

About the Book

In recent years, there has been enhanced awareness of human rights in the country following the orders of the Supreme Court and activities of the National Human Rights Commission, State Human Rights Commissions, non-governmental organisations, human rights activists, United Nations and its specialised institutions. There have also been exciting developments both at the national and international level, be it at the legislative front or where institutional mechanisms on human rights are concerned. For instance, the International Criminal Court has started working since 2002 and a new international convention on rights of persons with disabilities and disappearances have been adopted. The new and improved Human Rights Council has been established and is now more than one year old. At the domestic level too, there have been interesting developments which include, among others, the Right to Information Act, National Rural Employment Guarantee Act, legislations which tackle domestic violence against women and enable the setting up of commissions for the protection of the rights of children. Moreover, human rights courses have been introduced by over 35 Universities.

Human Rights Handbook carries an analysis of jurisprudence, carefully selected materials, and systematically arranged topics, with an emphasis on international and domestic standards on civil and political rights as well as economic, social and cultural rights and relevant case law; rights of vulnerable sections; contemporary issues such as terrorism, right to environment and right to development; newer trends in international human rights law; ratification and reporting history of India as well as reservations and declarations entered by India to various Human Rights Conventions. To assist students and researchers who are keen on further learning, a select bibliography and a list of useful websites have also been given. In addition to students of law, international relations and political science, it will also prove useful to lawyers, human rights activists, teachers and all others interested in this field.

About the Author

YSR Murthy is presently working as Director (Research) in the Policy Research, Projects and Programmes Division of the National Human Rights Commission of India. In this capacity, he oversees, amongst others, issues relating to public health, disability, rights of mentally ill persons, HIV/AIDS, international human rights conventions, refugees, migrants and internally displaced persons and training programmes in human rights. Mr Murthy has been working with the National Human Rights Commission for the past 11 years in different capacities. He holds a Masters Degree in Human Rights from the University of London and is a recipient of British Chevening Scholarship. He has published a number of articles and books on human rights, the most notable among them being *Halsbury's Laws of India—Human Rights*. He edited NHRC Newsletter 'Human Rights' for over three years between 1994-97 and NHRC Annual Journal on Human Rights for three years between 2002-2004. He is on the visiting Faculty of the Indian Law Institute, the Indian Society of International Law, Jamia Millia Islamia and is also associated with the Jawahar Lal Nehru University in research evaluation.



Human Rights Handbook

YSR Murthy

Human Rights Handbook

YSR Murthy



ISBN 978-81-8038-157-7



9 788180 381577
Rs. 695



341.48
MU-H
000185

 LexisNexis®
Butterworths

 LexisNexis®
Butterworths

Right to Information



S P Sathe

LexisNexis Butterworths

DEMOCRACY HUMAN RIGHT AND THE RULE OF L

Essays in Honour of Nani Palkhivala



Volume 1

www

Human Rights Handbook



YSR Murthy

Director (Research), National Human Rights Commission

 **LexisNexis®**
Butterworths

341.48
MU-H

For **Editorial Questions** concerning this publication, please contact:

Tel: 011-43559999

For **Customer Assistance**, please contact:

Tel: 011-43559999

Email: help.in@lexisnexis.com

Fax: 011-41513388

You can also visit us at:

LexisNexis,
C-33, Inner Circle,
Connaught Place,
New Delhi-110001.

© LexisNexis (A Division of Reed Elsevier India Pvt Ltd) 2007

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

YSR Murthy, *Human Rights Handbook*, LexisNexis Butterworths (A Division of Reed Elsevier India Pvt Ltd), New Delhi, India, 2007.

ISBN: 978-81-8038-157-7



General Manager
Aalok Wadhwa

Publishing Manager
Pankhuri Shrivastava

Senior Legal Editors
Richa Kachhwaha
Sheeba Bhatnagar

Typeset by Abhi Graphics, A-125, Dilshad Colony, Delhi 110095.

Printed by Rakmo Press, C-59, Okhla Industrial Area, Phase-I, New Delhi-110020.

The publisher has taken all care and effort to ensure that the legislative provisions reproduced here are accurate and up to date. However, the publisher takes no responsibility for any inaccuracy or omission contained herein or for advice, action or inaction based hereupon. Reference must be made to the Official Gazette issued by the Government of India for the authoritative text of any Act, Rule, Regulation, Notification or Order.

J S VERMA

FORMER CHIEF JUSTICE OF INDIA
& FORMER CHAIRMAN, NATIONAL HUMAN RIGHTS COMMISSION

Foreword

Even though human rights are universal, yet they are not universally respected and appreciated. Linkage between human rights and human development is established, and so also the dependence of their standards on the quality of governance, of which democracy is the best form. Thus, the emphasis now is on good governance transcending to 'humane governance', which is people centric and also owned by the people.

A recognised principle of human rights jurisprudence imposes the duty on the State to protect and to promote the human rights of everyone within its jurisdiction. The people have the right to demand the compliance of this state responsibility. It is therefore, imperative that the people are knowledgeable of human rights, and they are also empowered to secure them for their full development.

A ready reckoner of human rights for experts and laymen alike is a felt need for a long time. This 'Handbook on Human Rights' would serve that purpose, admirably. It defines 'human rights' explaining the concept and its historical origin; and deals with the classification of human rights, their significance, interdependence and indivisibility, inter-se priority in case of conflict, and those non-derogable in any event. The updating of the work with chapters on contemporary issues and the new trends adds to its utility.

The author emphasises that national security and individual rights are not inconsistent concepts to neutralise the bogey raised after the terrorist attacks of 9/11 in the USA that combating terrorism is not possible with respect for individual rights. The book would clear the misapprehension. In this respect also, it is a timely publication.

A treatment of the corresponding provisions in the Constitution of India in *pari materia* with those of the International Human Rights Law is useful

Abbreviations

GA	General Assembly (UN)
UN-HABITAT	United Nations Centre for Human Settlements
HIV	Human immunodeficiency virus
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILO	International Labour Organisation
NGO	Non-governmental Organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAIDS	United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNICEF	United Nations Children's Fund
WFP	World Food Programme
WHO	World Health Organisation

Contents

<i>Foreword</i>	<i>v</i>
<i>Preface</i>	<i>vii</i>
<i>Abbreviations</i>	<i>ix</i>
<i>Contents</i>	<i>xi</i>
<i>Table of Cases</i>	<i>xix</i>

CHAPTER 1

Human Rights	1
1.1 INTRODUCTION	1
1.2 CLASSIFICATION OF HUMAN RIGHTS	4
1.3 HUMAN RIGHTS IN INDIA	5
1.4 OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW	6
Conventions on Terrorism and War	8
Labour Conventions	9
Conventions to Which India is Not a Party and a Critique	11
1.5 RELATIONSHIP BETWEEN INTERNATIONAL LAW AND NATIONAL LAW	12
1.6 RATIFICATION HISTORY OF HUMAN RIGHTS TREATIES: INDIA	16
1.7 DECLARATIONS, RESERVATIONS ENTERED BY INDIA TO HUMAN RIGHTS CONVENTIONS	17
1.8 REPORTING HISTORY OF HUMAN RIGHTS TREATIES	22

CHAPTER 2

Civil and Political Rights	27
2.1 BRIEF OVERVIEW	27
2.2 RIGHT TO LIFE	28
Introduction	28
Brief Overview of International Human Rights Law Provisions Relating to Right to Life	28

Human Rights Committee on Right to Life.....	34
Human Rights Committee's Jurisprudence on 'Right to Life'	36
2.3 DOMESTIC STANDARDS	36
Right to Shelter	38
Right to Livelihood.....	38
2.4 DEATH PENALTY	39
International Standards	39
Human Rights Committee on Death Penalty	40
Evolution in Treatment of Death Penalty	42
Constitutionality of Death Penalty	42
Abolition of Death Penalty	42
Related Issues.....	43
2.5 FREEDOM FROM TORTURE.....	43
Introduction	43
Brief Overview of International Standards on Torture	43
Definition of 'Torture'	45
Objective of the Convention Against Torture	46
Significant Features of the Convention Against Torture.....	46
India as Signatory to Convention Against Torture	47
Optional Protocol	47
Torture Under Other International Human Rights Conventions	47
International Humanitarian Law on Torture.....	48
Non-binding International Standards Relating to Torture	49
Human Rights Committee's Jurisprudence on Torture	51
Death Row Phenomenon	53
Method of Execution	54
Extradition, Expulsion, Refoulement	54
Corporal Punishment	55
The Expanding Understanding of the Scope of Torture	55
2.6 DOMESTIC LAWS	56
2.7 INDIAN CASE LAW	57
Arrest.....	57
Custodial Violence.....	58
Preventive Measures.....	58
Compensation	59

The National Human Rights Commission's Guidelines and Instructions on Torture.....	59
2.8 RIGHT TO LIBERTY AND SECURITY OF PERSON AND HUMANE TREATMENT OF PERSONS DEPRIVED OF LIBERTY	60
International Standards	60
Human Rights Committee's Jurisprudence	63
Domestic Standards.....	65
2.9 RIGHT TO FAIR TRIAL	75
International Standards	75
Human Rights Committee on Right to Fair Trial	76
Domestic Standards.....	77
2.10 FREEDOM OF CONSCIENCE AND RELIGION	80
International Standards	80
Human Rights Committee's Jurisprudence on Freedom of Conscience and Religion	82
Domestic Standards.....	84
Case Law	86
2.11 FREEDOM OF SPEECH AND EXPRESSION.....	89
Introduction	89
International Standards	89
Human Rights Committee's Jurisprudence	92
Domestic Standards.....	93
2.12 RIGHT TO INFORMATION ACT 2005.....	98
Introduction	98
Salient Features of the Right to Information Act 2005	98
The Right to Information Act 2005: Processes	99
Obligations of Public Authorities	99
What is Not Open for Disclosure	100
 CHAPTER 3	
Economic, Social and Cultural Rights.....	103
3.1 INTRODUCTION	103
3.2 INTERNATIONAL STANDARDS	104
3.3 OBLIGATIONS OF STATES PARTIES	105
General Obligations	105
Progressive Obligation	106
3.4 RIGHT TO WORK.....	107

International Standards	107
Domestic Standards	108
Interpretation	109
Right to Just and Fair Conditions of Work	109
Sexual Harassment of Women at Work Place	113
The Vishaka Judgment	114
National Rural Employment Guarantee Act 2005	115
3.5 RIGHT TO FORM AND JOIN TRADE UNIONS	116
Right to Strike	117
3.6 RIGHT TO SOCIAL SECURITY AND SOCIAL INSURANCE	119
International Conventions	119
Domestic Standards	120
3.7 RIGHT TO PROTECTION AND ASSISTANCE FOR FAMILIES	122
Introduction	122
National Laws	122
International Safeguards	123
Domestic Standards and Case Law	123
Trafficking in Women and Children	126
3.8 RIGHT TO ADEQUATE STANDARD OF LIVING	129
Introduction	129
Right to Food	130
International Standards	130
Committee on Economic, Social and Cultural Rights on the Right to Food	132
Indian Standards	133
Right to Water	135
Right to Housing	138
Critique Of Indian Judgments	147
Right to Health	148
Elaboration of Normative Content of Right to Health by Treaty Bodies	151
Right to Education	157
Committee on Economic, Social and Cultural Rights on the Normative Content of Right to Education	159
Domestic Standards and Case Law	161
Right to Culture and to Benefit From Scientific Progress	163

CHAPTER 4	
Rights of Vulnerable Sections	165
4.1 INTRODUCTION	165
4.2 WOMEN	166
Introduction	166
International Standards	167
General Recommendations made by Committee on the Elimination of Discrimination Against Women	169
Domestic Standards	169
Apex Court on Women's Rights	171
4.3 CHILDREN	175
International Standards	175
General Comments Issued by the Committee on the Rights of the Child	177
Domestic Standards	178
Case law Relating to Rights of Children	180
4.4 SCHEDULED CASTES AND SCHEDULED TRIBES	184
Introduction	184
International Standards	184
Does Caste Discrimination Really Come Under the Purview of ICERD?	186
General Comments Issued by CERD	188
Constitutional Safeguards and Other Legislative Measures Against Discrimination	189
Judicial Trends	193
4.5 MINORITIES	194
Introduction	194
International Human Rights Instruments	195
Domestic Perspective on Minorities	198
Case Law	201
4.6 PERSONS WITH DISABILITIES	202
Introduction	202
Overview of International Legal Framework	203
Overview of Domestic Legal Framework	206
Judicial Orders	207
4.7 HIV/AIDS AND HUMAN RIGHTS	211
Introduction	211
Human Rights	212

International Standards	213
Domestic Standards	214
Judicial Trends	216
4.8 DENOTIFIED AND NOMADIC TRIBES	217
Introduction	217
Role of the National Human Rights Commission	218
4.9 ELDERLY PERSONS	218
Introduction	218
International Legal Provisions	218
Domestic Standards	219
4.10 MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS BILL 2006	220
 CHAPTER 5	
Contemporary Issues	221
5.1 TERRORISM AND HUMAN RIGHTS	221
Introduction	221
International Standards	222
Derogation of Rights	224
Security Council on Terrorism	225
Counter-Terrorism Committee	226
Human Rights Committee on Terrorism	228
General Assembly on Terrorism	228
United Nations Treaty Bodies and Charter Bodies on Terrorism	231
Conventions on Terrorism	232
European Court of Human Rights on Terrorism	238
Domestic Standards	239
Opinion of the National Human Rights Commission	245
5.2 RIGHT TO DEVELOPMENT	256
Introduction	256
Human Rights and Human Development	257
Right to Development as a Human Right	257
Declaration on Right to Development	258
Independent Expert on Right to Development	259
5.3 RIGHT TO CLEAN ENVIRONMENT	261
International Law	261
Impact of Warfare on Environment	264

Non-international Armed Conflict	267
Domestic Legal Framework	268
Case law	269
International Cases	271
 CHAPTER 6	
Newer Trends in International Human Rights Law	275
6.1 CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES	275
Introduction	275
Rights Covered in the Convention	277
Guiding Principles of the Convention	281
Monitoring of the Implementation of the Convention	281
6.2 INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE	282
Introduction	282
International Convention for the Protection of All Persons from Enforced Disappearance	283
Requests for Urgent Action on Disappearances	289
6.3 UNITED NATIONS CONVENTION AGAINST CORRUPTION	291
Convention Highlights	291
NHRC's Recommendations on Corruption and Good Governance	294
6.4 HUMAN RIGHTS COUNCIL	295
Introduction	295
Salient Features	296
Main Objectives of the Human Rights Council	297
Functions of the Human Rights Council	297
Composition of the Council	298
Key Differences With the Commission on Human Rights	299
Institution-Building of the Council	300
Universal Periodic Review Mechanism	300
Special Procedures	300
Human Rights Council Advisory Committee	301
Complaint Procedure	301
6.5 INTERNATIONAL CRIMINAL COURT	302
Historical Background	302

Rome Statute of International Criminal Court 305
 Structure of the International Criminal Court 306
 Jurisdiction and Admissibility 306
 Working of the International Criminal Court 307
 Complementarity 308
 Bases of Jurisdiction 308
 No Immunity 308
 Positive Features 309
 Negative Features 309
 Conclusion 310

ANNEXURE I

Select List of Human Rights Websites 311
Bibliography 315
Index 317

Table of Cases

A

Acharya Jagdishwaranand Avadhuta v
 Commissioner of Police, Calcutta, 87
 Aeltemesh Rein v Union of India, 68
 Ahmedabad Municipal Corpn v
 Nawab Khan Gulab Khan, 147
 Air India Statutory Corpn v United
 Labour Union, 109
 AK Gopalan v Noordeen, 95
 AK Gopalan v State of Madras, 37
 Ali Akbar v United Arab Republic, 12
 All Kerala Parents Association v State of
 Kerala, 208
 Andhra Pradesh Pollution Control
 Board II v MV Naidu, 137, 270
 Antonaccio v Uruguay, 51
 Anwar v State of Jammu & Kashmir, 94
 Apparel Export Promotion Council v AK
 Chopra, 115, 172
 Arvinder Singh Bagga v State of Uttar
 Pradesh, 58
 AS Narayana Deekshitulu v State of
 Andhra Pradesh, 201
 Assistant Collector of Customs, Bombay
 v LR Melwan, 67
 Atheist Society of India v Government
 of Andhra Pradesh, 201
 Attakaya Thangal v Union of India, 137
 Attorney General of India v Lachma
 Devi, 42
 Azeez v Union of India, 87

B

B Prabhakar Rao v State of Andhra
 Pradesh, 109
 Bachan Singh v State of Punjab, 42
 Bandhua Mukti Morcha v Union of
 India, 37, 112, 138, 154, 155, 183
 Bangalore Water Supply &
 Sewerage Board v A Rajappa, 118
 Baradakanta Mishra v Registrar of Orissa,
 High Court, 95
 Barbato v Uruguay, 36
 Barrett and Sutcliffe v Jamaica, 54
 Bennett Coleman & Co v Union of
 India, 94
 BL Wadehra v Union of India, 37, 154
 Bleir v Uruguay, 36, 53
 Bombay Environmental Action Group v
 AR Bharti, Dy Conservator of Forests,
 SNGP, 148
 BR Singh v Union of India, 118

C

Carballal v Uruguay, 52
 CEGAT v Union of India, 174
 CESC Ltd v Subhash Chandra Bose,
 155
 Chahal v The United Kingdom, 239
 Chairman, Railway Board v Chandrima
 Das, 173
 Chameli Singh v State of Uttar Pradesh,
 37, 145
 Chandan Kumar Banik v State of West
 Bengal, 210