue is whether parents would take their children to the tribunal, given various social pressures. A better approach may be to design a social security system, including financial products such as pension schemes and reverse mortgages that enable the elderly to live a dignified life."

This is a powerful critique of the Bill, which is scheduled to be debated during the current session of Parliament. To my mind, there is only one existing precedent for such a law, which is the Singaporean Maintenance of Parents Act. Significantly, that law is backed by governmental programmes of pension, healthcare and other forms of support for the elderly, which adds weight to Madhavan's core argument. Hopefully, these issues will be aired during the Parliamentary debates on this law.

## **Senior Citizen Right**

### *Growing Population*

The population of the elderly persons has been increasing over the years. As per the UNESCO estimates, the number of the aged(60+) is likely to 590 million in 2005. The figure will double by 2025. By 2025, the world will have more elderly than young people and cross two billion mark by 2050. In India also, the population of elder persons has increased form nearly 2 crores in



1951 to 7.2 crores in 2001. In other words about 8% of the total population is above 60 years. The figure will cross 18 % mark by 2025.

### *Problems of The Aged*

Problems of the aged as follows:

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Economic problems, include such problems as loss of employment, income deficiency and economic insecurity.

Physical and physiological problems, include health and medical problems, nutritional deficiency, and the problem of adequate housing etc.

Psycho-social problem which cover problems related with their psychological and social maladjustment as well as the problem of elder abuse etc.

### *International Efforts*

The question of ageing was first debated at the United Nations in 1948 at the initiative of Argentina. The issue was again raised by Malta in 1969. In 1971 the General Assembly asked the Secretary-General to prepare a comprehensive report on the elderly and to suggest guideline for the national and international action. In 1978, Assembly decided to hold a World Conference on the Ageing. Accordingly, the World Assembly on Ageing was held in Vienna from July 26 to August 6, 1982 wherein an International Plan of Action on Ageing was adopted. The overall goal of the Plan was to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. The Plan attempted to promote understanding of the social, economic and cultural implications of ageing and of related humanitarian and developed issues. The International Plan of Action on Ageing was adopted by the General Assembly in 1982 and the Assembly in subsequent years called on governments to continue to implement its principles and recommendations. The Assembly urged the Secretary-General to continue his efforts to ensure that follow-up action to the Plan is carried out effectively.

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The layout of the housing colonies will respond to the needs and life styles of the elderly so that there is no physical barriers to their mobility; they are allotted ground floor; and their social interaction with older society members exists.

Despite all these attempts, there is need to impress upon the elderly about the need to adjust to the changing circumstances in life and try to live harmoniously with the younger generation as for as possible.

It may be pointed out that recently the Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of Persons with Disabilities (equal opportunities, protection of rights and full participation) Act, 1995 cannot be confined only seven types of medical conditions defined as 'disability' in the Act. The seven medical conditions are blindness, low vision, leprosy-cured, hearing impaired, locomotor disability, mental retardation and mental illness. A Division Bench comprising Justice F.M.Ibrahim and Justice K.Venkataraman said : "We feel that the court cannot shut its eyes if a person knocks at its doors claiming relief under the Act. In a welfare State like India, the benefits of benevolent legislation cannot be denied on the ground of mere

hyper technicalities. It may be noted that this Act is not directly related to aged person but seven medical conditions which prescribed in this Act are the common symptom of the aged person.

### ***Need For A Change In Approach:***

In the older times, after the completion of 50 years of life, one had to detach oneself from the responsibilities of a 'Grihastha' and switch over to the third stage of human life which was known as 'Vanpristha' which referred to the devotion of the next 25 years of life by the 'Vanpristhi' by

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mana, vachana and karma to the selfless service of the suffering humanity and the larger society in return to the services received form society during the first 50 years of life.

Certain strategies and approaches at different levels of policy making, planning and programming etc. will have to be adopted in order to harness this vast human resource for promoting the involvement and participation of senior citizens in socio-economic development process on a much larger scale. This participation must result in an end to their social isolation and an increase in their general satisfaction with their life. Any attempt to secure the help of the elderly in offering their service to the nation must simultaneously ensure some sort of package of services aimed at arranging for them a better quality of life and a well-designed social security network for the senior citizen. The society and the state in India need to accept the challenge of their effectively focusing their attention on the following twin issues of:

- (i) How to provide a fair-deal to the senior citizens so that they are able to peacefully, constructively and satisfactorily pass their lives; and
- (ii) How to utilize the vast treasure of knowledge and rich life experience of the older people so that they are able to utilize their remaining energies and contribute to the all round development of their nation.

Palliative Care: Need of the hour : According to a pilot survey, 70% of city's elderly population is undergoing some kind of medication. The average spending per day ranges between Rs. 3 to 200. However, nearly half of the money goes waste. The reason is absence of proper palliative care in the country. World Health Organization has marked October 7 as a day to create awareness about the importance and need for hospice and palliative care. "Access to the best quality care, while facing terminal illness is a human right. Ironically, many people in the world are denied this right. The bitter side is that government in many countries does not even realize the important of this right" said geriatric physician Dr. Abhishek Shukla.

### **The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007**

THE ACT WILL be enforced by the State government concerned. The date on which the Act will come into force will be notified by the State government concerned in the Official Gazette.

Under Clause 5(1) of the Bill, a senior citizen or a parent may apply for maintenance under Clause 4 of the bill. (A senior citizen is an Indian citizen who is at least 60 years old. A parent

could be father or mother, whether biological, adoptive or step father or step mother, whether or not the father or the mother is a senior citizen). If the senior citizen or parent is incapable, any other person or a voluntary organization authorized by the senior citizen or parent can apply for maintenance on their behalf. The Tribunal may take cognizance suo motu (that is, it can act on its own cognizance). These two provisions are welcome since most senior citizens or parents do not have the energy (they do not have the money anyway) to apply for maintenance.

The said Tribunal may, when a proceeding regarding monthly allowance for the maintenance under this section is pending, order such children or relative to pay a monthly allowance for the interim maintenance of the senior citizen including parent. The State government is required to constitute within a period of 6 months from the date of commencement of the law (Act), Tribunals for the purpose of adjudicating and deciding upon the order for maintenance under Clause 5.

According to Clause 4(1), the senior citizen including parent is entitled to apply for maintenance under Clause 5 if he is unable to maintain himself from his own earnings or out of the property owned by him. A parent or grand-parent can make an application for maintenance against one or more of his children who are majors ('children' includes son, daughter, grandson and grand-daughter). The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life. A childless senior citizen, on the other hand, can make an application against his relative ("relative" means any legal heir of the childless senior citizen who is a major and is in possession of or would inherit the property after the childless senior citizen's death; property

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means property of any kind, whether movable or immovable, ancestral or self-acquired, tangible or intangible and includes rights or interests in such property).

Thus Clause 4 makes a reference to grand-parent while Clause 5 does not. In other words, Clause 5 is silent about how the application for maintenance should be made by a grand-parent (who is not yet 60) under Clause 4. I wish the learned law-makers took notice of this inconsistency lest vested interests should exploit this well-intended provision.

If the senior citizen has transferred by way of gift or otherwise, his property, subject to the condition that the relative shall provide the basic amenities and basic physical needs to the senior citizen and such relative refuses or fails to provide such amenities and physical needs, Clause 23 (1) says the said transfer of property shall be declared void by the Tribunal, if the senior citizen so desires. This is a welcome provision since it protects naïve senior citizens from exploitation by relatives who intend to renege on their promise subsequently.

The State government is also required to prescribe a comprehensive action plan for protecting the life and property of senior citizens. This is also a welcome provision since the vulnerable senior citizen can be easily harmed or hurt. In fact the senior citizen may be even carted away somewhere to ensure that none else including the voluntary organization and the Tribunal come to know of their whereabouts. Fortunately Clause 24 of the Bill takes care of this aspect. According to this Clause, 'Whoever, having the care or protection of senior citizen leaves, such

senior citizen in any place with the intention of wholly abandoning such senior citizen, shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousands rupees or with both'. I suggest registration of senior citizens with the jurisdictional police station be mandated. The NGO concerned may be requested to visit senior citizens at least every quarter under intimation to the jurisdictional police station.

Obviously, the Bill, in its present form, will meet the needs of only parents and senior citizens from educated families, propertied classes and the urban areas. It cannot cater to the needs of parents and senior citizens belonging to the poorer sections of society or hailing from villages. One may find three generations living in the same village and at times even under the same roof! If the son is also indigent, how can he maintain his parent and grand parent? How would the Tribunal adjudicate such disputes? The son will be only too happy if he is put behind bars because he is at least assured of two square meals a day.

Understandably, given its limited resources, one cannot expect the government to do a thorough job here. But it can at least ameliorate the situation. How? It should allow income tax sops to those who take care of parents / grand-parents / senior citizens. This is only fair because if tax is collected from citizens, they should be provided social security by the government when they grow old. When the government is not able to provide social security, it should at least encourage the citizens to provide it by allowing income tax sops. After all, a citizen taking care of his aged parents or senior citizens is providing them social security which strictly speaking the government should have provided. Our government taxes individuals a la the US government but unlike the US government does not provide social security to all citizens. I have pointed out this anomaly in my article, "Why Tirupur has raced ahead of Ludhiana?" dated, Nov 20, 2007. All that the government has to do is rob Peter and pay Paul. It is also unfortunate that the government has not made any serious attempt to cover the senior citizens under "Group Health Insurance Scheme". It believes that insurance coverage is mostly required in critical illness and at places where adequately-equipped hospitals are not available (!). Well, for a start, let the government convince me that AIIMS, New Delhi, is adequately equipped to treat indigent senior citizens.

The Bill does not cover old age pension perhaps because State governments are implementing the Old Age Pension Scheme. But the amount of pension and the eligibility criteria are not uniform across the States, under the said Scheme. The Bill should have mandated the State governments to pay old age pension to the senior citizens adequately and uniformly across the country. This should not be difficult because all that the government has to do is rob Peter and pay Paul. It has to deny income tax sops to those who do not maintain parents / grand parents / relatives; it has to deny old age pension to those parents / grand parents / relatives who are being maintained by their children / relatives. Lastly, the government, while drafting Bills, uses the word 'may' (instead of the word 'shall') even where provisions of a mandatory nature are involved. What leads to this howler? Is it ignorance or lack of conviction on the part of the government?

Note: Union Social Justice and Empowerment Minister Meira Kumar tabled the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 in the Lok Sabha. The Bill proposes to make it obligatory on the persons who inherit the property of their aged relatives to maintain them. It also aims to make provisions for setting up old age homes to take care of indigent older persons. It aims to set up an appropriate mechanism for need-based maintenance to parents and senior citizens, better medical facilities and old age homes in every district. It seeks for institutionalisation of a suitable mechanism for the protection of the life and property of older persons. Describing ageing as a major challenge and the need to give more attention to the care and protection of the older person, the statement of objects and reasons said many older persons, particularly widowed women, are now forced to spend their twilight years all alone and face emotional neglect and lack physical and financial support. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time-consuming as well as expensive. Hence, there is need to have simple, inexpensive and speedy provisions to claim maintenance, the statement said.

### *A critique of the Maintenance of Parents Bill 2007*

On May 8, 2007, the Indian Express carried a critique of the UPA government's Maintenance and Welfare of Parents and Senior Citizens Bill 2007, which was introduced in the Lok Sabha in March. M. R. Madhavan, who works with the PRS Legislative Research at the Centre for Policy Research focuses on larger policy problems with the Bill, while also zeroing in on specific provisions that arouse his concern:

"The Maintenance and Welfare of Parents and Senior Citizens Bill, 2007, which was introduced in Lok Sabha in March, aims "to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto." While it is difficult to contest the objective of ensuring a comfortable life for senior citizens, a number of provisions in the Bill may not be easy to implement.

The Bill neatly sidesteps the directive in the Constitution (Article 41), which directs the state to provide public assistance in cases of old age. The Bill does state that, "The state government may establish and maintain such number of old age homes at accessible places, as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent". Note the use of "may" instead of "shall" — there is no obligation on the state governments to establish these. Even without this clause, there was never any prohibition on them from providing old age homes. Also, one wonders why a Bill should specify details such as the minimum size of an old age home.

Instead, the Bill places the obligation of maintaining a senior citizen on his or her children, grandchildren or any legal heirs. The process and amount differs from the existing provision in the Code of Criminal Procedure (Section 125), under which a first class magistrate may order a person to provide a monthly maintenance to his parents (or wife, including divorced wife or children), limited to Rs 500.



The Bill provides that the children of a senior citizen have the obligation to maintain a senior citizen to the extent that he “may lead a normal life”. In case of a childless senior citizen, the obligation is on a relative who is in possession of the senior citizen’s property or who would inherit his property. The maximum monthly allowance is to be specified by state governments, subject to a limit of Rs 10,000.

Some of the definitions in the Bill are confusing. Senior citizens are defined as “any person being a citizen of India, who has attained the age of sixty years or above and includes parent whether or not a senior citizen”. This implies that every parent, including those below sixty years of age, would be

considered a “senior citizen”. Relative “means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.” How does one determine who would inherit the property? Does this mean that the senior citizen has to reveal the contents of his will, and does not have the freedom to change it later? If he is allowed to change his will, consider the case of the person who is initially named in the will, forced to provide a maintenance, and who finds on the death of the senior citizen that there is another will that disinherits him.

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So what does a senior citizen do if he wants maintenance? He applies to the ‘Maintenance Tribunal’. The application may also be made by any other person or organisation authorized by him. However, the Bill clarifies that such an “organisation” means “any voluntary organisation registered under the Societies Registration Act, 1860, or any other law for the time being in force”. It seems to ignore the fact that the Societies Registration Act does not define “voluntary organisation”.

One might be tempted to believe that the purpose of permitting such organisations is to assist a senior citizen. However, the Bill makes it clear that “no party to a proceeding before a tribunal or appellate tribunal shall be represented by a legal practitioner”. That is, one may not use the services of a legally qualified person in obtaining one’s legal entitlements under this law.

Regarding the maintenance tribunal, the Bill states that “the state government may... constitute for each sub-division one or more tribunals... The tribunal shall be presided over by an officer not below the rank of sub-divisional officer of a state”. There are two points to note here. First, the use of “may”, leaving the state governments the option of not forming such tribunals. Second, the job is entrusted to the SDO, who has a number of other responsibilities.

To conclude, one is not arguing against the idea of providing a safety net for senior citizens. The point is that any law that provides for such a net should be implement able. Other than the various loopholes discussed, the big issue is whether parents would take their children to the tribunal, given various social pressures. A better approach may be to design a social security system, including financial products such as pension schemes and reverse mortgages that enable the elderly to live a dignified life."

This is a powerful critique of the Bill, which is scheduled to be debated during the current session of Parliament. To my mind, there is only one existing precedent for such a law, which is the Singaporean Maintenance of Parents Act. Significantly, that law is backed by governmental programmes of pension, healthcare and other forms of support for the elderly, which adds weight to Madhavan's core argument. Hopefully, these issues will be aired during the Parliamentary debates on this law.

## ***Know Your Rights***

### **Know your Right if you Arrested**

A person is arrested when a police officer or a citizen takes him into custody or otherwise substantially deprives him of his freedom of action so that he may be held to answer for a crime or an offence. The police in India do not have any power to detain anybody for questioning unless he is arrested with or without warrant.

### ***Warrant of Arrest***

It is a written order issued by a Court to a police officer to arrest and produce an offender or to search his premises for a particular thing. A police officer who executes the warrant shall notify the substance thereof to the person to be arrested and if he demands, shall show him the warrant. He is expected to bring the required person before the Court without unnecessary delay.

### ***Valid Warrant***

A warrant of arrest should be (i) in writing (ii) signed by the presiding officer of the Court and (iii) should bear the seal of the Court. It should also contain the name of the accused, his address and indicate the offence with which he is charged. If any of these factors is absent, the warrant is not in order and an arrest made in execution of such a warrant is illegal. Warrants are of two kinds:

- i) Bailable
- ii) Non-Bailable

A bailable warrant is a Court's order which contains a direction that if the person arrested executes a bail with sufficient sureties for his attendance before the Court, he may be released from custody. In that case it shall further state the number of sureties, the amount of the bond,

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and the time for attending the Court. (Section 71 Cr.P.C.) In case of a non-bailable warrant the direction for bail will not be endorsed on the warrant.

### **Arrest without Warrant**

A police officer has power to arrest a person without warrant if he is suspected of having committed a cognizable offence. Normally in non-cognizable offences a police officer cannot arrest a person without a warrant from a Magistrate.

In the first Schedule of the Criminal Procedure Code (Cr.P.C.) offences have been classified and

enumerated as cognizable and non-cognizable. The more serious offences such as murder, rape, robbery, theft, waging war against the State etc. are cognizable.

### **When can a person be arrested without a warrant?**

A person can be arrested without a warrant:

1. If he is concerned in a cognizable offence or if there is a reasonable suspicion, complaint or information that he has committed a cognizable offence;
2. If he possesses implements of house breaking;
3. If he possess stolen property;
4. If he is proclaimed an offender;
5. If he obstructs a police officer on duty'
6. If he escapes from a legal custody;
7. If he is a deserter from the army, navy or air force;
8. Where he is out of India, if he commits an offence punishable under any extradition law or under the Fugitive Offenders Act;
9. If he is released convict who breaks the restrictions imposed by the Court on his movements;
10. If he is suspected of preparing to commit a cognizable offence;
11. If he is habitual criminal;
12. If he, after committing a non-cognizable offence in the presence of a police officer, refuses to give the police his name and address or has given him a false name and address;
13. If he is required by a police officer of another police station who suspects that he has committed a cognizable offence;

### **How is Arrest made?**

Arrest is complete when there is submission to custody by word or action, and in such a case touching or confining of the body of the person arrested is not necessary, but mere surrounding of a person by the police does not amount to arrest. (Section 46).

### **What happens if you resist arrest?**

If you forcibly resist arrest, the police officer can use all means necessary to effect the arrest. (Sec 46). He can even cause your death provided you are charged with an offence punishable with death or me imprisonment. However, he is not justified in using force more than necessary to obtain the arrest (Sec.46). Therefore, unnecessary restraints or causing physical inconveniences tying of hands and feet are not permissible if there is no necessity for doing so.

### **What are your rights when you are arrested?**

If you are arrested:

1. You must be informed of the reasons for your arrest (Fundamental Rights : Article 22 and Sec.50 Cr.P.C.)
2. You have a right to see the warrant if you are arrested under warrant (Sec.75 Cr.P.C.)
3. You have a right to consult a lawyer of your choice. (Fundamental Rights: Article 22 of the Constitution);
4. You must be produced before the nearest Magistrate within 24 hours (Fundamental Rights Article 22 of the Constitution);
5. You must be told whether you are entitled to be released on bail. (Sec.50 Cr.P.C.)

### *Can you be handcuffed?*

According to the latest ruling of the Supreme Court, normally an arrested person should not be handcuffed unless he is violent or he is desperate character or he is likely to attempt to escape or to commit suicide. Arrest is not a punishment. Hence unnecessary restraints are not permissible, if there is no necessity for doing so.

Search of a place entered by a person sought to be arrested Sec.47 of Cr.P.C. compels all persons to afford to the police facilities for search in a place for a person sought to be arrested. Police officers have power to break open any door or window to carry out a search and to liberate himself or any person who is detained inside a premises.

### *Search of an arrested person*

A Police officer has the right to search a person only after he is arrested. After the search the police officer must keep in safe custody all the articles taken from the person and give him a receipt for the same. A search of an arrested female should be done with strict regard to decency. A woman can be searched only by another women. (Sec.51)

### *Examination of arrested person by medical practitioner*

A police officer not below the rank of a sub-Inspector may require an arrested person to be medically examined if he feels that this may provide evidence to prove the offence. (Sec.53)

1. He may use reasonably necessary force to have the medical examination performed.
2. The accused person can make a request to the Magistrate that he had not committed the offence.(Sec.54)
3. A woman has a right to demand that she be examined by a woman doctor. (Sec.53 A(2)54)
4. In case of torture in police custody, this provision of law must be taken advantage of and the victim should demand in the Court that he be medically examined to prove torture by the police.

### *Detention of an arrested person*

Article 22 (2) of the Constitution lays down that every person who is arrested and detained in custody should be produced before the nearest Magistrate within a period of 24 hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. However, Sec.167 of the Cr.P.C. vests the power in the Magistrate to authorize the detention of the arrested person for more than 24 hours of the investigation cannot be completed within that period. In no circumstances can the accused be detained in custody for a moment more than twenty four hours without a special order of a Magistrate who can order his detention for a term exceeding 15 days on the whole. At the end of the 15 days he must be produced before the Magistrate. If there are adequate grounds for further detention in judicial custody (jail), he can pass an order to that effect, for a period not exceeding 15 days. But the total period of detention cannot exceed 60 days, whether the investigation of offence against him has been completed or not. The order of a Magistrate sanctioning the detention for an indefinite period is illegal. If the accused is not able to furnish bail during the stage of investigation he may be detained in judicial custody beyond 60 days. In case of a non-bailable offence the arrested person may be kept in jail until the trial is over.

## ***Search Warrant***

Search warrant is issued by the Magistrate for the following purposes:

- 1.For the recovery of a document or thing which may not be produced in the court otherwise;
- 2.For search of a house suspected to contain stolen property, forged documents, etc;
- 3.Seizing any publication banned by the government;
- 4.For discovery of a person wrongfully confined.

A search warrant gives the power to the police officer to search the required place and to seize the objectionable article known as "Mudammal". Police may use force to effect a legal entry provided that they have come, demanded entry and are unreasonably refused. The police officer

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executing the warrant may search any person in or about such place if that person is reasonably suspected of concealing on his person any article for which search is made. If the person to be searched is a female, then the search shall be made by another woman with the strictest possible decency.

## ***Procedure to be followed***

The officer making a search shall:

- 1.Call upon two or more respectable residents of the locality (called Panches) to attend and witness the search. Failure to attend is an offence under Sec.187 I.P.C.
- 2.Make the search in their presence. So, the search would be illegal if the panches: are kept outside while the search takes place inside the building;
- 3.Make a list of all things seized and of all places in which they are found. (The list is called the panchanama);
- 4.Get the list signed by the witnesses - Panchas
- 5.Permit the occupant of the place to attend the search and give him a copy of the list of things signed at his request;
- 6.Panches are not required to attend the court as witnesses unless specially summoned by the Court.

## ***Rights of the occupants of the premises searched***

- 1.The accused himself cannot be compelled to produce any document or property which is likely to involve him in any criminal charge. Hence police have to get a warrant issued by a Court of Law;
- 2.The police have no general power to enter or search your premises without your consent;
- 3.The court may specify in the warrant a particular place only to which the search will extend;
- 5.It is important that the warrant is read and the directions are taken note of before the police are allowed to make inspection;
- 6.If the police have no legal authority to enter your premises you can refuse the entry;
- 7.If they have no legal authority to remain, you have a right to insist that they leave;
- 8.If they refuse you have the legal right to use reasonable force to remove them. (Sec.97, of I.P.C.)

## **Bail**

Bail means releasing an arrested person from legal custody until his trial. Bail gives the freedom to seek advice from friends to consult a lawyer, to trace witnesses and to collect evidence for one's defence and to continue his job. When bail is not granted, the arrested person will be on remand and will be kept in custody to facilitate the investigation and to obtain evidence.

Provisions regarding bail can be classified into 2 categories: i.e.,

1. Bailable cases
2. Non-Bailable Cases.

### **Bailable Cases**

In the case of bailable offences, granting of bail is a matter of legal right. This means that bail cannot be refused and shall be granted by a police officer in charge of a police station having the accused in his custody. The release may be ordered on the accused executing a bond, even without sureties.

### **Non-Bailable Cases**

In non-bailable cases, only the Court can order release of the accused person on bail. However, if the police officer or the Magistrate is of the opinion that there is no sufficient material against the accused and that the complaint needs further investigation he may also release the accused on bail. (Sec.437 (2) Cr.P.C.)

Normally bail is not granted when the accused person appears, on reasonable grounds, to be guilty of an offence punishable with death or

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imprisonment for life. But women, children under 16, and sick people can be released on bail by a Magistrate even if charged with offences punishable with death or life-imprisonment. An accused person is entitled to be released on bail as soon as reasonable grounds for guilt cease to appear, between the close of the case and the delivery of judgement. A person released on bail may be taken into custody by an order of the Court, if his conduct subsequent to release is found to be prejudicial to a fair trial Sec.48 Cr.P.C. or if he does not observe the conditions of the bail.

### **Power of the Court to grant bail**

The discretionary power of the Court to grant bail is judicial power and is given by established principles. Before granting bail the Court must consider the seriousness of the charge, the nature of the evidence, the severity of the punishment prescribed for the offences and in some cases the character, means and the status of the accused.

### ***If you are arrested, how to get released immediately from police custody?***

In warrant cases, find out the directions endorsed in the warrant and execute a bond with sureties (Sec.71):

1. If the offence charge is bailable and the arrest is made without warrant, ask the police officer in charge of the police station to grant you bail after executing a bond.
2. The police officer has the discretion to release a person on his executing a bond without

sureties. (Sec. 436 of Cr.P.C.)

3.If you are not granted bail immediately you have the right to telephone your advocate, a friend or a relative. Give your advocate the names and addresses of the possible sureties. If you don't have an advocate inform your friend or relative

4.The name of the Court where you will appear;

5.The time the Court starts; and request him:

6.To take to the Court anyone else who is prepared to stand surety;

7.To contact an advocate if possible.

If you can deal with these matters before you go to the Court, you may be saved an unnecessary remand in custody.

### **Granting of Bail by the Magistrate**

If a person is arrested for a non-bailable offence, and there exists a reasonable ground to believe the guilt of the person, he may not be granted bail by the police officer. In such cases the accused person must give a written application to the court to grant bail. The court must grant bail unless he is charged with a crime punishable with death or life-imprisonment. In such cases only the sessions or the High Court can grant bail.

### **Common police objections to bail**

1.The accused will not appear at his trial;

2.He will interfere with witnesses or material evidence;

3.He will commit further offences while on bail;

4.Police enquiries are not complete;

5.Further charges might follow;

6.Stolen properties have not been recovered;

7.The co-accused are absconding;

8.The weapons with which the crime was committed has not been recovered.

Normally the police make an application for the remand of the accused. In such an application they give their reasons for further detention of the accused in custody. The reasons given by the police must be refuted to the extent possible.

### **Application for Bail**

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1.If the accused can afford an advocate he can make an application and represent the accused before the judge;

2.If the accused cannot afford an advocate he may make a written application to the judge. For this he must get an application form from the prison staff and complete it as fully as possible giving sufficient reasons to convince the judge of the need of granting bail.

### **The following special grounds for release must be mentioned in the application:**

1.Condition and state of accommodation; whether there is a possibility of eviction in case bail is not granted;

2. Whether he is likely to lose his job;
3. How refusal of bail would create hardship to the dependent members of the family;
4. How keeping in custody would affect the poor state of health and treatment.

### **Refusal of Bail by the Magistrate**

If bail is refused, the Magistrate must record the reasons for the same. Such a record is necessary to make a proper appeal for bail in higher Courts.

### ***Appeal***

If application for bail is rejected by the Magistrate, the accused person can appeal to a Sessions Court or High Court. Disagreement with the objections raised by the police in granting bail or the fact of no objection raised in the Court must be incorporated in the application for bail. If one's application is rejected, one may try again in one's next Court appearance.

### **Conditions for Bail**

The Magistrate may grant a bail:

1. Without any condition
2. Subject to special conditions;
3. Subject to bond with or without sureties.

Special conditions usually state that the accused person must report to the police station at specified times or surrender his passport. One can challenge in a Court any unreasonable condition imposed by the Magistrate. If the Court refuses to change the conditions, the accused person can reject them. But in that case he will not be released until his appeal is heard and disposed of in his favour.

### ***Bond and Sureties***

1. An accused person may be released on personal bond with or without sureties;
2. Sureties are people who guarantee a sum of money for appearance of the accused in the Court on the appointed day and time.
3. Those who stand as sureties must be present in the Court and if asked must guarantee the Court under oath that they are prepared to act and have sufficient funds;
4. They can file affidavits before the Court stating the fact to show that they have sufficient funds to pay the surety and that they are even otherwise fit to be sureties;
5. The Magistrate has the power to reject the surety without giving any reason. If the sureties are not in the Court, the arrested person will be kept in custody until the police have interviewed them and found them to be satisfactory;
6. Sureties must be over 18, have a permanent address and have sufficient money to cover the amount of surety after payment of all their debts. The sureties may carry to the Court documents such as ration cards, rent receipts, provident fund slips, salary slips and income tax challans.
7. The police and the Magistrate have no right to reject sureties on ground of their personal character, political opinions, criminal records or sex, unless they are professional sureties.

### ***Bail after Conviction***



If an accused person is found guilty, the Magistrate will pass the sentence after considering his past record. If the convicted person wants to appeal against his sentence in a higher court, the Court which passed the sentence must release him on bail.

1. When the sentence is for imprisonment for a term not exceeding 3 years, or;
2. When the offence for which the person is convicted is a bailable one and the person is already on bail. The release will be for a period that will enable the convict to present the appeal and get the orders of the appellate Court. Once a person files an appeal against his conviction, the appellate Court may suspend the sentence and release him on bail or on personal bond.

### ***Anticipatory Bail***

When a person has reason to believe that he may be arrested for a non-bailable offence, he may apply to the High Court or to the Court of Session for a direction that in the event of such an arrest he may be released on bail. If such a person is arrested without a warrant by a police officer and if he is prepared to give bail, he must be released on bail. In case a warrant is issued against the accused by a Magistrate, it. The purpose of the provision is to relieve a person from disgrace by being detained in jail for some days before he can apply for bail when he is implicated in a false case by a rival.

### ***Recent Observations and Recommendations of the Supreme Court on Bail***

1. The Bail system prevalent in our country is oppressive and discriminatory against the poor, since the poor would not be able to furnish bail on account of their poverty. The court, by ignoring the differential capacity of the rich and the poor to furnish bail and treating them equally, produces inequality between the rich and the poor.
2. The bail system should be thoroughly reformed so that it should be possible for the poor to obtain pre-trial release as easily as the rich without jeopardising the interests of justice.
3. The Court and the police must abandon the antiquated practice of release only against bond with sureties, and if the accused has ties in the community and there is no substantial risk of nonappearance, he may be released on his personal bond without monetary obligation, subject to penalty in case of breach.
4. The amount of bond the Court fixes to release the accused on personal bond should not be based merely on the nature of the charge but on the financial capacity of the accused and the probability of the absconding.
5. When the accused is released on personal bond, the Court or the police should not insist upon inquiring into his solvency as a condition of acceptance of his personal bond.

### ***KNOW YOUR RIGHTS AGAINST TRAFFICKING:***

A Victim of Trafficking is a Person Who is:-

1. Transported against her/his will.
  2. Forced into any form of sexual trade or forced labour or bonded labour.
  3. Taken out & away from their home and sexually exploited.
  4. Sold for any purpose.
  5. Made to travel to an unknown place on false promise of work, marriage, or better livelihood with unknown/known person.
  6. Duped, forced, kidnapped, abducted, blackmailed, deceived for any kind of gain.
- Person who is a foreigner (eg. Bangladeshi, Nepali Etc.) being exploited, held against her/his

will, forced into prostitution, etc.

Person, who is a minor and being transported, traded, sexually exploited and detained against her/his will.

## **DEFINITIONS**

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the
- (b) purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or
- (c) services, slavery or practices similar to slavery. servitude or the removal of organs...

Article 3: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organised Crime.

Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 23 (1):- Right Against Exploitation. CONSTITUTION OF INDIA

### FORMS OF TRAFFICKING

#### SEXUAL EXPLOITATION

Forced Prostitution

Social and Religious Forms of Prostitution  
(Devdasis, Joginis, Muralis etc)

Sex Tourism

Pornography

#### ILLEGAL ACTIVITY

Begging

Organ Trade

Drug Peddling and Smuggling

#### LABOUR

Bonded Labour

Domestic Work

Agricultural Labour  
Construction Work  
Carpet Industry

## ENTERTAINMENT

Camel Jockey  
Bar Girls  
Adoption  
Marriage

## OTHER LAWS THAT CAN BE USED FOR PROTECTION OF TRAFFICKED VICTIM

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- (d) 1. The Bonded Labour System (Abolition) Act, 1976.
2. The Child Labour (Prohibition and Regulation) Act, 1986.
3. The Indian Penal Code – Sections 366A, 366B, 367, 372, 373, 375, 319-338, 351, 354, 362, 339-348, 463-477. Sections 107- 120 can also be applied to trafficking cases.
4. Juvenile Justice (Care and Protection) Act, 2000
5. The Information Technology Act, 2000
6. The Transplantation of Human Organs Act, 1994
7. The Goa Children’s Act 20003
8. The Karnataka Devdasi (Prohibition) Act, 1982
9. The Andhra Pradesh Devdasi (Prohibition) Act, 1982

### ***IMMORAL TRAFFICKING PREVENTION ACT, 1956 (ITP Act)***

Some Useful Definitions:

“Child” is a person who has not completed the age of sixteen years.

“Prostitution” means the sexual exploitation or abuse of “persons” (who are generally known as prostitutes in society) for commercial purposes.

“Brothel” - Any house, room, conveyance, or place or any portion of any house, room or place which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

“Protective home” means an institution which can be used to place persons who are in need of care and protection, but does not include

- a shelter where ‘under-trial’ are kept in pursuance of this Act. or
- a corrective institution

Trafficking is a Cognizable Offence and is Punishable Offence. It is a punishable offence with 1 Year to life imprisonment and fine

### ***Offence Punishment***

If Crime Against Women If Crime Against Minor

Running or managing a brothel or allowing premises to be used as a brothel or allowing property to be used as a brothel.

1 year to 5 year imprisonment Fine Rs. 2000 While the ITP Act is silent with reference to minors in this regard, at least the same punishment should apply.

Living on the earnings of prostitution. 2 year imprisonment Fine Rs. 1000 7 year to 10 year Procuring, inducing or taking person for the sake of prostitution. (Buying or selling of human beings.) (Illegal transportation of people across the border) 3 year to 7 year imprisonment Fine Rs. 2000 7 year to 14 year Detaining a person at a place where prostitution is being carried out 7 year to 14 year imprisonment and fine 7 year to 14 year and fine Kidnapping, abduction, inducing, procuring, importing humans for the purpose of illicit sexual intercourse. 3 year to 7 year imprisonment Fine Rs. 2000 (7 year to 14) year Remember: Trafficked victims who are framed as prostitutes and charged with “offence of soliciting” cannot be punished with imprisonment more than 6 month to one year, and cannot be fined more than Rs 500.

### ***WHAT THE POLICE SHOULD DO***

During Search, Removal and Rescue

1.If the Special Police Officer or Trafficking Police Officer has reason to believe that an offence under this Act has been committed or is going to be committed, can search that premises even without warrant [sec.15(1)]

2.For verifying and ensuring no discrepancies during the search, police should ensure two or more respectable inhabitants of the concerned area.

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One member should necessarily be a woman (Sec.-15(2))

3.The Search team should have one or two women (especially women and children) found therein [Sec.15(4)]

4.DO NOT FORGET: Remove all the women detained in the brothel ALONG WITH All the children found therein. (Sec.-15-4)

5.A Police Officer, not below the rank of Sub-Inspector, can conduct rescue with the order of the Magistrate (before passing such an order, the Magistrate must have ground for this) [Sec.16(1)]

### ***AFTER REMOVAL RESCUE***

The medical examination should be immediately done for age determination and identification injuries by a Registered Medical Practitioner of all rescued and removed victim. (Registered medical practitioner has the same meaning as in the Indian Medical Council Act, 1956) (Sec.-15-5-A)

The Rescued or removed person should be produced before the appropriate Magistrate. (Sec.-15-5-5)

The Interrogation of victim should be done only by a Woman Police Officer or in the presence of a woman activist from an NGO (Sec.-15-6-A)

Complete care, protection and dignity to the rescued or removed victim should be provided

[Sec.17]

The rescued or removed children should be sent to the children homes and produced before the Child Welfare Committee [Sec. 17(3)]

### ***WHAT THE JUDGES CAN ENSURE***

Order to rescue a trafficked victim through police who is not less than sub- inspector rank. (Sec.-16-1)

Pass order for SAFE CUSTODY of the rescued or removed person. (Sec.-17-3)

Rescued or removed person can be sent to the protective home. (Sec.-19) Verify the genuineness of parents/guardians/husband through a reputed organisation before handing over the rescued or removed victim to them/him. (Sec.-17-A)

Direct the Probation officer to make a rehabilitation plan. (Sec.-)

### ***WHAT THE STATE SHOULD DO***

Appoint Special Police Officers or trafficking officers in each area a who shall not be below the rank of inspector (Sec.-13-1)

Form Advisory committee consisting five social activist including women to advise the Special Police Officer (Sec.-13-4)

Establish licensed protective homes and corrective institutions. (Sec.-21)

Maintain protective homes and corrective institutions with appropriate technically qualified persons, equipments and other facilities. (Sec.-21)

Both central and state governments can establish special courts after consultation with the concerned High court for speedy

### ***IMPORTANT JUDGMENTS***

Vishal Jeet vs. Union of India (AIR 1990 SC 1412, (1990) 3 SCC 318,)

States and other law enforcing agencies should take appropriate and speedy action to eradicate child prostitution. Governments should set up advisory committees to make suggestions to make rehabilitation programs and steps to rehabilitate the child victims. State should ensure that proper care and protection is provided to the girls and children. State should devise machineries of their own to ensure that the programs are properly implemented. State should set up an advisory committee to look at the customary practices closely. Prerana vs. State of Maharashtra and others. (Citation: 2003 BomCR(Cri), (2003) 2BOMLR562, 2003(2) MhLj105) Children rescued from brothels should be treated as “children in need of care and protection” under the Juvenile Justice (Care and protection of children) Act, 2000; No Magistrate can exercise jurisdiction over any person under 18 years of age irrespective of the fact whether that person is a juvenile in conflict with law or a child in need of care and protection. When such a person is found to be under 18 years of age, the magistrate must transfer the case to the Juvenile Justice Board or Child Welfare Committee as required. Any juvenile rescued from a brothel or found soliciting in a public place should only be released after the Probation Officer has completed an inquiry. No advocate can on its own appear before the Child Welfare Committee on behalf of a juvenile after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations

before the Child Welfare Committee through themselves or through an advocate. The said juvenile

should be released only to care and custody of a parent/guardian after they have been found fit by the Child Welfare Committee for the same. If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.

A lawyer representing the accused should not represent the victims.

### ***ELDERLY PEOPLE RIGHT:-***

“Old Age” is usually associated with declining faculties, both mental and physical, and a reduction in social commitments (including sport participation) of any person. The precise onset of old age varies culturally and historically. It is a social construct, rather than a biological stage. The persons in India, who have attained the age of sixty years and above, are defined as elderly for the purpose of availing old age benefits.

### ***ELDERLY AND HUMAN RIGHTS***

As per 2001 Census, total population of Senior Citizens (60+) was 7.7 crore, of which population of males and females was 3.8 crore and 3.9 crore respectively. The share of people aged 60 years and above in the total population. Population of senior citizens in Andhra Pradesh, Goa, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Orissa, Punjab, Tamil Nadu, Uttarakhand and Puducherry is more than the national average (7.5%). In rural areas, the percentage share of elderly population in total population is highest in the State of Kerala while Andaman & Nicobar Islands has the lowest share. In urban areas, the percentage share of elderly population in total population is highest in the state of Kerala while ***Arunachal Pradesh has the lowest share.***

### ***Constitutional Provisions***

In Constitution of India, entry 24 in list III of schedule VII deals with the Welfare of Labour, including conditions of work, provident funds, liability for workmen’s compensation, invalidity and Old age pension and maternity benefits. Further, Item No. 9 of the State List and item 20, 23 and 24 of Concurrent List relates to old age pension, social security and social insurance, and economic and social planning. Article 41 of Directive Principles of State Policy has particular relevance to Old Age Social Security. According to this Article, “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of undeserved want.

### ***Legal Provisions***

The right of parents, without any means, to be supported by their children having sufficient means has been recognised by section 125 (1) (d) of the Code of Criminal Procedure 1973, and Section 20(1&3) of the Hindu Adoption and Maintenance Act, 1956.

### ***Personal Laws:***

The moral duty to maintain parents is recognized by all people. However, so far as law is concerned, the position and extent of such liability varies from community to community.

### ***Hindu Laws:-***

The statutory provision for maintenance of parents under Hindu personal law is contained in Section 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents. As is evident from the wording of the section, the obligation to maintain parents is not confined to sons only; the daughters also have an equal duty towards parents. It is important to note that only those parents who are financially unable to maintain themselves from any source, are entitled to seek maintenance under this Act.

### ***Muslim Law:-***

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Under the Muslim law also children have a duty to maintain their aged parents. According to Mulla (Muslim title applied to a scholar or religious leader):

- (i) Children in easy circumstances are bound to maintain their poor parents, although the latter may be able to earn something for themselves.
- (ii) A son in stressed circumstances is bound to maintain his mother, if the mother is poor, though she may not be infirm.
- (iii) A son, although poor, is earning something, is bound to support his father who earns nothing. According to the Muslim law, both sons and daughters have a duty to maintain their parents under the Muslim law. The obligation, however, is dependent on their having the means to do so.

### ***Christian and Parsi Law:-***

The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under provisions of the Criminal Procedure Code.

### ***The Code of Criminal Procedure (Cr.P.C):***

The Cr.P.C 1973 is a secular law and governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents. The provision for maintenance of parents under the code was introduced for the first time in Section 125(1) of the Code of Criminal Procedure in 1973. As per the code if any person having sufficient means neglects or refuses to maintain his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his father or mother, at a monthly rate as the magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

### ***Government Policies and Schemes for Older Persons***

Over the years, the government has launched various schemes and policies for older persons. These schemes and policies are meant to promote the health, well-being and independence of senior citizens around the country. Some of these programmes have been enumerated below:

### ***National Policy for Older Persons***

The central government came out with the National Policy for Older Persons in 1999 to promote the health, safety, social security and well being of senior citizens in India. The Policy recognizes a person aged 60 years and above as a senior citizen. This policy strives to encourage families to take care of their older family members. It also enables and supports voluntary and non-governmental organizations to supplement the care provided by the family and provide care and protection to vulnerable elderly people.

The policy has identified a number of areas of intervention financial security, healthcare and nutrition, shelter, education, welfare, protection of life and property etc. for the well being of older persons in the country. The main objective of this policy is to make older people fully independent citizens.

This policy has resulted in the launch of new schemes such as:-

1. Strengthening of primary health care system to enable it to meet the health care needs of older persons
2. Training and orientation to medical and paramedical personnel in health care of the elderly.
3. Promotion of the concept of healthy ageing.
4. Assistance to societies for production and distribution of material on geriatric care.
5. Provision of separate queues and reservation of beds for elderly patients in hospitals.
6. Extended coverage under the Antyodaya Scheme with emphasis on provision of food at subsidized rates for the benefit of older persons especially the destitute and marginalized sections.

### ***National Council for Older Persons:-***

A National Council for Older Persons (NCOP) has been constituted by the Ministry of Social Justice and Empowerment to operationalize the National Policy on Older Persons. The basic objectives of the NCOP are to: Advise the Government on policies and programmes for

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olderpersons, Provide feedback to the Government on the implementationof the National Policy on Older Persons as well as on specific programme initiatives for older Persons advocate the best interests of older persons, Provide a nodal point at the national level for redressing the grievances of Older persons which are of an individual nature provide lobby for concessions, rebates and discounts for older persons both With the Government as well as with the corporate sector Represent the collective opinion of older persons to the Government Suggest steps to make old age productive and interesting Suggest measures to enhance the quality of inter-generational relationships. Undertake any other work or activity in the best interest of older persons.

### ***Integrated Programme for Older Persons:-***

Implemented by the Ministry of Social Justice & Empowerment this scheme provides financial assistance up to 90 per cent of the project cost to non-governmental organizations or NGOs as on



March 31, 2007. This money is used to establish and maintain old age homes, day care centres, mobile medicare units and to provide non-institutional services to older persons.

The Scheme of Integrated Programme for Older Persons (IPOP) is being implemented since 1992. Under the Scheme financial assistance up to 90% of the project cost is provided to Non-Governmental Organizations for running and maintenance of old age homes, day care centres and mobile medicare units. The Scheme has been revised w.e.f. 1.4.2008. Besides an increase in amount of financial assistance for existing projects, Governments/ Panchayati Raj Institutions/ Local Bodies have been made eligible for getting financial assistance. Several innovative projects have also been added as being eligible for assistance under the

***Scheme. Some of these are:-***

- 1.Maintenance of Respite and Continuous Care Homes;
- 2.Day Care Centres for Alzheimer's Disease/ Dementia Patients,
- 3.Physiotherapy Clinics for older persons.
- 4.Help-lines and Counseling Centres for older persons.
- 5.Sensitizing programmes for children particularly in Schools and Colleges;
- 6.Regional Resource and Training Centres
- 7.Training of Caregivers to the Older Persons;
- 8.Awareness Generation Programmes for Older Persons and Caregivers;
- 9.Formation of Senior Citizens Associations etc.

The eligibility criteria for beneficiaries of some important activities/ projects supported under the Scheme are:

- 1.Old Age Homes - for destitute older persons
- 2.Mobile Medicare Units - for older persons living in slums, rural and inaccessible areas where proper health facilities are not available
- 3.Respite Care Homes and Continuous Care Homes - for older persons seriously ill requiring continuous nursing care and respite

***PRESENT CONCESSIONS AND FACILITIES AVAILABLE***

d. The Ministry of Railways provides the following facilities to senior citizens:

- 1.Separate ticket counters for senior citizens at various (Passenger Reservation System) PRS centres if the average demand per shift is more than 120 tickets;
- 2.Provision of lower berth to male passengers of 60 years and above and female passengers of 45 years and above.
- 3.40% and 50% concession in rail fare for male passengers aged 60 years and above and female passengers aged 58 years and above respectively.
- 4.Wheel chairs at stations for old age passengers.

Central Government Health Scheme provides pensioners of central government offices the facility to obtain medicines for chronic ailments up to three months at a stretch. More details on Central Government Health Scheme.

***The Ministry of Health and Family Welfare provides for***

- (i) separate queues for older persons in government hospitals and
- (ii) geriatric clinic in several government hospitals.

The Ministry has taken a new initiative called the National Programme for the Health Care for the Elderly (NPHCE) in the Eleventh Five Year Plan. The programme has been implemented from the year 2010-11 with an approved outlay of ` 288 crore for the remaining period of the 11th Five Year Plan (i.e for 2010-11 and 2011-12). The objectives of the programme are to:

1. Provide preventive, curative and rehabilitative services to the elderly persons at various level of health care delivery system of the country
2. Strengthen referral system
3. Develop specialized man power and
4. Promote research in the field of diseases related to old age.

***The basic strategies of the programme are to:***

1. Strengthening of 8 Regional Geriatric Centres
2. Dedicated facilities at district hospital including 10 bedded wards
3. Dedicated services at PHC/ CHC level
4. Primary health care approach. The major components of the programme are:
5. To establish geriatric department in all the existing 8 Regional Geriatrics Centres
6. Strengthening healthcare facilities for elderly at various levels of 100 identified districts in 21 States of the country.
7. Regional Institutions to provide technical support to geriatric units at district hospitals whereas district hospitals will supervise and coordinate the activities down below at CHC, PHC and sub-centres. Physical targets set for achievement till March 2012
8. Establishment of Geriatric Department at the 8 Regional Geriatric Centres
9. To cover 30 districts in 2010-11 and another 70 districts in 2011-12 from 21 identified States:

- a. Establishment of Geriatric Units at the district hospitals
- b. Establishment of Rehabilitation Units at CHCs
- c. Establishment of Weekly Geriatric Clinic at PHCs

***Initiative taken and progress in 2010-11***

1. Programme initiated in 30 districts of 21 identified States.
2. ` 32.61 crore has been released to 19 States (covering 27 districts). Fund sanctioned for 3 districts of Jharkhand (Bokaro) and Uttar Pradesh (Raibareilly and Sultanpur) could not be released due to non-receipt of Bank Account details.
3. ` 8.59 crore have also been released to 4 Regional Geriatric Centres (S N Medical College, Jodhpur; Banaras Hindu University, UP; Guwahati Medical College, Assam; and Trivandrum

Medical College. Initiative taken and progress in 2011-12

4. Programme to be initiated in another 70 districts of 21 identified States.
5. Funds have been released to 7 States (Bihar, HP, Karnataka, Kerala, Sikkim, Punjab and Rajasthan) to take up 21 new districts.
6. Funds for Haryana and Chhattisgarh are being released.

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7. Funds have also been released to 2 Regional Geriatric Centres (Madras Medical College and Grants Medical College, Mumbai).

Fund is being released to Sher-i-Kashmir Institute of Medical Sciences, J&K.

8. Non Communicable Diseases (NCD) Cells at the Centre, State and District will implement and monitor the NPHCE. The National NCD Cell has been established at the Centre.

9. The National Mental Health Programme focuses on the needs of senior citizens who are affected with Alzheimer's and other old age problems like dementia, Parkinson's disease, depression and psycho geriatric disorders.

10. Tax Exemption on Interest: Senior citizens enjoy additional benefits in terms of saving schemes and interest earned on them. Interest is levied on the amount of money deposited for a particular time period. The rate of interest varies for different durations and is liable to change from year to year. Most banks provide a higher rate of interest to senior citizens than the rate available to the general public. The Reserve Bank of India has permitted higher rates of interest on saving schemes of senior citizens. Other than higher interest rates on deposits, senior citizens also enjoy exemptions on penalty rates for premature withdrawal of term deposits. Fixed deposits are sometimes withdrawn to tide over emergencies like sudden medical expenses and hospitalization. In this case, senior citizens are either exempted completely or charged a meagre percentage rate of their deposits.

A Senior Citizens Savings Scheme has been introduced by the Government through Post Offices in India which offers higher rate of interest on the deposits made by the senior citizen in post offices.

### ***Ministry of Finance***

The Ministry provides the following facilities for senior citizens:

1. Income tax exemption for Senior Citizens of 60 years and above up to ` 2.50 lakh per annum.
2. Income tax exemption for Senior Citizens of 80 years and above up to ` 5.0 lakh per annum.
3. Deduction of ` 20,000 under Section 80D is allowed to an individual who pays medical insurance premium for his/ her parent or parents, who is a senior citizen.
4. An individual is eligible for a deduction of the amount spent or 60,000, whichever is less for medical treatment of a dependent senior citizen.

### ***Insurance Regulatory Development Authority (IRDA)***

IRDA vide letter dated 25.5.2009 issued instructions on health insurance for senior citizens to CEOs of all General Health Insurance Companies which inter-alia includes:

1. Allowing entry into health insurance scheme till 65 years of age,

2. Transparency in the premium charged

3. Reasons to be recorded for denial of any proposals etc. on all health insurance products catering to the needs of senior citizens. Likewise the insurance companies cannot deny renewability without specific reasons.

### ***Department of Pensions***

The Department has set up a Pension Portal to enable senior citizens to get information regarding the status of their application, the amount of pension, documents required, if any, etc. The Portal also provides for lodging of grievances. As per recommendation of the Sixth Pay Commission, additional pension will be provided as per details given below to older persons:

Age 80+ Pension 20%

Age 85+ Pension 30%

Age 90+ Pension 40%

Age 95+ Pension 50%

Age 100+ Pension 100%

### ***Ministry of Civil Aviation***

The National Carrier, Air India, under the Ministry of Civil Aviation provides air fare concession up to 50% for male passenger aged 65 years and above and female passenger aged 63 years and above on the date of commencement of journey and on production of proof of age (Photo- ID) and nationality.

### ***Ministry of Road Transport and Highways***

The Ministry of Road Transport and Highways has taken initiatives for providing reservation of two seats for senior citizens in front row of the buses of the State Road Transport Undertakings. Some State Governments are giving fare concession to senior citizens in the State Road Transport Undertaking buses and are introducing Bus Models, which are convenient to the elderly.

### ***National Old Age Pension (NOAP) Scheme***

Under National Old Age Pension Scheme, in 1994 Central Assistance was available on fulfillment of the following criteria:-

1. The age of the applicant (male or female) should be 65 years or more.

2. The applicant must be a destitute in the sense that he/she has no regular means of subsistence from his/her own source of income or through financial support from family members or other sources.

The amount of old age pension varies in the different States as per their share to this scheme. This scheme is implemented in the State and Union Territories through Panchayats and Municipalities. Both Panchayats and Municipalities are encouraged to involve voluntary agencies as much as possible in benefiting the destitute elderly for whom this scheme is intended.

The Ministry is now administering the Indira Gandhi National Old Age Pension Scheme (IGNOAPS) under which Central assistance is given towards pension @ ` 200/- per month to persons above 65 years belonging to a household below poverty line, which is meant to be supplemented by at least an equal contribution by the States so that each beneficiary gets at least ` 400/- per month as pension.

As on 31.3.2011, the number of beneficiaries receiving central assistance was 171 lakh.

The Ministry has lowered the age limit from the existing 65 years to 60 years and the pension amount for senior citizens of 80 years and above has also been enhanced from ` 200/- to ` 500/- per month with effect from 1.4.2011. It is estimated that there are about 72.29 lakh additional persons living below the poverty line, who would become eligible to receive central assistance under IGNOAPS in the age group of 60-64 years and there are 26.33 lakh persons above the age of 80 years living below the poverty line, who would become eligible to receive enhanced central assistance @ 500 per month. The number of beneficiaries is expected to increase from 171 lakh to 243 lakh.

The decision of the Government of India regarding lowering the age limit from 65 to 60 years along with the revised guidelines have been issued to all States/ UTs vide letter no.J-11015/1/2011-NSAP dated 30th June 2011.

### ***Action Plan 2000-2005 for Senior Citizens***

The Action Plan 2000-2005 drawn up by the Ministry of Social Justice and Empowerment (MSJ&E) in consultation with the National Council for Older persons (NCOP) requires various Ministries to take action along the lines envisaged in it. The implementation of Action Plan with clear job responsibilities, practical ideas & time-frame for execution for the Ministries is required to be monitored by the NCOP & the Inter Ministerial Committee set up by the MSJ&E. Some of the Ministries have already initiated action on devising facilities & welfare schemes for the senior citizens, which have been listed as follows:

#### ***Ministry of Social Justice Empowerment***

- 1.Old Age Homes
- 2.Day Care Centres
3. Mobile Medicare Units through Grant in Aid to NGOs/ Voluntary Organizations

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#### ***Ministry of Finance***

- 1.Higher Rate of Interest
- 2.Personal Loan Scheme for Pensioners
- 3.Ashrya Deposit Plan
- 4.Higher Returns
- 5.Income Tax concession
- 6.Varistha Pension Bima Yojana
- 7.New Jeevan Akshay

#### ***Ministry of Civil Aviation***

- 1.50% Discount in Air Travel (subject to certain conditions)

#### ***Ministry of Railways***

- 30% Discount in Rail Travel

### ***Ministry of Road Transport Highway***

- 1.Road Travel concession in State Transport Buses
- 2.Chandigarh
- 3.Delhi
- 4.Kerala
- 5.Maharashtra
- 6.Punjab
- 7.Rajasthan

### ***Ministry of Law & Justice***

- 1.Free Legal Aid
- 2.Subordinate/High Courts
- 3.Supreme Court
- 4.Legal Aid Help-Line
- 5.Speedier Disposal of Cases
- 6.Maintenance of Older Parents

### ***Ministry of Rural Development***

- 1.Schemes Transferred to States (2002-03)
- 2.State Pension Scheme
- 3.Annapurna Scheme that is being implemented by the States/UT Administration, provides 10 kgs. of food grains per beneficiary per month free of cost to those senior citizens who remain uncovered under the old age pension scheme.

### ***Ministry of Consumer Affairs***

Antyodaya Programme which Food & Public Distribution provides the Below Poverty Line (BPL) families with food grains at the rate of 35 Kgs per family per month. The food grains are issued @3/- per kg. for rice and @2/- per kg. for wheat. The persons aged above 60 years from the BPL category were given priority for identification.

### ***Ministry of Health***

- 1.Sunday Clinic in Delhi
- j. The Maintenance and Welfare of Parents and Senior Citizen Act, 2007

#### Legislative Framework

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted in December 2007, to ensure need based maintenance for parents and senior citizens and their welfare. The Act provides for:-

- 1.Maintenance of Parents/ senior citizens by children/ relatives made obligatory and justiciable through Tribunals
- 2.Revocation of transfer of property by senior citizens in case of negligence by relatives

3. Penal provision for abandonment of senior citizens
4. Establishment of Old Age Homes for Indigent Senior Citizens
5. Adequate medical facilities and security for Senior Citizens The Act has to be brought into force by individual State Governments. As on 31.3.2011, the Act had been notified by 22 States and all UTs. The Act is not applicable to the State of Jammu & Kashmir, while Himachal Pradesh has its own Act for Senior Citizens. The remaining States yet to notify the Act are – Bihar, Meghalaya, Sikkim and Uttar Pradesh. States/ UTs which have notified the Act are required to take the following measures/steps for effective implementation of the Act:
  6. Frame Rules under the Act;
  7. Appoint Maintenance Officers;
  8. Constitute Maintenance and Appellate Tribunals.

The Act was enacted on 31st December 2007. It accords prime responsibility for the maintenance of parents on their children, grand children or even relatives who may possibly inherit the property of a Senior Citizen. It also calls upon the State to provide facilities for poor and destitute older persons.

### *Provisions of the Act*

1. Parents who are unable to maintain themselves through their own earnings or out of their own property may apply for maintenance from their adult children. This maintenance includes the provision of proper food, shelter, clothing and medical treatment.
2. Parents include biological, adoptive and step mothers and fathers, whether senior citizens or not.
3. A childless Senior Citizen who is sixty years and above, can also claim maintenance from relatives who are in possession of or are likely to inherit their property.
4. This application for maintenance may be made by Senior Citizens themselves or they may authorize a person or voluntary organization to do so. The Tribunal may also take action on its own.
5. Tribunals on receiving these applications may hold an enquiry or order the children/relatives to pay an interim monthly allowance for the maintenance of their Parents or Senior Citizen.
6. If the Tribunal is satisfied that children or relatives have neglected or refused to take care of their parents or Senior Citizen, it shall order them to provide a monthly maintenance amount, up to a maximum of ₹ 10,000 per month.
7. The State Government is required to set up one or more tribunals in every sub-division. It shall also set up Appellate Tribunals in every district to hear the appeals of Senior Citizens against the decision of the Tribunals.
8. No legal practitioner is required or permitted for this process.
9. Erring persons are punishable with imprisonment up to three months or a fine of up to rupees five thousand or with both.
10. State Governments should set up at least one Old Age Home for every 150 beneficiaries in a district. These homes are to provide Senior Citizens with minimum facilities such as food, clothing and recreational activities.
11. All Government hospitals or those funded by the Government must provide beds for Senior Citizens as far as possible. Also, special queues to access medical facilities should be arranged for them.

Beginning with the Universal Declaration of Human Rights, going on to the many International Instruments - including the Covenants on Economic Social and Cultural Rights, on Civil and Political Rights as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) - there are many references to the Rights of all. The Declaration on Social Progress and Development in 1969, for the first time specifically mentions old age in Article 11.

The UN adopted the 1st International Plan of Action on Ageing in Vienna in 1982, and it took until 1991 for the General Assembly to adopt the UN Principles for Older Persons (Resolution 46/91) and its 4 main themes independence, participation, care, self-fulfillment and dignity. The Committee on Economic, Social and Culture Rights adopted the General comment no 6 on the Economic and Social, and Cultural Rights of Older Persons (Document E/1996/22, Annex IV) in the year 1995.

In 1999, with the International Year of Older Persons (Document A/ 50/114), came the Conceptual Framework based on the Plan and Principles with 4 priority areas: (a) The situation of older persons, (b) individual lifelong development, (c) the relationship between generations, (d) the interrelationship of population, ageing and development. Finally, in Madrid in 2002, 20 years after, the 2nd World Assembly on Ageing (WAA) adopted unanimously a Political Declaration and an International Strategic Plan of Action on Ageing.

Both the documents include clear objectives and related actions to be taken: (i) to ensure the Rights of older persons, (ii) to protect older persons from “neglect, abuse and violence” in all situations addressed by the UN as well as (iii) to recognize “their role and contribution to society”.

The 2002 Madrid Plan of Action goes into great details on the situation of older persons and the Commission for Social Development was given the charge of implementation.

However, it is obvious that these precedents are not enough to give older persons their Rights as well as recognition of their contribution to society. Older persons are not only unrecognized but more and more excluded from their role in society, just to cite a few examples:

1. Migration of younger generations from developing countries or countries in transition with little or no welfare leaves behind older persons with no social, economic and care support, thus increasing their vulnerability, isolation, poverty, discrimination and lack of health care;
2. The galloping technological development increases the generation divide: in a 4 to 5 generation society, the 2-3 older generations are too often excluded and affected by the digital divide;
3. In HIV/AIDS pandemic, the contribution of older generations is today vital, their right to care for their orphaned grand-children could only benefit the socio-economic development but also the human reconstruction of society through restoring an identity, transmitting higher values and life skills;

In all issues, the Right to Development takes into account the generation-specificities of development over the life span and until the end of life.

To generate public attention concerning mainstreaming of older persons, the theme chosen for



the International Day of Older Persons in 2003 was 'Mainstreaming ageing: forging links between the Madrid International Plan of Action on Ageing and the Millennium Development Goals'. Various UN programmes, specialized agencies as well as NGOs have made efforts to mainstream the concerns of older persons into their respective agendas.

On the level of operative action, United Nations Population Fund (UNFPA) strives to mainstream ageing into its areas of work, namely reproductive health, gender issues and humanitarian responses to conflict situations. WHO's major mainstreaming objective is to focus on principles and methods of developing health care systems that are responsive to ageing. The 2004 report of the Secretary-General to the General Assembly recommends "to assign full-time focal points on ageing and provide them with adequate resources to further implementation, particularly through appropriate mainstreaming action."

### ***Initiatives by National Human Rights Commission (NHRC)***

Ministry of Social Justice had constituted the National Council for Older Persons (NCOP) on 11-1-1999 in which a representative from NHRC was included as a member. In its meeting held on 8th March, 2002, the Commission noted the details of the implementation of the Old Age Pension Scheme by the Central and State Governments and appointed Shri K. B. Saxena, IAS (Retd.), Former Advisor, Planning Commission for an in-depth study and recommendations.

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Shri K. B. Saxena submitted a Report with Suggested Interventions on "National Old Age Pension Scheme: Issues of Policy and Governance". The Report was published by NHRC in October 2007. The Ministry of Social Justice and Empowerment reconstituted them National Council for Older Persons (NCOP) on 1st August 2005 under the Chairmanship of Ministry for Social Justice & Empowerment. The Secretary General, NHRC is a member of the NCOP. The Council, presently, has 15 official Members and 33 non-official members. The Commission had organized "Health Week" Awareness

Lecture on following topics were delivered by the subject specialists in the field, which were very much informative with regard to the health of older persons:

1. Cardio-vascular Disease: How to Prevent Heart Attacks and Strokes
2. Diabetes in the Elderly - Myths and Reality
3. Vision Problems in the Elderly
4. Arthritis and Bone Management
5. Disease of the Prostate Gland
6. Specific Health Concerns of Older Women
7. Mental Health
8. Nutrition for the Elderly,

### ***The action plan envisages following role for the Commission:-***

1. Reviewing activities and performance of the institutions like old age home etc., through the Special Rapporteurs of the Commission;
2. Undertaking measures for publicity, awareness, familiarization, and sensitization of the public as well as Central and State Government Officers towards the older persons.

3.Promoting action research on issues relating to elderly. In Nov. 2010, the Commission has constituted a core Group on health, safety, and welfare of the elderly people under the chairmanship of Member-in-charge of the subject. The Core Group has been mandated to collect and compile data base on the magnitude of the problem and challenges faced by the elderly, review the activities of various Ministries/ Departments and give suggestions for qualitative improvement and change in the policies and programmes relating to senior citizens.

### **Issues and Challenges in Supporting the Older Poor in India**

- 1.The institution and functioning of the family as a support structure for older people is under severe pressure because of poverty, unemployment and changing attitudes and as such external support is needed to strengthen the family and provide supplementary income;
- 2.Since the older people are disadvantaged by stereotypes which largely discredit the poor older workers in the unorganized sector, necessary measures are required to create opportunities, increase the competence of older workers and counterbalance this negative image;
- 3.Incidence of widowhood among women even before reaching old age results in a serious disadvantaged experience of old age;
- 4.Lack of food is a major cause of poor health; priority for elderly in these circumstances receiving nutritional supplements is highly desirable.
- 5.The configuration, design and general physical environment in which older people live including housing, transport, work place and recreation could be made more user friendly to achieve greater independent personal mobility, safety and convenience;
- 6.Systematic and analytical studies on the needs of the elderly in India, both urban and rural, are required to add substance to the many preliminary and exploratory studies already made;
- 7.On account of the shortage of trained personnel in many specialist fields, the training of professionals to organize and promote services and programmes for the elderly needs to be given high priority, especially in such areas as family support, financial provisions, health care and community involvement.
- 8.The specialised health needs of the older people require greater attention through the expansion and integration of geriatric and gerontological training in the medical curricula, mainstreaming of geriatric services in the Primary Health Centres and geriatric rehabilitation in the integrated

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Community Development programmes as an integral component of community based services would ensure that the full range of support services is accessible to older people in the health system. At this age of their life, the senior citizens need to be taken care of and made to feel special. They are a treasure to our society. Their hard work has helped in the development of the nation. The youth of today can gain from their experience, in taking the nation to greater heights.

### **Consumer Rights**

#### ***Right to Safety***

Means right to be protected against the marketing of goods and services, which are hazardous to life and property. The purchased goods and services availed of should not only meet their immediate needs, but also fulfill long term interests. Before purchasing, consumers should insist

on the quality of the products as well as on the guarantee of the products and services. They should preferably purchase quality marked products such as ISI, AGMARK, etc

### ***Right to be Informed***

Means right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices. Consumer should insist on getting all the information about the product or service before making a choice or a decision. This will enable him to act wisely and responsibly and also enable him to desist from falling prey to high pressure selling techniques.

### ***Right to Choose***

Means right to be assured, wherever possible of access to variety of goods and services at competitive price. In case of monopolies, it means right to be assured of satisfactory quality and service at a fair price. It also includes right to basic goods and services. This is because unrestricted right of the minority to choose can mean a denial for the majority of its fair share. This right can be better exercised in a competitive market where a variety of goods are available at competitive prices

### ***Right to be Heard***

Means that consumer's interests will receive due consideration at appropriate forums. It also includes right to be represented in various forums formed to consider the consumer's welfare. The Consumers should form non-political and non-commercial consumer organizations which can be given representation in various committees formed by the Government and other bodies in matters relating to consumers

### ***Right to Seek Redressal***

Means right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. It also includes right to fair settlement of the genuine grievances of the consumer. Consumers must make complaint for their genuine grievances. Many a times their complaint may be of small value but its impact on the society as a whole may be very large. They can also take the help of consumer organisations in seeking redressal of their grievances.

### ***Right to Consumer Education***

Means the right to acquire the knowledge and skill to be an informed consumer throughout life. Ignorance of consumers, particularly of rural consumers, is mainly responsible for their exploitation. They should know their rights and must exercise them. Only then real consumer protection can be achieved with success.

### ***Right to Freedom***

The right to freedom is one of the most important fundamental right that have been granted to us by the founders of Indian Constitution. This right allow every citizen of India to be free from the ancient form of slavery. This fundamental right is described in the constitution as:

All citizens shall have the right-  
To freedom of speech and expression;  
To assemble peaceably and without arms;  
To form associations or unions;  
To move freely throughout the territory of India;  
To reside and settle in any part of the territory of India;  
to practise any profession, or to carry on any occupation, trade or business.

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of \_16[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of \_16[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of \_16[the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

Nothing in \_17[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, \_18[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,- the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

## Anticipatory Bail

### Obtaining Bail

The steps that a person can take when an FIR has been lodged against him. The first thing a person has to do is to enquire as to whether the FIR has been lodged for a bailable or a non-bailable offence. A bailable offence is one in which bail may be asked for as a matter of right. A non-bailable offence is one where only in certain contingencies will bail be granted. Depending on the kind of offence that the police have registered, a person should apply for bail under the relevant provisions of the Code of Criminal Procedure, 1973 (CrPC). If a person has been

accused in the FIR of an offence other than a non-bailable offence, he can move a bail application in the High Court or sessions court under Sec 436 of the Criminal Procedure Code. Sec 436 provides that when any person other than a person accused of a non bailable offences is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such a person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance. Persons within S 436 cannot be taken into custody unless they are unable or unwilling to offer bail or execute a bond.

This section contemplates two kinds of security –

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A personal recognizance  
Security with sureties.

### **Anticipatory bail**

In case of a FIR being lodged for a non-bailable offence, person who apprehends an arrest should immediately apply for Anticipatory Bail. Anticipatory bail is a direction to release a person on bail, issued even before the person is arrested.

Sec 438 of the Criminal Procedure Code deals with the concept of Anticipatory Bail. Sec 438(1) provides that when any person has reason to believe that he may be arrested on an accusation of having committed a non bailable offence, he may apply to the High Court or the Court of Session for a direction under this section, and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

The distinction between an ordinary bail and anticipatory bail is that the former being after arrest means release from custody of police, the latter being in anticipation of arrest is effective at the very moment of arrest.

Sec 437 of the Criminal Procedure Code deals with the power of courts other than High Court or court of session in the matter of granting or refusing ordinary bail in a non bailable offence. Sec 439 of the Criminal Procedure Code deals with the special power of the High Court or Court of Session regarding bail. The discretionary powers of the High Court or the court of sessions under this section is considerably wider than the powers of the magistrate in S437.

In conclusion it can be said that the most important step for a person against whom a FIR has been lodged is to obtain appropriate Bail. It would be advisable that legal counsel be hired to obtain such bail.

### ***When can a person apply***

When any person apprehends that there is a move to get him arrested on false or trump up charges, or due to enmity with someone, or he fears that a false case is likely to be built up against him, He has the right to move the court of Session or the High Court under section 438 of the code of Criminal Procedure for grant of bail in the event of his arrest, and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

### ***Conditions that may be imposed by the court***

The High Court or the Court of Session may include such conditions in the light of the facts of the particular case, as it may think fit, including:

- (a) a condition that the person shall make himself available for interrogation by the police officer as and when required;
- (b) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (c) a condition that the person shall not leave India without the previous permission of the court.

### ***Arrest at later point of time.***

If such person is thereafter arrested, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail and the magistrate taking cognizance of such offence decides that warrant should be issued against that person, he shall issue a bailable warrant in conformity with the direction of the court granting anticipatory bail.

### ***Anticipatory bail is not a blanket order for not to be arrested.***

The applicant must show by disclosing special facts and events that he has reason to believe, that he may be arrested for a non-bailable offence so that the court may take care to specify the offence or offences in respect of which alone the order will be effective and it is not a blanket order covering all other offences.

### ***Cancellation.***

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An accused is free on bail as long as the same is not cancelled. The High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody on an application moved by the complainant or the prosecution.

## ***Sexual Harassment***

### ***What is sexual harassment?***

For the first time, behaviour that can be considered sexual harassment has been explicitly legally defined. The apex court judgment of 14th August'1997 contains guidelines prohibiting sexual harassment. As defined in the guidelines: "Sexual harassment includes such unwelcome sexually determined behaviour such as: Physical contact or advances A demand or request for sexual favours Sexual remarks Showing pornography Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."

### ***To whom do these guidelines apply?***

It is the duty of the employer or other responsible persons in work places or other institutions to prevent sexual harassment and to provide procedures for resolution of complaints. Women who draw a regular salary, receive an honorarium, or work in a voluntary capacity – in the government; private sector or unorganized sector come under the purview of these guidelines.

### ***Preventive steps.***

Must be undertaken by employers or other responsible authorities in public or private sectors as follows: Express prohibition of sexual harassment should be notified and circulated. Prohibition of sexual harassment should be included in the rules and regulations of government and public sector bodies. Private employers should include prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. Appropriate work conditions should be provided for work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

### **Complaints procedure.**

Employers must provide a Complaints Committee headed by a woman and not less than half of its members should be women. Complaints Committee should include an NGO or other organization that is familiar with the issue of sexual harassment. Complaint procedure must be time bound. Confidentiality of the complaint procedure has to be maintained. Complainants or witnesses should not be victimised or discriminated against while dealing with complaints. The Committee should make an annual report to the government department concerned of the complaints and the action taken by them.

### ***Disciplinary action.***

When the offence amounts to misconduct under service rules, appropriate disciplinary action should be initiated. When such conduct amounts to an offence under the Indian Penal Code, the employer shall initiate action by making a complaint with the appropriate authority. The victims of sexual harassment should have the option to seek transfer of the perpetrator (from the existing place of work/department) or their own transfer.

### **Other provisions of the guidelines.**

Sexual harassment should be discussed at worker's meetings, employer-employees meetings and other appropriate forums. Guidelines should be prominently notified to create awareness of the rights of female employees. The employer should assist persons affected in cases of sexual harassment by outsiders or third parties.

### **Related enactments.**

The following provisions in the IPC and labour laws are outlined below:

## **I. Indian Penal Code**

Section 209, IPC - Obscene acts and songs - Whoever, to the annoyance of others: a) does any obscene act in any public place or b) sings, recites or utters any obscene song, ballad or words in or near any public place shall be punished with imprisonment of either description for a term which may extend to 3 months or with fine or both. Section 354, IPC - Assault or criminal force to a woman with the intent to outrage her modesty - whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both.

Section 509, IPC

Word, gesture or act intended to insult the modesty of a woman - whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both.

## ***II. Industrial Disputes Act***

Rule 5 Schedule 5 - Cases can (and have been) argued on the basis of unfair labour practices listed in this schedule. Such cases can be filed if an employee suffers unfair dismissal or denial of employment benefits as a consequence of the rejection of sexual advances. However, this would only be applicable in quid pro quo cases.

Civil suit – can be filed for damages under tort laws. That is, the basis for filing the case would be mental anguish, physical harassment, loss of income and employment caused by the sexual harassment.

## ***III. Indecent Representation of Women (Prohibition) Act (1987)***

Although it is not known to have been used in cases of sexual harassment, the provisions of this act have the potential to be used in two ways. First, if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing "indecent representation of women"; they are liable for a minimum sentence of 2 years.

Second, a "hostile working environment" type of argument can be made under this act. Section 7 (Offenses by Companies) – holds companies where there has been "indecent representation of women" (such as the display of pornography) on the premises guilty of offenses under this act.

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