

Call For Inputs: Human Rights Council resolution 51/12 on local government and human rights

Submitted by – Saakshe Jain

4th year law Student

Symbiosis International University, India

Dear Sir/Ma'am

This input is in response to the Questionnaire by the Office of the United Nations High Commissioner for Human Rights welcomes any relevant information with regard to the preparation of the expert meeting and report, including: to inform the summary report of the expert meeting on enhancing capacity-building for local governments to incorporate human rights into all their work, to identify areas of priority or concern for the consideration of further follow-up action and to inform the development of guidance tools on human rights education for local governments.

INTRODUCTION

India's Constitutional Amendments have structured local self-governance with a three-tiered system in rural areas. This system comprises Gram Panchayat (Village Council) at the village level, Panchayat Samiti (Block Council) at the block level, and Zilla Parishad (District Council) at the district level. This organized structure is commonly referred to as Panchayati Raj Institutions (PRIs).

Local governments play a crucial role in upholding human rights while recognizing the primary responsibility of national governments in this regard. Each state's local government operates differently within its constitutional framework and serves as a vital provider of local public services related to human rights. To effectively protect and promote human rights at all levels, there's a need for clear distribution of responsibilities, enhanced institutional cooperation, and adherence to principles such as universality, indivisibility, equality, participation, and accountability, ensuring a whole-of-government and whole-of-society approach to human rights implementation. Local government's human rights duties encompass respecting, protecting, and fulfilling these rights. They must avoid violating human rights themselves (*duty to respect*), take measures to prevent third parties from violating rights (*duty to protect*), and actively work to facilitate the enjoyment of rights (*duty to fulfil*). Additionally, local authorities should promote human rights through education and training, especially for elected representatives and staff, fostering a culture of human rights in the community. Special attention should be given to vulnerable and disadvantaged groups. Many countries are working to integrate human rights into local government activities through participatory

governance, human rights audits, awareness campaigns, and the establishment of human rights offices with adequate resources. Drafting local human rights charters or ordinances is also considered a vital step in localizing human rights.¹

The *principle of universality* underscores that all individuals are equally entitled to human rights, as enshrined in international human rights law. Human rights are inalienable but can be restricted within due process. They are indivisible and interdependent, meaning one set of rights complements others. Non-discrimination is a fundamental aspect of human rights, cutting across all major treaties. States have ratified core human rights treaties, obligating them to respect, protect, and fulfil these rights. Individuals have both entitlements and responsibilities to uphold human rights.²

Q. What capacity building initiatives have been taken to implement/incorporate human rights in local administration?

In India, several institutional structures are actively involved in coordinating and harmonizing capacity building initiatives aimed at enhancing the capacity of local governments in promoting and protecting human rights. It includes –

National Human Rights Commission (NHRC): The NHRC, as an independent statutory body, plays a pivotal role in advancing and safeguarding human rights in India. It implements various programs and initiatives specifically designed to bolster the capacity of local governments in their human rights efforts.

Ministry of Panchayati Raj (MoPR): Serving as the central government ministry responsible for local governance in India, the MoPR operates several capacity building programs and initiatives tailored to empower local governments in the promotion and protection of human rights.

United Nations Development Programme (UNDP): The UNDP, a United Nations agency dedicated to promoting human development, actively collaborates with India in enhancing the human rights capacity of local governments. It supports programs and initiatives aimed at aligning local efforts with national and international human rights standards.

Some of the civil society organizations, the private sector, and academia, actively engage in capacity building initiatives:

Civil Society Organizations: Groups like the *National Alliance of People's Movements (NAPM)* network various civil society organizations to drive human rights and social justice causes. They contribute to capacity building by providing training, technical assistance, and advocacy for marginalized groups.³

¹ Available at https://www.ohchr.org/en/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_49_ENG.docx (last Accessed on September 09, 2023)

² Available at <https://www.ohchr.org/en/about-us/what-we-do/partnership/local-governments> (Last Accessed on September 09, 2023)

³ Available at <https://progressive.international/members/79d51396-221d-40b0-90bc-eb8903f470b8-national-alliance-of-peoples-movements/en> (Last Accessed on September 09, 2023)

Private Sector: Some businesses such as *TATA Group* in India incorporate corporate social responsibility (CSR) programs focused on human rights. These programs offer training and technical support to local governments while raising awareness of human rights issues within their spheres of influence.⁴

Academia: Universities and academic institutions offer courses, conduct research, and disseminate knowledge related to human rights and development. Their research findings are valuable for informing and improving the effectiveness of capacity building initiatives. Such as *Jawaharlal Nehru University (JNU)*, has a Centre for the Study of Law and Governance, which conducts research on a variety of human rights issues, including the right to education, the right to food, and the right to health.⁵

The United Nations Development Programme (UNDP) has developed a monitoring and evaluation framework for its capacity building initiatives on human rights. The National Human Rights Commission (NHRC) has conducted an impact assessment of its capacity building initiatives on human rights. The Ministry of Panchayati Raj (MoPR) has conducted a survey of local government officials on the effectiveness of its capacity building initiatives on human rights. The CSLG at JNU has conducted a case study on the impact of a capacity building initiative on human rights in the state of Bihar.

Q. What are the capacity building gaps and needs of local governments in relation to implementing/incorporating human rights at the local level?

Local governments in India face significant capacity building gaps and needs when it comes to implementing and incorporating human rights at the local level. These challenges include a lack of awareness among local government officials regarding human rights standards and mechanisms available for promoting and protecting these rights. Even when officials are aware, they often lack the necessary skills and knowledge to effectively translate these standards into practice due to inadequate training, experience, or resources.

Moreover, there can be a deficiency in political will to prioritize human rights at the local level, often stemming from issues like corruption, authoritarianism, or a disproportionate focus on economic development over social progress. Local governments frequently grapple with resource constraints, including financial, human, and technical resources, which hinder their ability to uphold human rights effectively. Additionally, a lack of coordination among various local government departments and agencies poses further challenges to implementing human rights-based approaches.

The marginalized groups often find themselves excluded from decision-making processes, leading to human rights violations. In order to address these gaps and needs, targeted measures are essential. These include comprehensive training programs tailored to local government requirements, support for the development of human rights policies and procedures, awareness-raising initiatives for both officials and the public, active promotion of marginalized group participation in decision-making, and efforts to enhance inter-departmental

⁴ Available at <https://www.tatasustainability.com/SocialAndHumanCapital/BHR> (Last Accessed on September 09, 2023)

⁵ Available at <https://www.jnu.ac.in/sis-human-rights-studies-programme> (Last Accessed on September 09, 2023)

coordination. Providing adequate resources, encompassing financial support, human resources, and technical expertise, is pivotal to empower local governments to effectively protect and promote human rights in India.

Q. What measures are needed to further strengthen the capacity of local governments to implement/incorporate human rights at the local level?

In order to enhance human rights within local governments in India, several critical measures should be implemented. First, there's a pressing need to *strengthen the legal framework* by incorporating human rights standards into national laws and policies, alongside establishing a more independent and effective human rights commission. Secondly, *increased funding* should be allocated to support human rights initiatives, with a particular focus on vulnerable groups like women, children, and Dalits.

Moreover, providing targeted *training and technical assistance* to local governments, delivered in an accessible manner, is essential to empower them in promoting and protecting human rights effectively. Encouraging the participation of marginalized communities in decision-making processes and enhancing coordination between various local government departments are vital steps. Lastly, civil society organizations and the media play a crucial role in holding local governments *accountable by monitoring activities*, reporting human rights violations, and advocating for necessary reforms.

Q. What are existing procedures and practices for engaging local governments in the work of the United Nations human rights mechanisms and in implementing, reporting and following up on relevant recommendations? How could the existing level of engagement be enhanced?

Promoting and safeguarding human rights at the local government level is a multifaceted mission that requires a comprehensive strategy. First and foremost, it's crucial to *raise awareness* among local government officials about the intricate realm of human rights. We need to organize educational initiatives, workshops, and outreach efforts, tailoring them to provide a deep understanding of what human rights are and how they practically relate to local governance. But awareness alone isn't enough; we must equip local government officials with the right tools. *Specialized training* is a cornerstone, addressing their unique needs. This training should delve into not just the basics of human rights but also delve into the practical aspects, helping officials weave human rights considerations into their everyday decision-making. And it's paramount that this training is accessible and comprehensible, ensuring it's effective.

Additionally, we must provide *valuable assistance* in crafting robust human rights policies and procedures. Local governments should receive guidance, specialized training, and the necessary resources to develop comprehensive human rights policies. Active involvement in the UPR process is another crucial step.

Encouraging local governments to participate empowers them to voice their perspectives and contribute meaningful recommendations to enhance human rights.

Furthermore, it's essential to help local governments implement human rights recommendations from United Nations mechanisms. This support ensures these recommendations aren't just words on paper but real actions that drive human rights progress in local communities. Inclusivity is paramount. We must *promote the participation of marginalized groups* in decision-making processes. This means bridging information gaps, creating opportunities for involvement, and making sure that the voices of marginalized communities are not just heard but genuinely embraced by local governance. Efficient coordination among various local government departments and agencies is pivotal. Establishing *clear communication channels* and collaborative mechanisms helps define common goals and objectives, streamlining efforts to advance human rights.

Lastly, *allocating the necessary resources* is fundamental. This includes financial support, skilled personnel, and specialized expertise. These resources empower local governments to effectively uphold and safeguard human rights within their communities, nurturing a culture of respect, inclusivity, and equality.

India's efforts to promote and safeguard human rights are facilitated by several key institutions. The National Human Rights Commission (NHRC) stands as a vital pillar of this endeavour, being an autonomous statutory body entrusted with the task of monitoring and investigating human rights violations. It holds the responsibility of making recommendations to the Indian government to enhance the human rights landscape within the nation. The Ministry of Panchayati Raj (MoPR), a central government ministry, plays a significant role in local governance. Its mission is to empower and strengthen local government bodies, ensuring that they remain accountable to the citizens they represent. This is a fundamental aspect of upholding human rights, as local governments are often the first point of contact for individuals seeking access to their rights and services. Additionally, India actively engages with international human rights mechanisms, such as the Universal Periodic Review (UPR) and the Special Procedures of the United Nations. These mechanisms provide a platform for India to receive recommendations from the international community on improving its human rights practices, fostering a culture of transparency and cooperation on the global stage.

Q. What are the capacity building gaps and needs of local governments in relation to engaging with the United Nations human rights mechanisms and in implementing, reporting and following up on relevant recommendations?

Local governments in India encounter numerous capacity-building hurdles when interacting with United Nations human rights mechanisms and executing, reporting on, and acting upon pertinent recommendations. One fundamental obstacle lies in the inadequate awareness among local government officials about human rights standards and mechanisms that are relevant to their roles. This lack of understanding can impede their ability to effectively advocate for and safeguard human rights. Moreover, even when officials possess

awareness, a deficiency in practical skills and knowledge can obstruct the translation of human rights principles into practical actions. Frequently, officials may lack the essential training, experience, or resources required for the effective implementation of human rights standards.

In some cases, the dearth of political will presents a formidable challenge. Factors such as corruption, authoritarianism, and an emphasis on economic growth at the expense of social development can contribute to this issue, hindering local governments from prioritizing human rights. Resource constraints, encompassing financial, human, and technical resources, further compound these challenges. Without adequate resources, local governments grapple with the effective implementation of human rights-based approaches. Coordination issues within various local government departments and agencies represent another impediment. These problems can lead to disjointed efforts and hinder the coherent implementation of human rights initiatives. Lastly, the limited participation of marginalized groups in decision-making processes remains a pressing concern. Their exclusion frequently results in human rights violations, underscoring the need for more inclusive governance.

Q. What are the main challenges in your country in the promotion and protection of human rights at the local level?

Local governments grapple with *inadequate institutional capacity* and *limited resources*, a result of either political reluctance to empower local bodies or the country's challenging economic conditions. The Special Rapporteur's report on adequate housing underscores that decentralization, while potentially fostering democratic governance, may not always favour the right to adequate housing if accompanied by a lack of mechanisms and political will. Scarce resources and budget constraints undermine local governments' ability to execute projects and provide services, eroding their legitimacy within communities.

It lies in the *lack of effective coordination* between central and local governments, often exacerbated by complex and unclear laws governing the division of powers. A clear delineation of responsibilities between different tiers of government is crucial for establishing accountability and, consequently, ensuring the realization of human rights. It is essential to recognize that any public authority vested with power must uphold human rights, a connection sometimes overlooked at the local level.

Human rights are universal, meant for every individual regardless of their economic status or the colour of their skin. Sadly, millions worldwide endure *poverty's harsh realities*, facing deprivation and indignity. But there's hope, and it often comes through education. I can personally attest to this as I come from a developing nation. In many developing countries, whether you're born in a city or a remote village, education can be your lifeline out of the circumstances you're born into. It offers a chance to break free from the limitations fate seems to impose on you from birth. It's a stark truth that poverty remains a persistent challenge, but education stands as one of the most powerful tools to combat it. It empowers individuals, broadens horizons, and opens doors to opportunities that might otherwise remain firmly shut. In a world where disparities are all too prevalent, education serves as a beacon of hope, offering a pathway to a brighter future, regardless of where you begin your journey.

Women often face discrimination and a lack of basic human rights in our society. This mistreatment takes various forms, from violence within their homes to workplace harassment. Despite the constitutional guarantee of equality under Article 14, women still endure unequal treatment.⁶ A common example is the wage gap, where women earn less than their male counterparts for the same work. However, the SC has played a crucial role in protecting women's rights. In the case of *Associate Banks Officers Association v. State Bank of India*⁷, the court emphasized that women workers are equal to men and should not face discrimination based on gender. They set important guidelines for safeguarding women against workplace sexual harassment in the *Vishakha v. State of Rajasthan* case⁸, reaffirmed later in the *Medha Kotwal Lele v. Union of India* case⁹. These legal actions serve as steps toward ensuring women's rights are respected and protected, combating the discrimination that has persisted for too long.

Another challenge pertains to the **insufficient knowledge** about the requirements stemming from human rights at the local level. It is crucial for every individual in a local government role to be well-informed about their human rights obligations. Often, this awareness is lacking, and even when present, it may lack a solid understanding of the content and extent of these human rights. Consequently, many local governments struggle to grasp and integrate human rights principles into their local policies and practices. Additionally, efforts to enhance coordination on human rights issues are hindered by a lack of transparency.

One such challenge involves the **failure to acknowledge** the role and contributions of civil society, often stemming from a limited understanding of human rights within local government circles. Neglecting to recognize and collaborate with civil society organizations hampers local governments' efforts to connect with and assist marginalized communities.

In the new millennium, a significant challenge for human rights is to establish **fairness** both within individual nations and on a global scale. Human rights theory faces a pressing task: to shift the current destructive dynamic towards a more constructive equilibrium between the individual, who democracy seeks to empower, and the various sources of power, both internal and external to the state apparatus. This is where the human rights movement in the new millennium must step in. It should address the existing disparities and injustices that disproportionately affect the less privileged, as these imbalances not only jeopardize the principles of democracy but also its very essence. Simultaneously, the judiciary, responsible for upholding the rule of law in a democratic society, needs to grapple with these same issues. In the context of India, the judiciary has displayed a commendable level of awareness and sensitivity towards these challenges. Their role in adjudicating cases and making decisions that address these crucial questions is pivotal in ensuring a fair and just society.¹⁰

⁶ Suvarnakhandi, S. S. (2020). Rights of Women in India: Constitutional and Legal Scenario. *International Journal of Law Management & Humanities*, 3, 418-431.

⁷ AIR 1996 11 SCC 348.

⁸ AIR 1997 6 SCC 241.

⁹ AIR 2013 1 SCC 311.

¹⁰ Available at <https://www.ohchr.org/en/statements/2009/10/new-challenges-promotion-and-protection-human-rights> (Last Accessed on September 09, 2023)

Q. Please provide examples, good practices, challenges, and recommendations with regard to the above-mentioned issues.

Lack of Awareness of Human Rights:

Example: The NHRC in India has initiated awareness campaigns like "Human Rights for All" to educate the public about human rights.

Good Practice: NHRC has produced educational materials like booklets, posters, and videos in multiple languages to spread awareness.

Challenge: Despite these efforts, factors like illiteracy and limited access to information contribute to the ongoing lack of awareness.

Recommendation: The government and civil society should continue diverse awareness efforts, including education and media campaigns.

Lack of Political Will:

Example: NHRC has criticized the government's inadequate commitment to human rights, highlighting issues like caste discrimination, violence against women, and prisoner rights in a 2021 report.¹¹

Good Practice: NHRC has made recommendations for the government to improve its human rights record, such as strengthening the legal framework and enhancing funding for human rights programs.

Challenge: Government often disregards NHRC's recommendations, hindering human rights progress.

Recommendation: The government should heed NHRC's recommendations and implement them promptly.

Lack of Resources:

Example: Local governments in India often lack essential resources for human rights initiatives, including finances, manpower, and expertise.

Good Practice: The government has provided some funding to local governments for specific human rights programs, like preventing violence against women.

Challenge: Greater government funding, particularly for vulnerable groups like women, children, and Dalits, is needed.

Recommendation: The government should offer training and technical assistance to local governments for more effective human rights promotion.

Discrimination:

¹¹ Available at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/india/> (Last accessed on September 09th, 2023)

Example: Marginalized groups, including women, children, Dalits, and tribal people, frequently face discrimination, affecting their human rights across various areas.

Good Practice: Organizations like the National Commission for Women (NCW) and the National Commission for Scheduled Castes and Scheduled Tribes (NCSC) work diligently to combat discrimination and protect the rights of these marginalized groups.

Challenge: Despite these efforts, discrimination persists as a significant issue.

Recommendation: The government should address underlying causes of discrimination, such as poverty, illiteracy, and limited access to justice thereby increasing awareness and providing education to all.

Violence:

Example: India grapples with high levels of violence, often targeting marginalized groups and human rights defenders. For instance, there were multiple attacks on Dalits and tribal people in 2022.¹²

Good Practice: NHRC strongly condemns violence against marginalized groups and human rights defenders, urging the government to safeguard these communities.

Challenge: The government often falls short in preventing and penalizing violence against these groups and defenders.

Recommendation: The government should urgently take measures to protect these communities, investigate and prosecute perpetrators, and raise awareness of the issue.

Regards

Saakshe Jain

4th Year Law Student

Symbiosis International University, India

09th September 2023

¹² Available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india> (Last Accessed on September 09 , 2023)