QUESTIONNAIRE RELATED TO THE RIGHT OF ANYONE DEPRIVED OF HIS OR HER LIBERTY BY ARREST OR DETENTION TO BRING PROCEEDINGS BEFORE COURT, IN ORDER THAT THE COURT MAY DECIDE WITHOUT DELAY ON THE LAWFULNESS OF HIS OR HER DETENTION AND ORDER HIS OR HER RELEASE IF THE DET ENTION IS NOT LAWFUL.

1) **Please describe your national institution’s concern and practice with the right of anyone deprived of his or her liberty to arrest or detention to bring proceedings before court.**

The National Human Rights Commission of India has been mandated to promote and protect human rights in the country. Before discussing the concern and practice of NHRC India regarding the right of anyone deprived of his or her liberty to arrest or detention to bring proceedings before the Court, it is important to look into the following provisions under the Constitution of India and other existing laws which are relevant in the present context:-

* **The Constitution of India**

Article 22 – Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody **shall be produced** before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

The Supreme Court of India under Article 32 of Constitution of India and the High Courts in States under Article 226 of Constitution of India have the powers to issue writs in the nature of Habeus Corpus for enforcement of any of the fundamental rights.

* **The Criminal Procedure Code**

**Section 50**

**Person arrested to be informed of ground of arrest and the right to bail.**

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

**Section 50 A**

**Obligation of person making arrest to inform about the arrest etc., to a nominated person. –**

(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrest ed person for the purpose of giving such information**.**

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub section (3) have been complied with in respect of such arrested person.

**Section 56**

**Person arrested to be taken before Magistrate or officer in charge of police station.**

A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

**Section 57**

**Person arrested not to be detained for more than twenty-four hours.**

No police officer shall detail in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s court.

* **The Legal Services Authority Act 1987**

The Act provides constitution of **National**, **State** and **District level Legal Services Authority** to provide **free** and **competent** legal services to the weaker section of the society to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities.

* In case of malicious prosecution a victim can file suit for damages before the competent court.
* In case of unlawful detention the victim/any other person on his behalf can approach the Magistrate in his area for his release.

The Supreme Court of India has denounced the practice of unlawful detention in many decisions. One leading case in this regard is DK Basu v/s State of West Bengal.

Keeping in view the complaints on illegal arrests and unlawful detention the NHRC India has issued guidelines on arrest which are enclosed as Annexure ‘A’**.**

As evident from above there are sufficient legal provisions available to a person in unlawful detention in India to bring the proceedings before the Court.

Further,NHRC India has been mandated under Section 12(a) of Protection of Human Rights Act 1993;

a) to inquire suo motu or on petition presented to it by a victim or any person on his behalf { or on a direction or order of any court}, into complaint of

i) violation of human rights or abetment thereof; or

ii) negligence in the prevention of such violation, by a public servant;

The NHRC India ensures that the public servants perform their duties as per laid down constitutional provision and laws. Any deliberate omission/negligence on the part of public servant in non implementation of the laws is taken to be as an act of violation of human rights of the victim and the NHRC India inquires into the same. As a result of NHRC’s intervention relief has been provided to many victims. NHRC ensures that arrests are made according to law and that no detention is unlawful.

The Commission has in this connection kept itself alive to the spirit of various United Nations instruments too. Article 9 of the International Covenant on Civil and Political Rights makes it explicit that everyone has the right to liberty and security of person and nobody shall be subjected to arbitrary arrest or detention. It further mandates that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985 makes it an obligation of the State to ensure that in its legal system, the victim of an ac t of torture obtains redress and has an enforceable right to compensation, including the means for as full a rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. Principle 35 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), also prescribes for remedy of compensation, incase of any damage incurred because of acts of omission by public officials contrary to the rights contained in the Body of Principles.

In the case of Sanabhai Bhulabhi Machhar, the Commission considered the death occurred in suspicious circumstances and the police officials on duty did not exercise the due diligence expected of them. This case is a significant illustration of the widened scope of the meaning, which the Commission has given to the concept of immediate interim relief.

The Commission took the position that it is not required in a case to establish that the public servant was negligent in preventing the violation of human rights. It is sufficient to bring the case within the doctrine of *res ipsa loquitor* if the concerned public servant has not exercised due diligence. The Commission has thus enhanced the meaning of Section 18(1) and has broadened the horizons of S.18(3) of the Act.

***2)* How far is the right of anyone deprived of his or her liberty to bring proceedings before court part of the laws of your country?**

The Constitution of India and other laws as mentioned in the aforesaid paragraphs are sufficient enough to enable the victim/any other person to bring the proceedings before the Court. For example, it is imperative as per constitutional provision for the State to produce any person who is arrested before the nearest Magistrate within 24 hours of his arrest. Though there are cases of deliberate omission/negligence by public servants in the implementation of these laws/rights, NHRC India has played a very important role in curbing such violations. This has been done by recommending relief to the victims and recommending action against the culprits.

**3**) ***Please describe the most common problems individuals face in their realization of the right in your country.***

Some of the most common problems that the individual face in bringing proceedings before the Court of Law are as under:

(A) In India, there have been many cases where the police have been accused of unlawful detention and custodial torture. People are fearful of the police and the are afraid of resorting to any action which antagonizes the police force. Therefore, knowingly they don’t take any step forward to seek justice. They feel that in such cases they will have to bear the brunt of police anger. This is one major reason for non – realization of this right in the country.

(B) A large number of vacancies in the judiciary has also resulted in delay in bringing the proceedings before the Court of Law.

(C ) At the grass root level, people are unaware about the provisions of Law and the legal aid available to them in case of their victimization.

***4) How does your national institution assist individuals who do not enjoy the right to bring proceedings before the court?***

The National Human Rights Commission (NHRC) India has been a pioneer institution in assisting the common man in protection and promotion of their rights. The Commission ensures that every individual is given equal protection of laws.

When NHRC India receives a complaint of unlawful detention or illegal arrest, an inquiry into the same is carried out in terms of the provisions of the Protection of Human Rights Act 1993. In many cases the Commission also deputes its own investigation team to conduct on the spot inquiry. After a detailed inquiry into the incident and analysis of the report received from the concerned authorities, the Commission recommends relief/action.

The Commission has also come across many cases where the accused were detained but were not produced before the Court as required under the law. The Commission intervened into such cases and because of such interventions, the public servants were forced to observe the provisions of law.

The efficacy of the NHRC India is evident from the fact that during the period 01.04.2010 to 30.09.2013 3949 cases of illegal arrest and 4467 cases of unlawful detention by the police have been registered in the Commission. ***The Commission after detailed inquiry into the matter has recommended compensation in 45 cases of illegal arrest and 67 cases of unlawful detention.*** The Commission has also recommended action against the erring public servant in 3 cases of illegal detention and 5 cases of unlawful detention. ***The total compensation paid in cases of unlawful detention and illegal arrest during the period 01.04.2010 to 30.09.2013 was more than Rs. 55 lacs.***

NHRC India has also sensitized and trained police officers/other public servant to abide by the laws in the country and provide help to the persons who need protection of such laws.

***5)*  Does your national institution assist your country in the realization and implementation of this right? If yes, please explain how*.***

As explained in paras above.

***6) How would the general principles and guidelines that the Working Group has been entrusted to elaborate on the realization of the right to bring proceedings before court best support your work? &***

***7) In your view, how would these general principles and guidelines best support your country***

The Constitution of India and other extant laws, if properly abided by and implemented, are strong enough to enable any victim of unlawful detention to bring his proceedings before the Court. NHRC of India further helps them in protecting their rights.

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