



Journal of The National Human Rights Commission, India



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Chairperson, NHRC

From the Editor's Desk

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Secretary General, NHRC

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- NHRC recommendations on Preventive, Remedial, Rehabilitative and Compensation aspects relating to Silicosis
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*As Member of the Commission upto 28 June, 2012.

**He passed away recently. The Editorial Board acknowledges his contributions.

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CHAIRPERSON
NHRC

Preface

The National Human Rights Commission, established in 1993 with the objective to promote and protect the human rights of people of India, has over the years of its existence taken upon itself, a large number of activities. These are in addition to inquiring into, the complaints of violation of human rights. In accordance with its function as per the Protection of Human Rights Act, 1993 to spread human rights literacy among various sections of society, the Commission is bringing out several publications on varied issues relating to human rights on a regular basis. The English journal being brought out annually since 2002 is one of the most prestigious publications of NHRC, which has got widespread circulation.

In the journal for this year, the Editorial Board decided upon themes on which articles were to be invited for inclusion which are not only of importance currently but also which have long term relevance for the well being of the society.

The Commission receives a large number of complaints which are relating to civil and political rights and this trend may be indicating deficiencies in the existing 'criminal justice system'. Accordingly, this was one of the themes agreed upon by the Editorial Board for the current year. Further, the Commission gives as much importance to the social, economic and cultural rights as it gives to the civil and political rights. Among these, the right to food and connected 'food security' and connected issues are of vital importance. A large number of people, especially the children, still face hunger and malnourishment. Therefore, this subject has also been included as a theme on which articles were invited.

There is vigorous ongoing debate in the society taking place regarding corruption related issues and delivery of public services to common citizen. Hence, another important theme which has been selected for the journal is that of 'ethics in governance and delivery of services'.

Besides the above, the issues pertaining to 'rights of children' and 'gender equality' are subjects which will remain relevant till the time the society is fully sensitive to their special needs, being disadvantaged sections of society. Further, disasters, both man-made and natural lead to violation of human rights of a large number of people especially those belonging to the disadvantaged sections of the society. Accordingly, these themes have also been covered in this journal.

A large number of experts and eminent persons working in the area of human rights as well as in academics have contributed to this year's English journal of NHRC. The journal also includes important recommendations arising out of important events organized by the Commission during the year as well as contributions made at international level. There is also an article in the loving memory of the first Chairperson of this institution, Dr. Ranganath Mishra, who passed away recently and whose services during its early years, the Commission acknowledges. I hope the journal will serve the objective of not only creating awareness and sensitivity among people regarding human rights and thus, contribute to improvement in the well being of society.

10 December, 2012



(K.G. Balakrishnan)

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SECRETARY GENERAL
NHRC

From the Editor's Desk

In 2002, the Commission started this Journal to facilitate sharing of ideas, experiences and information on human rights issues, both national and international. Since its inception, it has stimulated a great deal of interest amongst the scholars and practitioners of human rights. By facilitating research and publication, the Commission has sought to create an important platform for developing high quality scholarship on human rights besides spreading human rights literacy among various sections of society. The articles from a cross-section of people including jurists, academics, public servants and others, published in previous issues of the journal, have not only enriched the literature on human rights but also helped in bringing into focus, some key human rights issues.

This year's Journal focuses on issues, viz. criminal justice system, food security, ethics in governance and delivery of services, human rights and disaster management, rights of children, gender equality and human rights. Besides in the background of wide discussions going on in the area of the criminal justice system, there is an article which primarily analyzed and compared the criminal law in India vis-à-vis the U.N. Human Rights Standards. There is also an article in memoir of Justice Shri Ranganath Misra who not only held the high offices of Chief Justice of India and Chairperson, National Human Rights Commission but was a great legal luminary and a champion for human rights.

I sincerely hope that the Journal will stimulate thinking and research and also spread awareness about human rights issue.

10 December, 2012


(Dr. Ashok Sahu)

CRIMINAL JUSTICE SYSTEM

Aftercare and Rehabilitation of Released Prisoners: An Indian perspective

Dr. M. R. Ahmed*

Introduction

One of the most critical periods in the life of one who has been a prisoner is that which immediately follows his release from prison. The longer is his period of confinement the greater are his woes in the prospects of rehabilitation. The monotonous routines of a restricted living disorient him completely for the social life in a free community. His family is in a disarray and mostly friends desert him. He has no money and no one to fall back upon. People shun him the simple fact that he has been in prison. The stigma of imprisonment follows him at all points of life. He applies for a job but is received with suspicion. He decides to enter a service and fills up a form but stumbles at the column: 'Have you ever been arrested or convicted?' No one is prepared to believe him that he that he how wants to lead an honest and hard-working life and is making fresh and honest effort for living the life of a normal citizen. The humiliation of prison life often denudes a person of self-respect and self-reliance. He is like a handicapped person convalescing from a crippling accident of crime and trying to learn to walk on his own feet. What he needs is after-care and rehabilitation.

According to Schwartz (1982) "the word rehabilitation means the purposeful reduction or elimination of an offender's subsequent criminal behaviour through a programme of planned intervention." This definition has three elements, all of which are parts of the core concept of rehabilitation. They are: the purpose of rehabilitation is to reduce subsequent criminal behaviour; its programmes are planned for intervention to do so; and its effect is the actual reduction or elimination of criminality in the offender's behaviour.

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If these three elements are separately examined, we find that rehabilitation has to be planned, programmes. The major question emerges is whether these three elements are found together in the policies which we have formulated country and have applied to reduce the criminality of offenders in the future? The policies which we have in India, particularly point to the custody of the offenders and to provide obsolete vocational training with no programme of rehabilitation in the community. (Singh 1993).

The Aim of Rehabilitation

The primary aim of rehabilitation of a prisoner is “to make the transition from the prison community to the free community as smooth and painless as possible by giving the prisoner financial and material assistance and psychological instruction, counseling and guidance and by offering or imposing some degree of continuing supervision where this is desirable. Help may be needed in obtaining employment, in obtaining accommodation, in reestablishing his position in the family, in settling various debts incurred while he was in custody or prior thereto, and in countless other directions.” (Williams 1979). Equally significant is the comment made in the Model Prison Manual (Bureau of Police Research & Development 2002). “Aftercare is the released person’s convalescence. It is the bridge which can carry him from the artificial and restricted environment of institutional custody, from doubts and difficulties, hesitations and handicaps, to satisfactory citizenship, resettlement and to ultimate rehabilitation of the free community”.

Impediments in the implementation of aftercare and rehabilitation programmes

One of the significant hurdles which come in the way of implementation of aftercare and rehabilitation is the lack of meaningful communication between the institutional programme and the Governmental and community services in the field of aftercare, employment, vocational counseling and training and rehabilitation. The existing communication channel between released offenders and after-care institutions is really inadequate to bridge the gap between what the institutions can offer and what a released offender can really avail himself of those services. Another

impediment is the lack of proper coordination between the Governmental and voluntary organisations in the matter of organising after-care services. Voluntary organisations are found to work in isolation without getting adequate support and incentives from the Government or the public.

The stigma attached to persons for their being in prison combined with the general public apathy and the lack of co-operation of the family members of the ex-convicts poses a serious problem for the proper rehabilitation of offenders. The lack of active Governmental support, insufficient infrastructural facilities, inadequate financial back up and want of trained personnel and training equipment have also been identified as major handicaps in the fruitful utilisation of aftercare services for the socio-economic rehabilitation of institutionalised offenders.

The Role of Police

The basic functions of the police being prevention and control of crime, the police cannot afford to ignore after-care services of offenders so long as they help directly in the matter of preventing and controlling crime by way of rehabilitating criminals in the society. The police who remain mostly busy with their multifarious duties relating to management of law and order situation, V I P security, enforcement of major laws, etc., tend to believe that prevention of crimes through correctional treatment and rehabilitation of offenders is the sole responsibility of correctional officers and social workers only and they have got nothing to do in this sphere. But this is not true. In view of the fact that the police is the first to come into contact with the criminals, the society has got enormous dependence on them relating to the protection of society against antisocial.

The police cannot afford to ignore this responsibility, rather it becomes imperative for them to share this task in close collaboration with correctional officers and social workers.

Role of Correctional Officers

The period immediately after the discharge from prison is a very difficult one for the offenders and all the efforts of correctional officers would be nullified if adequate after-care is not made available to them. In order to ensure the success of all the programmes carried out in the correctional institutions, it is the task of the correctional administrators to

see that outside agencies are properly communicated for providing necessary after-care of the discharged offender. In many countries, there are schemes whereby volunteers from the community close upon discharge of a prisoner so provide them the necessary help and guidance after discharge. It is also the responsibility of the correctional officers to educate society regarding the relevance and usefulness of social rehabilitation of offenders. If society continues to reject them not give him a chance to make good, he may very soon revert to a life of crime.

Despite lot of thinking and ideas which have been generated during the last century regarding the development of after-care services for the released offenders in this country, the present status of the existing after-care services gives a gloomy picture. The services in this respect have been remained restricted to giving temporary shelter and financial assistance sometimes to a very limited number of discharged prisoners. Some aid societies for discharged prisoners are operative in the country but excepting a few, all are suffering from acute financial crisis and lack of public sympathy and governmental support.

What needs to be done?

In India, there is an urgent need to reform the system to prepare convicts for leading a law-abiding life. As suggested by Petersilia (2003), we must first reinvest in prison work and education. We simply cannot reduce the problems of released prisoners and recidivism without funding programmes that provide opportunities for ex-convicts to create alternatives to a criminal lifestyle. Ironically, just as evidence was building that certain rehabilitation programmes do reduce recidivism, state prison administration and correction department had to dismantle those very programmes due to budgetary constraints. The result is that relatively few inmates leaving prison today have received any education or vocational, almost guaranteeing their failure at release.

Second, we must front-load post-prison services during the first six months after release. Recidivism statistics in the USA show that two-thirds of people released from prison will eventually be rearrested and the return to crime happens very quickly, in most of the cases in the first six months of their release. On the other hand, the risk of recidivism declines dramatically after three years (Petersilia 2003). All this suggests that the first six months

after release are extremely critical and we should concentrate our limited resources on that time period. In this period agencies relating to after-care should work to coordinate surveillance, job training and placement, health services, family services and transitional housing.

Thirdly, we must establish procedures by which convicts can put entirely their criminal offending in the past. A criminal conviction – no matter how trivial or how long ago it occurred – scars one for life. The stigma associated with a criminal past significantly affects one's chances of finding and keeping a job, personal relationships and housing – and these difficulties ultimately also affect public safety. Hence jobs, housing and financial stability are necessary for convicts to refrain from again committing crime and to establish the informal networks critical for long-term survival.

Indeed, the conditions under which many inmates are handled are detrimental to successful reintegration, and many of the restrictions we place on returning prisoners prove deeply counter-productive. Clearly we need policies that reflect the state's legitimate interests in public protection but do not at the same time, in and of themselves, diminish an individual's motivation and ability to change, which produces more crime in the long run.

The nation faces enormous challenges in managing the reintegration of the increasing numbers of individuals who are leaving state prisons. It is time for developing more effective responses to these challenges. We should do this not only for the sake of prisoners returning home, ultimately for the sake of their children, their neighbours and the community at large. The will depend not on economics but on whether we embrace the noble idea that we have a responsibility to help offenders make new lives for themselves. It is mostly our changed value system that has led to more punitive crime policies, not changes in crime rates.

If prison is judged necessary, then maximum effort should be made to encourage ties with the family and community throughout the prisoner's stay, and prerelease programmes should focus on actively connecting the prisoner to the host community. Every known study that has been able to directly examine the relationship between a prisoner's legitimate community ties and recidivism has found that feelings of being welcome at home and the strength of interpersonal ties outside prison help predict post-prison adjustment (Petersilia 2003).

Rehabilitation must focus on linking offenders with community institutions be it religious organisations, ex-prisoner self-help groups, families, and non-government organisations. We have to share the responsibility for transitioning offenders to the community with the community. Community partnerships not only help the offender connect with the community, but just as important, help the community connect with the offender. If an inmate does not have a naturally occurring family support system, then reentry courts, reentry partnerships, and reintegration ceremonies can help serve this vital role.

In the Indian context, it is urgently necessary that an officially recognised system should be evolved to pursue and ensure that the follow-up action for the rehabilitation of offenders starts from the day a prisoner enters prison and ends with his proper rehabilitation in the society. This job may not be very difficult in India because majority of prisoners hail from the agricultural community and they may be easily absorbed in their original system with little bit of counseling and social assistance. These services will be necessary only for those who have lost their socio-economic roots in the process of incarceration.

In order to give a fillip to the rehabilitation of released offenders, the government has to play a dominant role. Some organisation like the Rehabilitation Bureau which functions under the direct control of the Ministry of Justice, Govt. of Japan, needs to be created in the country for continuous review and monitoring of the rehabilitation work, from the day they enter prison till they are settled in the normal life. There is an urgent need of involving community in the rehabilitation programmes in a big way. It is a well established fact that rehabilitation is facilitated if community support is enlisted in the greatest proportion (Bedi 1983). Since the ex-offender has to be rehabilitated in the society, the latter has to come half way in this regard.

For bringing the community closer, a three-pronged approach needs to be adopted:

Firstly, maximum possible efforts should be initiated to associate people from different walks of life. Secondly, mass media has to be brought closer to the prison programmes for people at to be enlightened about the good work being carried out in prisons for their reformation. Thirdly, voluntary organisations should be encouraged and strengthened to work in

tandem with the government agencies. Community-based treatment programmes have great potentiality in enhancing rehabilitation of released prisoners, among which probation services have immense potentiality which has not so far been fully harnessed in the country. Probation not only, helps in decongesting prison population but also creates an opportunity for the offender to correct himself in the community itself (Harris 1993). Although, there is Central Act on Probation, enacted in 1958, unfortunately, the probation services so far, have not been able to make any significant dent in the correctional field in the country, so far being the main reason of ignorance among the public and general apathy of the law enforcement agencies. There is an urgent need to make the probation services more popular among the public as well as to the criminal justice system to boost the rehabilitation of released offenders.

Aftercare and Rehabilitation: The way ahead

At present, there is no legal support by which a released prisoner can automatically be benefited by government or from other sources. Some laws like the 'Law for Offenders Rehabilitation Services (1995)' of Japan or some similar acts as prevalent in other advanced countries may go a long way in the augmentation of rehabilitation programmes. The All India Committee on Jail Reforms 1983 also strongly recommended that after-care of discharged prisoners from prisons and allied institutions should be the statutory function of the Department of Prisons and Correctional Services. Prison officers should be trained as to how they can help the prisoners for their rehabilitation from the initial days of their imprisonment. They should be equipped with guidance and counseling skill to facilitate legal assistance to indigenous prisoners, help them to keep contacts with their families, pursue the community to accept them back and maintain liaison with voluntary organisations who will, in turn, help the prisoners for their rehabilitation. Police officers, particularly at the grassroot level, should also be trained as to how they should deal with released prisoners to facilitate their resettlement in social life. A team of well trained officers should be appointed in the headquarters of every state who will evaluate, monitor and coordinate the rehabilitative activities. They will maintain a continuous liaison with voluntary organisations working in the field of after-care and rehabilitation of prisoners released from the correctional institutions. Planning for after-care should begin the day the inmate enters the institution

(Srivastava 1989). At the same time, the number of after-care institutions and organisations should also be raised. Both voluntary and governmental organisations for after-care and follow-up work should be adequately equipped both infrastructurally and technically to make them discharge their duties well. Voluntary workers engaged in after-care should be provided with necessary training, encouragement, help, guidance and incentives, to help them perform their job properly and also sustain their interest.

The prison's struggle to achieve reform ideals would be fruitless, as long as prisons continue to be manned by ill-trained, ill-equipped, low-paid disgruntled non-professional personnel, many of whom seem to appear plagued with low-morale and simply wish to spend their time and strictly as conform to the prison rules and regulations in a ritualistic manner. Prison guards, at least a majority of them, are the worst of the lot. Some of them are inhuman, sadistic, brutal, filthy and corrupt in their relationship with the prisoners. It is these guards who brazenly abuse the keeper's authority and continue to exploit the system to the maximum disadvantage of both. Prisons cannot be reformed as long as the prison keepers, as a group, remain unreformed. To reform them it is essential to launch a massive personnel development programme in prisons and endorse a philosophy of recruitment that aims at selecting people who are humane in their outlook, incorruptible and dignified in their approach to prisoners. Such men are difficult to find, no doubt, but it can be hoped that such men can be available if the remunerative scales of the different kinds of prison-keeping jobs are sufficiently attractive, in accordance with the technical or professional qualifications they possess.

The solution to the problem of reformation and rehabilitation does not lie with the prison administrators alone. It, in fact, lies with the penal policy-makers, and the judges who somehow still believe that their job is better done if the criminals they apprehend and prove guilty are sent to prison. The prison in their conception is the warehouse of human waste material which society wants to remove both out of sight and out of mind. This approach is now rightly criticised and viable alternatives to imprisonment are being looked into. The burden of prisons can be reduced only when majority of the short-termers and petty criminals are either released on probation and/or acquitted after paying the fines. A liberal policy of release on parole would also result in reducing the prison population substantially. The recent clamour for 'community corrections' is a right

direction, that would solve many of the ills of the present criminal justice system in India.

Inclusion of Prisons in Development Plans

As prison administration has a direct bearing on the improvement of the quality of life among prisoners the development of prisons should be pursued as an integral part of the National Development Plans (BPR&D 2002). Investment on prisons not only lead will not to the reformation and rehabilitation of the offenders and help them to be law-abiding citizens but also to safeguard the life of those adversely affected by them. Therefore each State should take steps to formulate schemes for the development of prisons in their entirety in the central and state plans. Such schemes should not only relate to the correctional content of prison programmes but also to the relief and rehabilitation of the released prisoners and improve the quality of the prison staff.

Conclusion

Despite a lot of thinking and ideas which have generated during the last century regarding the development of after-care and rehabilitative services for the released offenders in this country, the present status of the existing after-care services leaves a lot to be desired. The services in this respect have remained restricted mainly to giving temporary shelter and financial assistance to a limited number of discharged prisoners. Although, a good number of after-care organizations are operative in the country, barring a few, most of them are suffering from acute financial crisis and lack of public co-operation and governmental support. The Model Prison Manual and the Mulla Committee on Prison Reforms have strongly recommended for evolving a structured network of after-care services for different categories of offenders on the basis of their rehabilitational needs. In spite of it, neither adequate infrastructural facilities nor stabilised organizational mechanisms have evolved. Not only the basic objective of correctional administration is constrained but also the entire efforts involving massive manpower and huge expenditure towards the correctional endeavor are not being properly utilised. It is, therefore, necessary to take up this issue with real seriousness and to translate the recommendations into reality. A systematic approach needs to be adopted to sensitize the community as well as the government regarding the importance of after-care services in the field of prevention and control of crime.

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Is Criminal Justice System a Worthwhile Cause?

Professor B. B. Pande*

The Criminal Justice System (CJS) is a matter of deep concern not only for policy planners and law makers, law administrators, the accused, the victims, but also the community at large. This is because CJS is meant to relate to the interests of the multiple stake-holders diversely: The policy planners and the dominant law makers see CJS as nothing more than a regulatory or social control mechanism. The legal administrator, be it the police, the prosecutor or the courts, see CJS as a normative framework that deserves maximum compliance, the accused perceive CJS as a shield for the protection of his interest by devices such as fair procedure and equal access guarantees, the victim sees CJS as a device for vindication of their material and psychological sufferings, and finally the community that claims to be above narrow party considerations sees CJS as a symbol of social solidarity. Therefore, a comprehensive exploration and all-round critical understanding of CJS requires a debate on issues such as: What behaviours are criminalised in our society? By whom are the criminal laws primarily enforced? Against whom are the criminal laws enforced generally? Can we safely conclude that there exists a uniform system of criminal justice in the country? Before examining these issues critically it may be useful to embark on a brief discussion on the CJS generally, in terms of its core components, namely (i) Defining “crime” and “criminality”, (ii) Conceptualising 'Justice' and 'Doing Criminal Justice' and (iii) Operationalising Criminal Justice as a system.

Defining “Crime” and “Criminality”

The Anglo-Saxon law of wrongs did not maintain any kind of distinction between civil and criminal wrongs, since all the wrongs were

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redressed by payment of compensation or money equivalent at the instance of the wronged party. It was only in the middle of the thirteenth century that on the basis of Royal edict certain wrongs were designated as non-compensable and only punishable by the kings courts. The first lot of non-compensable wrongs were more like the present-day offences of blasphemy, treason and rape. These wrongs were identified on the basis of their potential for breach of king peace and general sense of security. During the fourteenth and fifteenth century the number of non-compensable wrongs multiplied many-fold giving rise to a body of Criminal Law that was meant to protect a wide range of interests, both of the individual and the collectivity.

Eighteenth century onwards the civil and criminal wrong demarcation not only sharpened, but diverse rationalization of “crimes” and criminality were propounded. There was a line of thought that associated crime and criminality with immorality or wrongfulness of the behaviour in question. The scholars made a distinction between *mala in se* (bad from inception) crimes and *mala prohibitum* (bad because of prohibition) crimes. In the same line Lord Bramwell B. (supported by six House of Lords judges) in *R V Prince* (1875) ruled against a kidnapper of an under-age girl, who he had mistakenly believed to be overage, by opining that the central issue was not the strict construction of the legal measure but that the accused had indulged in a wrongful act : "The act for bidden is wrong in itself is done without lawful cause. I do not say illegal but wrong?" However, as the state assumed a bigger role in the regulation and control of the individual behaviour, new rationalisations for labelling behaviours as crime and new forms of criminality were invented. Some of these rationalisations can be gleaned in the writings of Kenny¹, Russel², Jerome Hall³, Granville Williams⁴ and Chambliss⁵. The wide range of rationalisations can be categorised into one of the two broad traditions, namely (a) the consensus tradition and (b) the conflict tradition. The consensus theorists assume that every crime and all forms of criminality as a 'harmful conduct that sovereign desires to prevent'. What behaviour is harmful human behaviour and how it is to be prevented is

¹J.W. Cecil Turner (Ed.) *Kenny's Outlines of Criminal Law*, 18th Edn. Cambridge.

²J.C. Cecil Turner (Ed.), *Russel on Crime*, 12th Edn. Stevens & Sons, London.

³Jerome Hall, *General Principles of Criminal Law* Second Edn. Bobbs Merrill, New York, 1960.

⁴Glanville Williams, *The Definition of Criminal Law* (1955) CLP 107.

⁵Chambliss, W.J. "The Criminalization of Conduct" in *Law and Deviance*, H. Lawrence Ross (Ed.), Sage Annual Reviews of Studies on Deviance Vol. 5, 1981.

decided by the sovereign only. Society, by and large, concurs with the crime-related decisions of the sovereign, on the basis of an assumed consensus in the society. In contrast to consensus tradition there are a few theorists who claim that crime need not be associated with 'harm' but is more a contraption in the hands of the dominant classes in the society, who criminalise behaviours to further their class interests. Though not a conflict theorist, Russel in his treatise *On Crime*, almost toes the conflict line when he observes: "Criminal offences are basically the creation of the criminal policy, adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing the sovereign power in the state to repress conduct which they feel may endanger their position."⁶

Both the consensus and conflict theorists only help in broadening the range of justifications for creating new categories of crimes and extending the sweep of criminality to newer forms of human behaviours. As a consequence both in the USA and in the UK crimes and criminality have proliferated beyond justifiable limits. William Chambliss observes in this context: "There are literally thousands of laws enacted each year. In the United States, with fifty state legislature, thousands of municipal and country councils and the federal government all passing laws, the sheer magnitude is overwhelming. In addition, there are court decisions at the state and federal levels whose decisions constitute the creation of law as well".⁷ A similar state of statistical reality in the UK is revealed by Andrew Ashworth, thus: " There are probably around 8000 offences now, mostly created over the last 150 years, under the varying influences of governments of different political hues, movements towards criminal law reform, the expansion of regulatory mechanisms and so forth."⁸

The enormous increase in the number of crimes is further accentuated by the tendency of the governments and policy planners to expand the domain of criminal law by creating strict liability offences, omission liability offences, reverse burden of proof offences and hybrid procedure criminalisation. An example of hybrid procedure criminalisation is provided by the Crime and Disorder Act, 1998 of England. Section 1 of

⁶ Supra note 2 at p.18.

⁷ Supra note 5 p. 47.

⁸ Ashworth, Andrew, "Is the Criminal Law a Lost Cause?", *The Law Quarterly Review*, Vol. 116, p. 226.

the Act conferring powers on the Magistrate to pass an anti-social behaviour order that prohibits a person from "doing anything described in the Order" and breach of the order, may entail a liability up to five years imprisonment. Such an order may initiate out of a civil proceeding by the police or by the local authority against a defendant for having caused or likely to cause harassment, alarm or distress to one or more persons of other households, and the proceedings require only a civil standard of proof.

Perhaps the growing unprincipled criminalisation tendency has shifted the focus to the 'criminal proceeding' feature of criminalisation. Glanville Williams had emphasised the formal definition of crime as the key factor in these terms: "In short a crime is an act capable of being followed by criminal proceedings having a criminal outcome."⁹ The distinguishing feature of criminal proceedings is that these proceedings are brought by public officials and they can result in conviction and imposition of sanctions. Indiscriminate resort to criminal proceedings and their adverse impact on Human Rights has led the European Court of Human Rights to adopt criteria for labelling certain proceeding as "criminal" rather than "civil". Thus, for the purposes of the European Convention the proceedings would be labelled as "Criminal" if they (a) are brought by a public authority, and either (b) have culpability requirement, or (c) have potentially severe consequences (such as imprisonment). Such criteria can put meaningful limitation on the growing tendency of over-criminalisation and disguise criminalisation in non-European countries as well.

Conceptualising 'Justice' and 'Doing Criminal Justice'

The concept of justice has been much less debated within the discipline of law in comparison with other disciplines such as political science, philosophy, economics and public administration. The reasons for near exclusion of independent 'justice' debates in the discipline of law could be: first, the dominance of positive law tradition that excludes all extralegal enquires; second, the duty-oriented nature of most of laws that create liability; and third, the necessary elements of justice being an integral part of the law itself. However, the right-oriented transformations of the modern laws have

⁹ *Supra* note 4, p. 130.

led to a revival of justice debate in the legal domain as well. The notable justice debate can be found in the researches and writings of scholars such as John Rawls, whose 'principles of justice' propounded in the book, *A Theory of Justice* (1971) opened up new lines of enquiry in the area of justice. John Rawls was inspired by his early predecessors like Thomas Hobbes, John Locke, Rousseau and Kant to construct his 'Justice' conception in a 'contractarian' mode, but he carries the debate to a higher level of abstraction that ultimately leads the debate to a point of 'Justice as Fairness'.¹⁰

Justice debate has received a fresh and welcome impetus due to the emergence of Amartya Sen's *The Idea of Justice* (2009) that has given a comprehensive treatment to the concept of justice. The uniqueness of Sen's 'Justice' debate lies in the fine blending of the most profound moral and philosophical argument on justice with the functional realities of famines and starvation. In this context it may be of interest to show how Sen has used the Hindu jurisprudence classical distinction between *neeti* (organisational propriety and behavioural correctness') and *nyaya* ('comprehensive concept of realised justice') in his justice discourse. He has not only used these concepts, but has taken clear sides by standing in support of Arjuna's *nyaya*-oriented arguments with Krishna in *Bhagwatgita*.¹¹ Sen's commitment to realised justice can be used for strengthening the justice shortfall in the legal system a well.

Justice debates are scarcer in the field of criminal law. This is mainly because the majority in the society goes by 'normatively defined law as a "good thing" that is meant to resolve social conflicts between "decent" and "deviant" people. Thus, a criminal prosecution at the instance of a public official against a Hobbesian 'nasty, brutish and short' criminal has all the elements of 'justice' in its favour. It is this Hobbesian influence that must have inspired David Miller to formulate in his treatise *Social Justice* (1976) a clear distinction between legal justice and social justice in these words: "Legal Justice concerns the punishment of wrongdoing and compensation of injury through the creation and enforcement of a public set of rules (the

¹⁰ The 'transcendental institutional approach' to justice what aims at identifying just rules and Institutions can be found in the writings of Ronald Dworkin, David Gauthier, Robert Nozick and others.

¹¹ Amartya Sen has displayed similar passion for functionality of Justice and commitment to take sides in the context of a hunger-oriented correspondence between utilitarian philosopher James Mill and political economist David Ricardo way back in England in 1816. (Ch. 18). Taking sides Sen had observed "Open-minded engagement in public reasoning is quite central to pursuit of justice" (p.390).

law). It deals mainly with two types of issues. First of all, it stipulates the conditions under which punishment may be inflicted, adjusts the scale of punishment to fit the nature of different crimes... Secondly, it lays down the procedures for applying the law principles of fair trial, right to appeal etc."¹² Miller goes on to distinguish social justice in these words: "Social Justice, on the other hand, concerns the distribution of benefits and burdens throughout a society, as it results from major social institutions property systems, public organisations etc. It deals with such matters as regulation of wages and (where they exist) of profits, the protection of persons rights through legal system, the allocation of housing, medicine and welfare benefits, etc. Since punishments have been included in the scope of legal justice, 'burdens' should be read to mean disadvantages other than punishments i.e. such things as unpleasant or onerous work, bad housing conditions, etc. ... This separation of legal from social justice is important because the criteria of justice are not necessarily the same in two cases".¹³ The Criminal Laws' concern with punishment as a punitive justice has been traditionally already one sided and pro-prosecution. But with due process guarantees and rights of the accused gaining momentum world over in the 20th and 21st century, the process stage justice has assumed new significance. As a matter of fact certain aspects of 'social justice' should find a place in the agenda of criminal justice as well.

Operationalisation of Criminal Justice as a System

While conducting a course for District Criminal judiciary at one of the judicial academies, I this author had difficult time to labour the point of relevance of Constitutional Law and Fundamental Rights for a holistic criminal justice administration. The members of the District Judiciary were trying to argue that their function revolved around the substantive, procedural and evidence laws, without much concern for the Constitutional or Human Rights Law. The author realised that the primary responsibility for such a faulty perception ought to be shouldered by the legal academics who have taught substantive and procedural laws in isolation with the Constitutional and Human Rights Laws and propagated a myth that even without expounding linkages between the Constitutional and human rights

¹² Miller, David, *Social Justice*, Clarendon Press, 1976, p. 22.

¹³ *Ibid*, pp 22-23.

and criminal law, criminal procedure law there can be successful teaching of these subjects in water-tight compartments and in isolation of each other. A.G. Noorani pointed out such a disjuncture in these words: "While every work on British Constitutional law discusses the status and powers of police, books on the Constitution of India ignore the profound importance of the police in a polity governed by the rule of law."¹⁴ Therefore, the understanding of criminal justice as a system would require composite view of the individual laws that constitute the system.

Yet another aspect of lack of system realisation is evidenced by the diverse agencies of the criminal justice administration functioning without much coordination or harmony with each other, at times even functioning at cross-purposes. Herbert L. Packer has insightfully observed in this respect, thus:

The principle of legality, then, is important for the allocation of competences not between the legislative and judicial branches, but among those who initiate the criminal process through, largely the informal methods of investigation, arrest, interrogation, and charge that characterize the operation of criminal justice.¹⁵

Our police force is often found complaining how the Human Rights of the accused, particularly the extremists, impede their effective functioning and adversely affects their crime control cause. They seem to be oblivious of the Constitutionally sanctified scheme which is essentially constituted by Constitutional and Human Rights guarantees. Therefore, there is a need to train the diverse criminal justice agencies about their "allocated competences" and instruct them about the value of operating as a system to achieve the aims of CJS more effectively.

What behaviours are criminalised in our society?

Experiences of criminalisation in most of the modern societies displays a clear trend towards over-criminalisation, over-regulation and growing disregard for essential principles. Reporting about such a trend in England, Andrew Ashworth in an incisive article titled "Is the Criminal Law a Lost

¹⁴Noorani, A.G., *Handbook of Human Rights and Criminal Justice in India*, SAHRDC, OUP, Delhi, 2007, p.xii

¹⁵Packer, Herbert L., *The Limits of the Criminal Sanction*, Stanford University Press, California, 1968, p. 89.

Cause?, “has observed:” Although 1997 was thus a year in which there were relatively few additions to the criminal law as it applies generally... this small survey highlights some noteworthy features of the existing criminal law. First, the bulk of new offences may be described as "regulatory", in the sense that they form part of statutory schemes for the regulation of certain spheres of social or commercial activity, and are generally enforced by the regulatory authority rather than by the police. Secondly, the bulk of new offences are characterised by three features— strict liability, omission liability, and reverse onus provisions for exculpation"¹⁶ Such a trend of over-criminalisation has led Ashworth to raise a few questions such as : How the criminal law ought to be shaped? What should be the social significance of such a law? When it should be used and when not?

The one hundred and fifty years of history of criminalisation in India is dominated by the Indian Penal Code, 1860 that was the first comprehensive and codified criminal law enacted by the colonial rulers to further their interests. The Penal Code was based on the best English criminal law principles and values that followed the common law tradition of the mid-nineteenth century. However, the Penal Code that was supposed to serve as the criminal law of the land for the protection of diverse kinds of interests at one time, was in course of time found to be inadequate for new kinds of interests and alternative forms of criminalisation. This has led to the emergence of a vast body of special penal statutes described as ‘Special and Local Laws’. The notable special and local laws’ are the Prohibition Act., the Excise Act, the Gambling Act, the Essential Commodities Act, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, the Wild Life Protection Act, the Environment Protection Act, the Immoral Traffic (prevention) Act, the Pre-conception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994, the Protection of Women form Domestic Violence Act, 2005. etc. Thus, the wide spread of Penal Code offences provided for in eighteen chapters, plus a much larger number of offences falling under one or the other 'special and local laws' offence category creates an enormously wide criminality catchment area, which is often unprincipled and chaotic, largely depending on the whims of the government and knee-jerk reaction to the behaviours that can be contained and regulated by, measures other than the techniques of criminalisation.

¹⁶ Supra Note 8, p.228.

It is true that the government is under great pressure to create new laws to protect children from abuse and women against domestic violence and tribals against sex tourism.¹⁷ But new forms and old forms of criminalization should be strictly subject to larger social good and compliance with the basic criminal law principles. As Ashworth would said "Criminal sanction should be reserved for substantial wrongdoing" or as Lord Williams of Mostyn has stated that offences "should be created only when absolutely necessary".

By whom and how are the criminal laws enforced?

The enforcement of Criminal Law is an outcome of the composite functioning of the multiple criminal justice agencies such as the police, the prosecution, the courts, the lawyers and the prison administration etc. As described earlier each of these agencies is supposed to function within the 'allocated competences' and neither more nor less. The enforcement cycle begins with crime information reaching the formal agencies i.e. the Police as the assigned investigating agency or the Magistrate either by way of an F.I.R. in case of cognizable offence and information in case of non-cognizable offence (SS. 154, 155) and a 'complaint' before a Judicial Magistrate (S.190). The crime information brings the raw crime event within the ambit of formal CJS. The formal receipt of crime information triggers the investigation process that is exclusively, a police function, commencing in section 156 and concluding S. 173 with the filing of a positive or negative charge sheet. Investigation process is followed by prosecution process, trial process and sentencing process and so on.

Though trial process, sentencing process and the associated functions played by defense lawyers and witnesses are vital for enforcement, but the role played by the police and prosecution agencies assume critical significance in matters of enforcement for the ordinary stake holders. Here a brief discussion relating to the exercise of powers relating to receiving information regarding a cognizable offence in terms of norms fixed by the Code of Criminal Procedure 1973 would be in order. Section 154(i) lays down: "Every information relating to the omission of a cognizable offence, if given

¹⁷Under Article 240 of the Constitution the Union Cabinet has approved a proposal for the promulgation of Andaman & Nicobar Islands (Protection of Aboriginal Tribes) Amendment Regulation, 2012 that provides for imprisonment up to 7 years for activities of tourist nature within 5 km of the "Buffer Zone" created to protect the Jarva tribals of Andaman & Nicobar Islands, *The Hindu*, 2/6/2012.

orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing, or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book kept by such officer in such form as the state government may prescribe in this behalf.

A copy of the information as recorded under sub-section(i) shall be given forthwith, free of cost, to the informant.

..... "(emphasis supplied).

There are two possible views of interpreting the nature of power flowing from Section 154. The first view that favours giving to the officer in-charge a wide discretion in matters of registration of F.I.R. According to the first view even after receiving clear and categorical information the officer in-charge will have a discretion to conduct a preliminary enquiry and decide about registration or non-registration of an F.I.R.. The second view makes the registration of an F.I.R. mandatory only after fulfilling the normative requirement of giving information regarding a cognizable offence. According to the second line the mandatory nature of Section 154 takes away the discretion of conducting a preliminary enquiry. The implications of the aforesaid two lines of interpretation of the powers flowing from Section 154 are very significant, because giving to the officer in-charge of a police station a wide and unguided discretion will amount the police agency to assume the key role in the CJS and wider the executive discretion the greater the chances of its abuse and lesser the citizen's (victims) ability to put the CJS to use in their interest. From the ground level we have enough evidence to establish the charge of abuse of discretion in matters of registration of the 'F.I.R.' both to favour the politically and economically powerful perpetrators of crime and also the socially or economically weak victims. However, it is surprising that the Indian Judiciary has not been able to take a categorical stand on the interpretation of Section 154 so far.¹⁸ Even a

¹⁸There are two lines of Supreme Court rulings. The one line that favours giving discretion to the Executive in matters of registration of F.I.R. represented by Rajendra Singh Katoch V Chandigarh Adm. (2007) 19 SCC 69; Sevi V State of TN 1981 Suppl. SCC 43; P. Surajudeen V State of Mad (1970) 1 SCC 595; State of U.P.V. Bhagwat K. Joshi A.I.R. 1964 SC 221. The second line that makes registration of F.I.R. mandatory for the Police is supported by Lalita Kumari V State of U.P. (2008) 7 SCC 164; Aleque Padmase V. UOI (2007) 677; Ramesh Kumari Delhi Adm. (2006) 2 SCC 677; State of Haryana V Bhajan Lal 1992 Suppl (I) SCC 335 etc.

recent three judge ruling in Lalita Kumari case¹⁹ has only referred the matter to a Constitutional Bench of five judges. The court has to ultimately realise that the citizens' Constitutional Rights have a much better chances of protection in a scheme where there is a mandatory registration of each case that is monitored by the judiciary, rather discretionary registration that gives uncontrolled discretion to the executive.

We must remember what Herbert L. Packer had observed long ago: "The police and the official prosecutors operate in a setting of secrecy and informality. Their processes are subject to public scrutiny in only the most sporadic and cursory ways. Although some courts (Particularly low-level courts in large cities faced with the necessity for dispensing assembly line justice) at times behave with the informality and lack of articulation that characterises the police or prosecutors, not one has ever discovered a police or prosecutorial organization that behaves like a court"²⁰

Against whom are the Criminal Laws enforced generally?

The principle of equal treatment of those who commit wrongs of equivalent seriousness and in similar circumstances should be subjected to similar kind of censure and sanction remains more as an ideal. At the ground level under most of the criminal Law system the enforcement is considerably impacted by the social and economic standing, both of the criminal and the victims of crime. Writing in the European society context Alan Norrie has observed: "This social dividing up of the potential criminal population takes us to Foucault's and the dual role that it plays there. Those who are located at the 'bottom end' of the social structure, with least to gain from 'playing the game', are precisely those whom the prisons system ends containing. They cannot be deterred but they can be removed from circulation for a period of time. The prison thereby acts as a cordon sanitaire between the relatively law abiding and the rest."²¹ In a recent study conducted by the Tata Institute of Social Sciences, Mumbai in 15 prisons in the State of Maharashtra similar facts have emerged in respect of the minority and poor population.²² The anti-poor bias in matters of enforcement is reflected

¹⁹(2012) 4 SCC 1

²⁰Supra note 15, p.89.

²¹Norrie, Alan, *Crime, Reason and History*, Weidenfeld and Nicholson, London, 1993, p.202.

²²The TISS Study reveals that "most of the prisoners in Maharashtra Jails are victims of prejudice", "The%age of Muslims in jails is also a high 36%". *The Hindu* (Delhi Edn.), 24/6/2012.

not only in higher number of cases being filed against them but also infilling of false and faked cases as well.²³

Yet another aspect of differential enforcement that violates equal treatment principle is an outcome of the extensive use of regulatory strategies in the modern criminal laws. Several new statutes such as the Consumer Protection Act, the Trade-mark and Patents Act, the Environmental Protection Act, the Competition Act etc., tend to regulate commercial activities within criminal sanction framework. But the regulatory agencies provided under these laws use warnings more frequently and prosecute rarely. They deploy a kind of compliance approach (favouring negotiations with offenders and keeping prosecutions as a last resort) in contrast to the sanction approach (that favours instant prosecution). On this trend Ashworth makes this scathing comment: "Is it not monstrously unfair and intolerable that people who steal from shops are dragged through the criminal courts and subjected to liberty restricting penalties, when others (whether fraudsters or companies) who culpably inflict far greater harm are dealt with outside the criminal law?"²⁴

Do we have a uniform system of criminal justice in our country?

The search for a viable and credible CJS brings us face to face with certain hard ground level realities, some of which are enumerated below:

(i) Thrust of the Ram Lakhan V State²⁵ ruling

The case relates to an offence under an outdated colonial mind-set legislation the Bombay Prevention of Begging Act 1959 (extended to UT of Delhi in 1960)— that criminalizes begging in any public place. On conviction by the Magistrates' Court and Sessions Court for begging offence, the petitioner moved the High Court. Justice Badar Durrez Ahmed not only refused to accept the over-wide interpretation of the 'begging' offence without any kind of rational

²³In a recent decision the division Bench of the Bombay High Court quashed the FIR filed against 17 members some of them women and senior citizens, of Andheri Gymkhana under the Bombay Prevention of Gambling Act, for playing cards with stakes. Similarly, under the Bombay Police Act, police routinely launches criminal prosecutions against poor and resourceless persons for flying kites and hawking on the streets.

²⁴Supra note 8, p. 249.

²⁵137 (2007) Delhi Law Times, 173.

classification for different kinds of begging, but critiqued the indiscriminate criminalisation as being out of sync with the Constitution, in these words:

It would be instructive to remember that Article 19(1)(a) of the Constitution of India guarantees to all its citizens the right to "freedom of speech and expression". Would "begging", therefore, not be covered by this guarantee? Just as an advertisement of a product would be within the perimeter of this valuable fundamental right, begging, too would fall within it. After all, begging involves, the beggar displaying his miserable plight by words or actions and requesting for alms by words (spoken or written) or action. Does the starving man not have a fundamental right to inform a more fortunate soul that he is starving and request for food? And, if he were to do so, would he not be liable under the said Act for being declared as a "beggar" and consequently being deprived of his liberty by being sent for detention at a certified institution?²⁶

Therefore, is there not a need to re-visit all the criminalization decisions afresh, particularly those that are directly or incidentally in violation of the Constitutional guarantees?

- (ii) 'Justice' to innocent Sheoraj S/o Attar Singh who had to remain in prison for seven years for a crime committed by his namesake

The Haryana Police in collusion with the U.P. Police managed to implicate and arrest Sheoraj S/o Attar Singh resident of Aligarh, currently employed as a brick-kiln labourer owned by Sheoraj S/o Thakurdas. Sheoraj was detained in Palwal Jail for seven years as an under-trial in respect of a kidnapping and murder case. The story of false implication came to light as in consequence of a series of petitions filed before the Chief Minister of U.P., the Prime Minister, the President of India, which categorically ruled that the brick-kiln labourer Sheoraj was innocent. At the wife's instance a senior lawyer filed a pro-bono petition before the Supreme Court which ordered an enquiry on the matter²⁷. Justice to Sheoraj would not only require

²⁶Ibid, p. 181.

²⁷The Times of India (Lucknow Edn.) 30/11/2011 and The Indian Express (Lucknow Edn.) 1/12/2012 p.1 'Anchor'.

setting him at liberty in the false implication case, compensation for illegal denial of liberty for seven years, the economic loss suffered by the family by the bread-earner's seven years incarceration, the loss of company suffered by Sheoraj's wife and children and the sufferings of the four children, who had to discontinue education due to total loss of family earnings.

- (iii) Prem Pal's²⁸ predicament of false accusation in multiple criminal prosecutions:

Prem Pal, a mason, purchased an LIG flat in Sangam Vihar, New Delhi. Prem Pal's self-assertive way of life and economic, social vulnerability brought him in confrontation with the local police and as a consequence he was falsely implicated in over seven criminal cases for offences under Arms Act, murder, theft, rape etc. For all these false accusations for over a period of 15 years, Prem Pal had to spend a total period of more than seven years in prison, though at the end he was acquitted in all the cases. Writing his judgment in the last (seventh) case Addl. Sessions Judge S.N. Dhingra put an end to Prem Pal's predicament in these words: "I consider this is an eye opener case, which reveals the manner in which police lets go of real culprits and falsely implicates innocent persons, who dare for justice or who want erring officials to be brought to book. The police torture of Prem Pal has converted him into a living corpse. It is a case which shows that police force has persons of criminal character in it, who are out to damage the whole institution and needed to be weeded out. It is recommended that all police officials who were involved in framing Prem Pal in different cases be given exemplary punishment and Prem Pal be adequately compensated for loss of valuable years of life and wrongful imprisonment for several years and his harassment for 15 years and physical and mental torture."²⁹

- (iv) Increasing incidence of child sexual abuse and 'inappropriateness' of the CJS response.

²⁸State V Prem Pal Sessions Case No. 29/02.

²⁹Ibid, para 33.

Sexual abuse of children is on the rise both in the public and private spheres.³⁰ The protection of children against sexual aggression is primarily achieved by offences under Sections 375 and 376A to D of the Indian Penal Code. In addition to the Penal Code offences the increasing incidence of sexual aggression of children, has led to the enactment of the Protection of Children from Sexual Offences Bill, 2011 that has already received union cabinet approval. But enacting a new and more comprehensive law would not mean much unless the system generates effective enforcement strategies.

However, the recent handling of the child rape (Pascal Mazarurier Case), child harassment (Punita Mistry's Victimization Case) and sexual allegations against middle-class females (Pinki Parmanik Case) cases raises serious doubts about whether the CJS is in sound health. The Bangalore child rape case is unique in many respects, because it relates to a father, Pascal Mazarurier, a French diplomat alleged to have raped his four-year old daughter. The complainant is the mother of the victim and the police, despite media pressure, delayed arrest till five days, in anticipation of the accused claiming diplomatic immunity. Consequently even after the confirmation of the fact of rape, the police arrested the accused on the fifth day. Not only the delayed arrest, the insensitivity shown by the Police Commissioner and his office to the plight of the child victim and her complainant mother appeared more like a ploy to discourage them. The complainant (wife of the accused) was asked personal and embarrassing questions as if she was the perpetrator of the crime. A recent media write-up on the case by Saritha Rai titled "A nightmare twice over"³¹ has tellingly observed: "After seeing her story as it is played out in the media, other victim's families may put off approaching the authorities altogether. The unintended consequences would make it all the more tragic".³²

³⁰An NGO Childline has reported, "Spurt in incestuous child sexual abuse cases in Kolkata", "The victims are aged between 10 and 17 years and they come from both poor and well-off households". The Hindustan Times (Delhi Edn.) 27/6/2012.

³¹Rai, Saritha, "A nightmare twice over", Indian Express (Lucknow Edn.) 9/7/2012.

³²Ibid.

Similar is the story of the lack of appropriate system of handling criminal cases in the Punita Mistry and Pinki Parmanik Cases. In the Punita case, the hostel wardens arbitrary and inhuman punishment to the 10 year old hostel resident could have been handled in an more sensitive and dignified manner, but the police instead arrested the parents of the inmate, leading to equally disproportionate media coverage, giving rise to a ugly image of the CJS. The Pinki Paramanik case handling was even more bizarre. Pinki, a woman Asiad Gold medalist, had been implicated in sexual molestation case by one of her female friend. The police arrested Pinki and kept her in custody for investigation of the alleged crime. All that happened in police custody in the name of investigation is highlighted in the following editorial: "There is no justification for the abuse Pinki faced in police custody. According to reports she was forced to undergo several medical tests – in one case with her hands and feet bound – to ascertain her gender. She was initially kept in a prison for men, manhandled by male police officers and even allegedly filmed during one of her gender tests, all of which amounts to gross violation of her rights and presumes built even before by a court of law"³³

Even a slender sample of the realities of the functioning of the criminal law in our society is enough to lead us to conclude that there is little 'justice' component and scarce realization of the operation of a 'system', so far. The criminal law is largely operated through the executive agencies, particularly the police. The victim, the community and the administration expects the overworked and under-staffed police organisation/agency to cope with the growing tide of crimes with maximum efficiency. Therefore is hardly surprising that the 'so-called CJS' characterised with the stories of abuse of power by the police, both involving over-action as in the case of Sheoraj or Prem Pal, or Punita or Pinki or under-action as in the case of Pascal Mazauier.

Conclusion

The search for a credible and socially relevant Criminal Justice System should continue and be considerably strengthened by developing abilities to do the following:

³³The Times of India (Lucknow Edn.), 13/7/2012.

- (a) Self up the task of di-criminalisation in right earnest on the lines of Ram Lakhan ruling;
- (b) Re-visit the policy of over-criminalization, by reserving the tag of 'criminalisation' only for 'serious harmful behaviours';
- (c) Identification of 'serious harms' in terms of their social relevance and the Constitutional and human rights considerations;
- (d) Rationalizing the police burden in the operation of the system of criminal justice by subjecting their functioning to a tighter judicial control;
- (e) Inculcating respect amongst the criminal justice agencies for the Constitutional and Human Rights norms;
- (f) Imparting knowledge and professional back-up training to the police, prosecution and Judiciary through appropriate courses in the Academies and Institutes;
- (g) Develop a temper for holistic understanding of CJS amongst the police, prosecution, courts, prison administrators, lawyers and, above all, the legal academics who still tend to see laws in isolation.

U.N. Human Rights Standards and Criminal Law in India

Justice G. P. Mathur*

The death, destruction and misery unleashed after the Second World War gave birth to the United Nations on June 26, 1945. The idea of human rights predates the United Nations but it achieved a formal and universal recognition only after setting up of this body. The main objective of U.N. is “to save succeeding generations from the scourge of war” and “to reaffirm faith in fundamental human rights”. Article 1 of the Charter states that one of the aims of the United Nations is to achieve international cooperation in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. Even before India had attained independence, it signed the Charter on October 30, 1945 and that shows its commitment to the cause of human rights.

On December 10, 1948 in Paris, the General Assembly, after thorough scrutiny and nearly 1400 rounds of voting on practically every word and every clause, adopted the Universal Declaration of Human Rights (UDHR). It is the primary international articulation of the fundamental and inalienable rights of all members of the human family and represents the first comprehensive agreement among nations as to the specific rights and freedoms of all human beings. Among others, these include civil and political rights such as the right not to be subjected to torture, to equality before the law, to a fair trial, to freedom of movement, to asylum and to freedom of thought, conscience, religion, opinion and expression. It also includes economic, social and cultural rights such as the right to food, to clothing, to housing, to medical care, to social security, to work, to equal, pay for equal work, to form trade unions and to education. Originally intended as

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a “common standard of achievement for all people and for all nations” over the years, the UDHR has become a cornerstone of customary international law and all countries are now bound to apply its principles.

The United Nations strives to create a culture of human rights around the world. The broadest legally binding human rights agreements negotiated under UN auspices are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which were adopted by United Nations General Assembly Resolutions on December 16, 1966. They take the Universal Declaration a step further by making its provisions legally binding. Along with the Universal Declaration, they comprise the International Bill of Rights. Whether the criminal law in India meets the standards set there in is the subject matter of discussion in this paper.

The Constitution of India was in the process of making when the UDHR was adopted by the U.N. General Assembly and many of these rights were given a concrete shape in our domestic law by incorporating them in Part III and Part IV of the Constitution dealing with Fundamental Rights and Directive Principles of State Policy. Article 14 of the Constitution of India is identical to Article 7 of UDHR which lays emphasis on equality and says that all are equal before the law and are entitled without any discrimination to equal protection of the law. Articles 3 and 9 of UDHR secure life and liberty of a person and say that everyone has the right to life, liberty and security of person, and that no one shall be subjected to arbitrary arrest, detention or exile. Similar guarantee is enshrined in Articles 21 and 22 of the Constitution. Article 21 says that no person shall be deprived of his life or personal liberty except according to procedure established by law. The content and scope of this Article has been expanded by judicial decisions rendered in the year 1978 by the Supreme Court and the view taken therein is that the law laying down the procedure for depriving a person of his life or personal liberty must be just, fair and reasonable and not arbitrary, fanciful and whimsical otherwise the law will be ultra vires. Article 22 requires that a person arrested shall be informed about the grounds of detention and he shall be produced before a Magistrate within a period of twenty-four hours, and further that he shall not be detained in custody without the authority of a Magistrate. These provisions ensure that arbitrary arrest and detention are not made.

Articles 5 & 12 of UDHR mandate that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and that no one shall be subjected to arbitrary interference with his privacy, family or home. The Constitution of India does not contain any specific provision regarding right to privacy but the Supreme Court has held that such a right flows out of Article 21 (*Kharak Singh vs. State of UP*¹ and *Gobind vs. State of MP*²). Similarly, solitary confinement, handcuffing, or putting a prisoner in fetters or subjecting a person to torture, inhuman or degrading punishment have been held to be violative of Article 21 of the Constitution of India and cannot be resorted to (*Sunil Batra vs. Delhi Admin.*³ and *Charles Shobraj vs. Supdt. of Central Jail*⁴).

Article 8 of UDHR lays down that everyone has the right to effective remedy by competent national tribunals for acts violating the fundamental rights granted to him by the Constitution or by law. Article 32 of the Constitution of India guarantees the right to everyone to approach the Supreme Court of India in the event of violation of his fundamental rights and Article 226 empowers the High Courts to issue directions, orders or writs including writs of habeas corpus for enforcement of any fundamental right or for any other purpose. The District courts are also empowered to grant relief in the event of invasion of such of the rights which come within their domain.

Clause 2 of Article 11 of UDHR provides that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence under national or international law at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the penal offence was committed. Exactly similar guarantee is enshrined in clause (1) of Article 20 of the Constitution of India.

Article 10 of UDHR lays down that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against

¹ AIR 1963 S.C. 1295

² AIR 1975 S.C. 1378

³ AIR 1978 S.C. 1675

⁴ AIR 1978 S.C. 1514

him. Section 327 of the Code of Criminal Procedure (for short Code) specifically lays down that the place where any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open court to which the public generally may have access. The only exception to the rule of public hearing is a trial for the offence of rape which has to be held in camera. This is evidently a just provision made for the protection of honour and reputation of a victim of rape and also to ensure that the evidence is given in a free atmosphere without any kind of psychological pressure and away from public gaze. The district courts where a criminal trial takes place are wholly independent, fair and impartial. This is ensured by virtue of Article 235 of the Constitution of India which vests complete control over the district courts with the High Court totally excluding the Executive. Section 407 of the Code empowers the High Court to transfer any criminal case from one court to another court, if it considers it expedient for ends of justice and this power can be exercised on the report of the subordinate court or on the application of the party interested or on its own initiative. Similar power can be exercised by the Supreme Court of India under section 406 of the Code and it can transfer any criminal case or appeal from one subordinate court to another subordinate court or from one High Court to another High Court. The power of transfer can be exercised if there is reasonable apprehension that the accused will not get justice from the court where his trial or appeal is pending.

Clause (1) of Article 11 of UDHR mandates that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. The principle that an accused is presumed to be innocent and the prosecution has to establish its case beyond any reasonable doubt is too well-settled in India and hardly needs any elaboration. The Indian Evidence Act has given statutory recognition to this principle in Chapter VII dealing with the topic of Burden Of Proof and Section 101 thereof says that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. The legal position is clarified by illustration (a) appended to this section which says that if A desires a court to give judgment that B shall be punished for the crime, A must prove that B has committed a crime.

Elaborate provisions have been made in the Code of Criminal Procedure (Code) that anyone charged with a penal offence gets full and fair opportunity for his defence. Section 207 of the Code enjoins furnishing to accused, free of cost, copies of police report, First Information Report, statements of witnesses recorded by the police and all other documents which the prosecution seeks to rely. At the commencement of the trial, charge has to be framed against the accused and detailed provisions in that regard have been made in Chapter XVII of the Code. The charge must clearly state the time and place of the alleged offence, the person who is alleged to have committed the offence and should be reasonably sufficient to give the accused notice of the matter with which he is charged. The accused is given an opportunity to enter upon his defence and adduce evidence which he may have in support thereof and also for issuing process by the Court in compelling the attendance of any witnesses or for the production of any document (Section 243, 247 and 233 of the Code). The accused is also entitled to give reply to the arguments advanced on behalf of prosecution (Section 234 of the Code).

The provisions of UDHR in the realm of criminal law having been noticed in entirety, the relevant provisions of International Covenant on Civil and Political Rights (for short ICCPR) need to be examined.

The United Nations General Assembly considered some principles to be of special importance for the dignity and worth of human person and to reaffirm faith in fundamental human rights. Probably for this reason these principles were reiterated in ICCPR although they had already been incorporated in the UDHR. Clause (1) of Article 6, 7, clauses (1) and (4) of Article 9, clause (2) of Article 14 and Article 15 of ICCPR are virtual reproductions of Articles 3, 5, 9, 12, 8, and 11 respectively of UDHR. These are rights to life, liberty and security of person; not to be subjected to torture or cruel or inhuman or degrading treatment or punishment; not to be subjected to arbitrary arrest and detention; non-interference with ones privacy; to be presumed innocent if charged with a penal offence and right to an effective remedy in the event of violation of fundamental rights granted under the constitution or the law. It is, therefore, not necessary to consider them again.

Clauses (2), (4) and (5) of Article 6 of ICCPR lay down that in countries which have not abolished the death penalty, sentence of death

may be imposed only for the most serious crimes and the penalty can be carried out in pursuance to the final judgment rendered by a competent court. Any one sentenced to death shall have right to seek pardon and commutation of sentence and death sentence shall not be imposed for crimes committed by a person below 18 years of age and shall not be carried out on pregnant women. Section 354 of the Code requires that the Court awarding death sentence must record special reasons for awarding such sentence. The Supreme Court has held in a catena of decisions that the death sentence can be awarded only in rarest of rare cases. Article 72 of the Constitution of India confers power on the President to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person who has been sentenced to death. Similar power has been conferred on the Governor of a State under Article 161 of the Constitution. Chapter XXVIII of the Code (sections 366-371) requires that when a court of Session passes a sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by at least two judges who have heard the reference. Section 416 of the Code specifically lays down that if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to imprisonment for life. In view of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, a person who has not completed 18 years of age cannot be sentenced to death or to imprisonment for life. In exceptional cases he may be kept in place of safety.

Clause (7) Article 14 of ICCPR provides that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted. This protection is ensured by Clause (2) of Article 20 of the Constitution of India and also by section 300 of the Code.

Clause (5) of Article 14 of the ICCPR says that everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. Chapter XXIX of the Code contains very elaborate provisions for appeals in the event of conviction and sentence by the trial court and such a right is available in all cases except in very trivial ones. Where the High Court in an appeal reverses an order of acquittal recorded by the Trial Court and imposes a punishment of 10 years imprisonment or more, an appeal lies to the Supreme Court as a matter of right both on fact and law. Section 389 of the Code empowers the appellate

court to suspend the execution of sentence and release the convict on bail during the pendency of the appeal.

Clause (3) of Article 14 of ICCPR has seven sub-clauses. The first six ensure certain minimum guarantees to a person who is facing any criminal charge like (a) to be informed in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) to be tried without undue delay; (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; and also to be informed, if he does not have legal assistance of this right and to have legal assistance assigned to him (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf; and (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court. The Code contains elaborate provisions which make available the aforesaid safeguards to an accused facing criminal prosecution. Any person arrested and detained in custody has a right to consult and be defended by a legal practitioner of his choice in view of Article 22(1) of Constitution of India and also Sec 303 of the Code. Where an accused has not been able to engage a legal practitioner, Section 304 of the Code requires that legal aid be provided to him at State expense.

Sub-clause(g) of Clause (3) of Article 14 of ICCPR says that in the determination of any criminal charge, a person shall not be compelled to testify against himself or to confess guilt. Clause(3) of Article 20 of the Constitution of India contains a similar guarantee which says that no person accused of any offence shall be compelled to be a witness against him. The V amendment of the American Constitution adopted in 1791 says “no personshall be compelled in any criminal case to be witness against himself.” Privilege against self-incrimination is one of the great landmarks in man’s struggle to make himself civilized and it is closely linked with abolition of torture. Some jurists, however, are of the view that privilege is a hiding place of crime and only the guilty have use for the privilege. Justice Cardozo remarked that there would remain the need to give protection against torture physical or mental, but justice would not perish if the accused were subject to a duty to respond to orderly inquiry (Palko vs. Connecticut⁵). Undoubtedly, the human rights of those who are facing criminal prosecution ought to be protected but the modern policy of law is to favour the

production of any cogent and reliable evidence which will help to establish the truth. Otherwise the very purpose of law which is to maintain social order would be defeated. This constitutional guarantee has raised some problems in its application in different fact situations and therefore its content and scope need little elaboration.

In the period of over two centuries since its adoption in 1791 the Vth amendment of the American Constitution has come up for consideration on many occasions and the view of American Courts is that the Constitutional guarantee renders incompetent only such evidence as is furnished or produced by accused under 'testimonial compulsion' such as disclosures obtained by legal process against him as a witness. The rule extends only to communications, written or oral, on which reliance is to be placed as involving the accused's consciousness of the facts and the operation of his mind in expressing it. The test is whether the proposed evidence depends for its probative force on the testimonial responsibility of accused, or has such force in itself unaided by any statement of accused. The constitutional guarantee does not preclude the admission of real evidence produced by a reasonable examination of the body of accused or scientific examination of a substance taken from the body even where it was done without his consent like taking of blood sample or testing of accused's blood, breath, or urine for alcoholic content and consequent intoxication or routine fingerprinting, photographing, measuring parts of body or requiring a suspect to speak or write or imprinting a suspects body like nose or cheek on window or glass for identification. (Vol. 22A Corpus Juris Secundum para 649, 651 (a) & (b) and 8 Wigmore 2265)

What meaning be given to the expression "to be a witness" and whether Constitutional guarantee also affords protection to production of documents by an accused unaccompanied by any personal statement initially gave rise to conflict of judicial opinion in India. Finally an eleven judge bench of Supreme Court in *State of Bombay vs. Kathikalu*⁶ held that "to be a witness" means imparting knowledge in respect of relevant facts, by means of oral statements, or statements in writing by a person who has personal knowledge of the facts to be communicated to a court, or to a person holding an enquiry or investigation. The guarantee against self-incrimination must

⁵ 302 US 319

⁶ AIR 1961 S.C. 1808

mean conveying information based upon personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw light on any one of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. The giving of a personal testimony must depend upon his volition. This would not include giving a specimen writing or thumb impression or exposing part of the body for purpose of comparison or identification.

Two other statutory provisions also deserve notice in this connection. Section 313 of the Code requires that in every trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the court shall, after the prosecution evidence has been recorded, question him generally on the case, but no oath shall be administered to the accused nor shall he be liable to punishment by refusing to give answers or by giving false answers. Section 315 of the Code provides that any person accused of an offence shall be a competent witness and may give evidence on oath in his defence but he shall not be called as a witness except on his own request in writing and his failure to give evidence shall not be made the subject of any comment or give rise to any presumption against himself. So an accused can be examined as a witness only when he volunteers to do so in writing and not under any kind of compulsion. Section 132 of Indian Evidence Act says that a witness shall not be excused from answering any question on the ground that answer will criminate him. However, the proviso to the Section says that no such answer, which a witness shall be compelled to give subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer. This provision also affords protection against self-incrimination.

The International Covenant on Economic, Social and Cultural Rights operates on a different arena and does not pertain to arrest, detention or trial for a criminal offence. The Criminal Law in India, as shown above, is compatible in every aspect with U.N. Human Rights Standards. They provide greater protection and safeguards to a person who has been detained or is facing criminal prosecution than what is visualised under the U.N. resolutions. They not only ensure full safeguards to a suspect and free and fair trial of a person accused of having committed an offence but also recognise the inherent dignity of the human person.

Ending Indifference: A Law to Exile Hunger?

Harsh Mander*

The failure of governments and middle class people to acknowledge and strive to end hunger and destitution derives, from a denial of the intrinsic equal human worth of every human being. It fails to acknowledge that all women and men, boys and girls are equally worthy, regardless of their gender, faith, caste, colour, wealth or physical abilities; of regardless of what they produce and contribute; regardless their difference; of their departures from prevalent social norms; of their physiological and social diversity from the majority; of their disenfranchisement and powerlessness. The notion of an inalienable right to food of all is built on an ethical framework that affirms that every human being is an end in herself, of intrinsic and immutable value.

Till the day when this equal intrinsic human worth of every person is fully acknowledged and realised - the silent tragedy will continue to play out, of millions of women and men, boys and girls, who sleep hungry. They will continue to serve their life-sentence, as have generations before them - of chronic hunger; of intense yet avoidable suffering; of self-denial; of learning to live with far less than the body needs; of minds and bodies stymied in their growth; of unrealised potentials; of unpaid, arduous devalued work; of shame, humiliation and bondage; and of the agony of helplessly watching one's loved ones - in hopeless torment.

In free India, famines – in which the lives of tens of thousands of people regularly perished has passed into history. But men, women are compelled to subsist for long periods without sufficient food. They drastically cut back on their food intake, sometimes reduced to eating one meal a day; or to beg for food; or to eat tubers, grasses and mango kernels that fill their stomachs but provide no nutrition. There is little nothing more shaming for a parent than to be unable to feed one's child.

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State granaries are full, grain rots, the economy is resurgent and many of the world's wealthiest people are Indians. Yet the paradox persists, that one in every two Indian children is unable to access enough food for her body and brain to develop to their full potential, and two out of three women are anaemic, because even within families, women eat the least and only after all others have been fed. Countries which are much poorer than India have fared far better in battling hunger and malnourishment. The Government in India procures and distributes millions of tons of subsidised food, runs feeding centres for children, and feeds a hundred and forty million students daily in schools. Yet they fail to stem the wasting of the bodies - and spirit - of millions of her people. Official surveys admit that in nearly a decade, the percentage of malnourished children has reduced by just one percentage point, from 47 to 46%.

Experts battle each other endlessly to ways to measure poverty and count the hungry, and policy-makers use minimalist assumptions to claim the decline of poverty, and rationalise cut-backs in public expenditure. Often their assumptions are not just unrealistic, but inequitable. Current official 'poverty lines' condemn the poor to eat cheap, monotonous food, with little left over for health services, education, housing and recreation, and then deem these levels as satisfactory to pull them out of poverty and justify the retreat of the State.

Such high levels of hunger and malnutrition are a paradox, because they stubbornly survive galloping economic growth, and agricultural production which outpaces the growth of population (although agriculture in India has worryingly stagnated in recent years); and some of the largest and most ambitious State-run food schemes in the world. The persistence of widespread hunger is the cumulative outcome of public policies that produce and reproduce impoverishment; of failures to invest in agriculture especially in poorer regions and for rain-fed and small farmers; of unacknowledged and unaddressed destitution; of embedded gender, caste, tribe, disability and stigma which construct tall social barriers to accessing food; but in the last analysis it is the result of a profound collapse of governance.

The colonial Famine Codes continue to cast a long shadow over responses of the State to hunger, even though both the nature of famine and the political economy of the State have been completely transformed

in free India. As with these Codes, State responses continue to regard starvation as a temporary aberration caused by rainfall failures rather than an element of daily life. Destitution is invisible to our governments. The effort remains to craft minimalist responses, to spend as little public money as is absolutely necessary to keep people threatened with food shortages alive.

States can be held more accountable only if social and economic rights like right to food, work, shelter, health care, education and social security are legally enforceable as fundamental rights, no different from civil and political rights. People cannot be forced to choose between rice and freedom; each loses meaning without the other. In India, through a fortuitous combination of judicial and civic activism, in what has come to be known as the right to food case, the Supreme Court has converted various government programmes with a bearing on food security into entitlements, which the State cannot abridge or withhold on the plea that it lacks resources. Before the intervention of the Supreme Court in 2001, they ran many food schemes, but these were not guarantees: they could be withdrawn or reduced, and there was no obligation on the State that these schemes must cover all needy people. The Supreme Court changed this, by directing that governments could not withdraw any food schemes; and that all children in schools be given hot cooked school meals, all children under six years as well as nursing and expectant mothers supplementary feeding through ICDS, and all vulnerable groups ration cards. But through the right to food act, the State has an opportunity to seize the initiative from the Courts, and instead comprehensively legislate itself to make governments responsible to reach food to all.

The courts have shown the way for the right to food to become a judicial legal entitlement, binding on every government. In a nation in which mammoth wealth and intense destitution have co-existed for millennia, a law that would bind governments to guarantee that no man, woman or child sleeps hungry could be momentous. Such a law, if enforced by sustained democratic non-violent people's resistance, can enable the beginning of the end of the enormous human suffering, indignity, economic and social cost and enduring injustice associated with entirely preventable food denials and malnutrition, and the banishing of hunger from every home in the country.

Such a law would bind governments to guarantee that no man, woman or child sleeps hungry. If passed, it can become – with the Right to Information Act and the National Rural Employment Guarantee Act – the most significant contribution of this government to humane and accountable governance. It is such a right to food law that the union government in India in 2009 has promised to its people. A debate about the contours of such a law began thereafter within and outside government, and continues even as government finalises its Bill.

There are many within government who would like to see a minimalist formulation of the State's obligations under this law. Soon after the President of India announced that legislating a Right to Food Act was among her new government's highest priorities¹, the Ministry of Food and Civil Supplies circulated a proposal which tried to restrict the legal obligations of governments under the proposed law only to supplying 25 kilograms a month of rice and wheat at 3 rupees a kilogram. This too was only for a small segment of the population which the government deemed to be 'poor'. There was a hushed clamour that even this would cast too heavy a burden on the State treasury. But shortly after wards, the Chairperson of the UPA Sonia Gandhi wrote her first letter to the Prime Minister since the installation of this government, proposing a Bill that would much more comprehensively guarantee adequate food to people who live with hunger. Many people who are chronically denied food have been specifically detailed in the draft she recommended: such as single women, disabled and aged people, street children, bonded workers, people in casual low paid employment including agricultural labour and rag-picking, the urban homeless, and others.

In this initiative were echoes of the luminous words of Lula da Silva, President of the Republic of Brazil, when his government launched a similar national food guarantee, called 'Hunger Zero'. He had pledged, 'We will make it possible for people in our country to eat three square meals a day, every day, with no need for handouts from anyone. Brazil cannot go on living with so much inequity. We must overcome hunger, extreme poverty and social exclusion. Our war is not to kill anyone. It is to save lives'. The sub-title of Brazil's Food Security Policy was equally iridescent: 'Brazilians who eat helping those who don't'.²

¹ President of India Pratibha Patil's address to Joint Session of the 15th Lok Sabha, 21 February 2011. Available at : <http://www.hinduonnet.com/nic/presidentjointsession.htm>

² 'Brazil's Food Security Policy', Available at: www.fomezero.gov.br

It is precisely these ethical and political convictions that India's right to food law must draw upon if it is to rewrite history: that the first claim over the country's resources must be of men and women, girls and boys who are the most deprived; that a right to food must impose binding obligations on the governments and people of India to exile hunger from every home; that this would involve redistribution of resources from those with privilege and means to those who are dispossessed; that necessary resources to reach food to every mouth therefore exist; and ultimately that the State must care.

The food that this law would guarantee to every person in this country must be nutritious and sufficient for an active and healthy life. It must also be assured. And it should be food that they can access with dignity. A bonded worker, a child searching in rubbish heaps, and a disabled or aged man who stretches out his limbs for alms, possibly may have a full stomach, but without the dignity that every single human being is entitled to.

The law must also contain penalties against public authorities who fail to reach food to the hungry. Public authorities can be punished if it proved that they killed a man in their custody. But if a child dies because State functionaries failed in their duties, none face penalties. The law would be toothless unless it changes this.

There are many ways in which governments under this law would have to reach food to people who are threatened with hunger. For able bodied men and women, it may be sufficient for governments to guarantee employment at decent wages. Besides subsidising rice and wheat it must also subsidise pulses and oilseeds; to encourage agricultural production of these foods and to procure these at reasonable prices from all farmers; and to reach food to scarcity areas. But children additionally need nutrition, through breast feeding, in ICDS centres and schools. For children who lack adult protection, like street children, a large network of government hostels alone can secure their food. Women require maternity benefits, and nutrition support to single women. Aged people need adequate pensions, and access to free cooked food in feeding centres. And for urban migrants and homeless people, community kitchens which offer affordable nutritious food are imperative in thousands in every city.

This law can help end the suffering of watching one's loved ones wilt, waste and die because they cannot afford healthy food. It can enable the people and governments to redeem their pledge to reach true freedom to all, by exiling hunger from every home. Several decades before Lula made his resounding moral appeal to his people in Brazil, Gandhiji too had offered us a talisman, to remind us that only those public policies are legitimate which make life better for those who are the most vulnerable and dispossessed. This law provides is the chance at last to heed his counsel.

It is often said far too lightly that one decision can sometimes change the course of history. This is indeed one such decision. For people who have for centuries been condemned to live with of hunger, a comprehensive food security bill—which creates detailed obligations for governments to secure food and nutrition for people who live most with want and deprivation, whose lives still remain frozen in time as the rest of us race ahead – can indeed alter the destinies of the most wretched of our earth.

While crafting this legislation, the first major debate was what should be the scope and objectives of such a law, which aims to create a situation in which economic and social access to adequate food with dignity, would be assured for all persons in the country, at all times, in pursuance of their fundamental right to be free from hunger, malnutrition and other deprivations associated with the lack of food.

Influential elements in government initially wanted an extremely minimalist law, limiting its legal guarantee to 25 kg of cereals per month at ₹ 3 to around 38% households designated by government to be BPL (or 'below poverty line'). With time, they conceded expanding the monthly entitlement to 35 kg, and the coverage of households to 46% rural and 28% urban households (corresponding to the revised estimates of poverty by a Committee headed by economist Dr Tendulkar in 2010).

The political Left rejects any law which does not cover all households in the country with a universal guarantee of subsidised food grain through PDS. The NAC agrees that a right to food law must provide for a greatly expanded, if not universal PDS, but adds that it must also include universal food guarantees for infants and children, maternal entitlements, and special guarantees for vulnerable groups such as those living with starvation, the destitute, persons affected by natural and human-made disasters, and migrants.

The Right to Food Campaign³ maintains that a food security law should not only ensure state provisioning of food, but also sufficient and sustainable availability of food. Therefore the law must contain a range of guarantees for food growers, including sustainable agricultural technologies, income protection and remunerative prices, soft credit, promotion of pulses, oilseeds and millets, and prevention from diversion of lands involved in food production away from agriculture. And nutrition requires far more than availability and access to food. The law should contain guarantees also for universal health care, universal access to clean drinking water, and universal sanitation.

There is no dispute that each of these is imperative, if malnutrition is to be fought. But how much can you load on to a single law? It should not collapse under its own weight. The NAC draft law incorporates all these elements as ‘enabling provisions’, which are enjoined upon governments for progressive realisation, but not enforceable in a court of law in the way various food guarantees under the law are.

A rights-based law should create enforceable duties of the State. This potentially historic legislation creates duties of *public provisioning of food* to persons who are food-deprived or vulnerable. This food would be supplied in three major ways: the first as subsidised food grain (through PDS); the second as cooked food, for small children in ICDS centres, schools and destitute feeding centres and urban community kitchens, as well as free dry rations; and the third as maternity cash entitlements. The food entitlements created by this Act would cover State duties to provision food during the entire life cycle of a human being, starting with overcoming maternal and foetal under-nutrition resulting in low birth weight babies, and extending up to old and infirm persons.

An equally heated debate surrounds the question of whether PDS under this law should be universal, or in other words available to any household in the country which seeks, or should it be restricted to families identified by governments to be poor. Left-wing political parties, economists, commentators, and the Right to Food Campaign all believe that if the law falls short of guaranteeing a universal PDS, it is without worth.

Their first argument is of principle. At a basic level, the purpose of the proposed Act is to provide a *universal* guarantee of adequate nutrition.

³ http://www.righttofoodindia.org/right_to_food_act_campaign_docs.html

The right to food, as an aspect of the right to life under Article 21 (interpreted by the Supreme Court as a right to live with dignity), is a fundamental right of all citizens. The Directive Principles of State Policy in the Constitution should never be compromised or undermined; instead they need to be realised, strengthened and taken further forward *for all*. Food for all, health for all, education for all, work for all — these should be taken as the bottom line. Basic rights like right to food, education, social security and health care must be guaranteed by the Government to all citizens, as universally State-supplied and common entitlements. The food law should under no circumstances dilute these principles, in no way should it be used to exclude people from their basic rights and needs. It should be the choice of citizens whether or not they wish to use these public services, but none should be excluded by law.

Protagonists of universalisation also fear, not without justification, that the real underlying objective of targeting subsidised food grains is to progressively reduce fiscal expenditures on food subsidies, by first linking these subsidies to Below Poverty Line families, and then to establish that the percentage and numbers of poor families have fallen. They believe that targeting is the thin edge of the wedge, to lay the ground for gradual but eventual State withdrawal from the supply of public services.

Their further argument is more practical, that the politics of middle class stakes would ensure that quality is maintained in PDS. The poor are relatively powerless to demand and secure quality services from the State. Programmes for the very poor therefore tend to be very poor programmes. For instance, since the middle classes hardly use public hospitals, government schools and city public transport, the quality and accountability of these services have severely declined.

Government of India has currently restricted the allocation of subsidised food grain to a specific number of households using the poverty percentage of 1993-94. Studies establish that there are more people consuming less than required calories than there are people identified as living under 'official' poverty line, even if this is enhanced to the levels proposed by Tendulkar, and other evidence of food and nutritional status of people in India also corroborates this.⁴ Therefore there is a strong case

⁴ Saxena, NC. (2009), 'Report of the Expert Group to advise the Ministry of Rural Development on the methodology for conducting the Below Poverty Line(BPL) Census for the 11th Five Year Plan'. New Delhi: Ministry of Rural Development

for bringing many more, if not all, people within the reach of subsidised food through PDS than those identified to be ‘below poverty line’ by governments.

Votaries of universalisation suggest that targeting for subsidised food grain inevitably fuels greater corruption, and the most powerless consumers are most likely to be excluded from these services. Official targeting is chronically ridden with problems of exclusion and wrongful inclusion. Available evidence suggests that the ‘BPL’ methods of identifying the poor have indeed resulted in the frequent and widespread exclusion of the most deserving. For instance, a recent study by Planning Commission’s Programme Evaluation Office (PEO) reveals that more than half of the poor either have no card or have been given APL cards, and are thus excluded from the BPL benefits. On the other hand, almost 60 per cent of the BPL or Antyodaya cards have been given to households belonging to the non-poor category⁵. This indeed is corroborated by the finding of at least 3 National Surveys⁶. In other words, if you are really poor, there is a greater chance that you will be left out of the BPL survey, than included within it! It could be presumed that the excluded will comprise largely of poor tribal groups, women headed households, and people living in remote hamlets where the reach of public services is poor. Such problems of inclusion and exclusion can be avoided only if the service is universally available to all.

These are powerful arguments for a universal Public Distribution System. This author rejects outright the arguments of those who oppose universalisation mainly because they wish to restrict public spending, for what they regard to be ‘fiscal discipline’ and ‘efficiency’. It is the duty of States to provision basic public goods like food, education, health-care and social security to all citizens, and claims of absolute fiscal constraints are hollow and difficult to sustain. What governments believe are worthy of public investment, it finds the money for these.

But others oppose universalising PDS on more significant ethical grounds of affirmative action. People vary hugely in their ability to access sufficient food. There is enormous difference in food denials and vulnerability between households, based on divergent conditions of wealth,

⁵ Planning Commission (2007), “Eleventh Five Year Plan 2007-2012” - Volume 2, Chapter 4, page 149, accessible at http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v2/11th_vol2.pdf

⁶ NSS Survey 55th Round (1999-2000), 61st Round (2004-05), 63rd ‘thin’ Round (2006-07)

gender, caste, community, age, disability, and a range of other factors. What is the justification to give a rich rural landlord subsidised grain, and that too at the same levels and price as a destitute rural landless widow, or a homeless disabled beggar? A rich person opts out of a notionally universal public health system or schooling system, because they access high quality alternatives. There is no problem with making the right to work under MG NREGA universal, because wealthy upper caste persons would be unwilling to labour on a public works site with their hands. But these barriers would not apply necessarily for a universal right to food. It is speculated that the wealthy may still draw the subsidised food for their domestic help, or even to feed their pets! Why should large populations who live with chronic hunger get the same share as those who can easily afford to access their food requirements?

Further, opponents of universalisation fear that a universal system would spread the State's food subsidy too thin. Even if both food procurement and cash subsidies are greatly enhanced above present levels, as they must be, the quantity of food available for distribution is still finite, and so ultimately are budgetary resources. If currently available food grains were to be distributed equally to all households, it is calculated that each household would get around 15 kg a month. (We need to work out the calculations of current food procurement divided by total number of households at the rate of 4.5 persons per household). There are also inevitable trade-offs: spending more on a universal PDS would mean spending less for something else. And if 'universal' does not mean 'uniform', or in other words, if universalists wish to provide subsidised food to all, but not at the same price or quantity, then we are back to the requirement even within the framework of universalisation, of finding better ways of identifying those most in need – and therefore one of the main arguments which favour universalisation (that it precludes the need to identify the poorest, a process fraught with failures) breaks down. They argue that the claims of affirmative action inevitably require governments to look for better ways to identify the disadvantaged. There is no getting away from identifying those who require State food support, and if States are able to do this, then it is best to focus all available food grains and the food subsidy to better ensure the food security of individuals and households whose food rights are most threatened and denied.

The NAC has attempted a middle path in this debate, which admittedly has not fully satisfied any side. It accepts that much larger numbers of households should be covered with subsidised food grains, both because the numbers of food-insecure households and malnourished individuals is far higher than government estimates of the 'poor'; and because larger coverage would reduce the risk of vulnerable and powerless persons being edged out of their entitlements. It initially suggested that PDS be universalised to start with in 150 poorest districts, and then expanded gradually as food grains became available. It then went on to recommend instead that 90% rural and 50% urban households should be given subsidised food grains. But only nearly 50% rural and 30% urban households (corresponding to Tendulkar poverty estimates) would receive monthly quotas of 35 kg at ₹ 3 for rice, ₹ 2 for wheat, and ₹1 for millets (which is virtually free). These are called 'priority' households. The remaining 'general' households would receive a minimum of 20 kg a month, and at a higher price. This administratively complicated formula attempts to partially accommodate the arguments of universalists, with the imperatives of affirmative action: by offering subsidised grain to very many more households, but still retaining higher entitlements for social and economic categories that are the most vulnerable. But is this truly a 'golden' mean, or one that of less sterling mettle, is still wide open to debate.

The next set of debates when drafting the food law was what entitlements to food the law should guarantee beyond the PDS. Since India has unacceptably high levels of malnutrition with almost one in two children being underweight, it was clear firstly that cast-iron and wide-ranging guarantees for child nutrition should be at the heart of the proposed law. The first three years of life are most critical for nutritional well-being, and damage done by inadequate nourishment or health care at early stages of life is very hard to reverse later on, therefore the law should provide for nutrition counselling and support for optimal breastfeeding – including through crèches. Besides preventing malnutrition, it is equally important to *treat* children who are severely malnourished, as this condition alone accounts for almost half of all child deaths. Further, once a child is malnourished she is prone to infections, and this leads to a vicious cycle of malnutrition and infection. We therefore recommend that all malnourished children who require treatment should have access to appropriate care, including regular growth monitoring; enhanced supplementary nutrition

and therapeutic food if required as part of the treatment protocol; nutrition counselling for improved locally appropriate feeding and care; health checkups and referral services and special care at a Nutrition Rehabilitation Centre or in the community as appropriate.

We also recommend that the current provisions for guaranteeing at least one cooked nutritious meal to children in the pre-school and elementary school age-groups should be consolidated and brought under the ambit of the law. The many benefits of school mid day meals in ending classroom hunger, encouraging enrolment and attendance, making the school environment more child-friendly, helping break social barriers among school children, and providing employment to large numbers of underprivileged rural women are well established. Though school meals are already mandatory under Supreme Court orders, we felt that we should make them permanent entitlements under the new law. Like the Supreme Court, we wished that the law bars penetration of commercial interests in food, given the global experience of its perils, and also provide for diverse local foods and not 'ready to eat' packaged foods.

Even if all of this is in place, there is still the danger of the most vulnerable children falling through the cracks, such as out of school children. Our law proposes that no child below the age of 14 years should be turned away from receiving a freshly cooked nutritious meal by any feeding facility such as anganwadi centre, school, or destitute feeding centre.

Given the grave levels of maternal deaths and malnutrition, the proposed law also contains guarantees for supplementary feeding of expectant and nursing mothers, and maternity entitlements of ₹ 1000 per month for 6 months. We sought to cover all women who do not receive maternity entitlements of the same level. We also opposed the government's suggestions of laying down conditions for such benefits, such as that the woman must undergo various health services, institutional delivery and keep the family size small, because this would exclude the poorest women and those in remote regions, who face many hurdles in obtaining services and ensuring compliance.

There are many important provisions for women in the proposed law. The head of household is defined as 'the person acknowledged as taking the main responsibility for the survival and nutritional wellbeing of the household members... this shall generally be a woman unless there is no

adult woman in the household.’ We already referred to the automatic inclusion of female-headed households in official lists of the poor. Most food services, such as the management of shops or the production of supplementary food, are recommended for women’s collectives.

An important part of the proposed law is special protections for those other segments of the population who are most vulnerable to hunger and food insecurity. The law would guarantee one nutritious cooked meal daily free of charge to all destitute people who seek it as a vital last defence against starvation for those who are most vulnerable to it. Destitute people are those who lack the economic or social means required for dignified survival. Studies confirm that there are large numbers of highly food insecure urban homeless persons, and single migrant workers, who require subsidised and affordable cooked meals in cities. We recommend for them a programme of Community Canteens. Such canteens, called soup kitchens, form a major element of food security entitlements in countries like Brazil. The proposed law mandates that arrangements should be made to ensure that migrant workers and their families can claim their food entitlements wherever they are, because presently they are excluded from most public services in places to which they migrate. For instance, the children of migrant workers should have access to the local Anganwadi, and migrant workers should be able to access their PDS rations at their current place of work. We also recommended that inclusion of guarantees of social security pensions for the aged, single women and disabled persons should be incorporated in an alternative legislation for social security.

A major component of the proposed law would guarantee all persons protection from starvation, and prescribe a legally binding protocol for those individuals, households or communities which may be threatened by starvation. We observed that Famine Codes from colonial times prescribe state actions in the event of large-scale famines, but there are no such binding duties in the event of individual starvation. We believe that the law should try to remedy this major gap in state accountability, by prescribing duties of governments at various levels to prevent, investigate and respond to starvation. Likewise, all disasters, natural or human-made, place affected populations at risk of food insecurity and starvation. We therefore prescribes that such populations at risk should be entitled to subsidized foodgrains on the same terms as designated ‘priority groups’ and be guaranteed special ration cards for at least one year after the disaster

As far as the price-tag of the range of food entitlements proposed by the law are concerned, it is never our claim that food security for all would come cheap, and that too in a country of a billion plus twenty million people, and desperately high levels of hunger and malnutrition.

The battle, is not about a few million metric tonnes of grain more or less, or of whether millions of rupees of budgetary resources more or less should be invested in the food and livelihoods of the poor. The battle in the end is between two visions for India. One vision is founded on the belief that the best hope for all people, including the disadvantaged millions, is for governments to efficiently promote and facilitate markets. A resurgent private sector in a globalised economy would create wealth and jobs, and all would be better off in the long run. The other vision for the country rejects growth which excludes millions of our people and condemns them to sink deeper into their dubious historical legacy of centuries of want, hunger, debt, caste and communal discrimination, and patriarchy. It demands a more compassionate economics, one in which 'people matter'.⁷ It believes that the State's highest duty is not to promote markets, but to invest in a better life for its disadvantaged citizens.

For those who transact only the language of growth, such investments in people's bodies and minds would further compound the benefits of India's demographic dividend, with healthier young workers with their minds more developed and better equipped to compete in the contemporary global knowledge economy.

But the paramount argument for a comprehensive right to food law is not economic, or even political (that it will generate more votes). The imperative is ethical. Elie Wiesel, a Holocaust survivor and Nobel laureate, observed with wisdom that was both grave and weighed down with sadness: 'The opposite of love is not hate. It is indifference'. In a country which for too long is scarred by its absence of outrage about and suffering with desperate inequality, the greatest imperative for a right to food law is to breach our collective indifference. There is a great gaping hole in our collective souls, which we must mend. The people of this ancient land must push into history the enormous silent hopeless agony of generations, over centuries, of the inability to feed one's loved ones and oneself.

⁷Schumacher, E.F (1973), 'Small is Beautiful: Economics as If People Mattered', Blond & Briggs Publishers.

Food Security and Hunger in India

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The word 'hunger' does not appear even once in the 12th Plan Approach Paper prepared by the Planning Commission recently, whereas according to the latest Global Hunger Index Report, India continues to be in the category of those nations where hunger is 'alarming'. What is worse, despite high growth hunger index in India between 1996 and 2011 has gone up from 22.9 to 23.7, while 78 out of the 81 developing countries studied, including Pakistan, Nepal, Bangladesh, Vietnam, Kenya, Nigeria, Myanmar, Uganda, Zimbabwe and Malawi, have all succeeded in reducing hunger. Another evidence of continuing hunger in India is the recent hunger and malnutrition (popularly known as HUNGaMA) report released by the Prime Minister in January 2012 showing that the number of malnourished children in the 100 backward districts continues to be above 40%.

Would the Food Security Bill recently approved by the Cabinet be able to reduce hunger and starvation in India? The answer depends on several factors, such as whether we are able to increase production, ban exports and thus increase availability, and identify the real poor correctly. Besides, there are administrative problems with the Bill. Finally, states have to improve monitoring of the PDS system.

Production

According to the Central Government's Economic Survey 2012, foodgrain production in India has gone down from 208 kg per annum per capita in 1996-97 to 200 kg in 2010-11, which was a year of bumper production. From this reduced production, India has been exporting on an average 7 million tonnes of cereals per annum, causing availability to decline further from 510 g per day per capita in 1991 to 439 g in 2010. This has

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adversely affected the cereal intake of the bottom 30% which continues to be 20% less than the cereal intake of the top decile of the population, despite the rich doing less manual work and having better access to fruits, vegetables and meat products. Those who are below the poverty line, notwithstanding marginal increase in their incomes over time, are forced to cut down on their food consumption to meet other pressing demands of health and education that were not considered important in the past. Their expenditure on liquor, tobacco, transport and fuel has also gone up. Food is still needed, but not demanded as they get used to eating less food and in the process get stunted and malnourished. Endemic hunger (often hidden) continues to afflict a large proportion of Indian population.

The increase in agricultural GDP during the last ten years has been because of higher relative prices, and not higher productivity. In addition, the casualisation of a mass of rural workers without safety nets, the feminisation of agricultural labour accompanied by low wages, and the persistence of child labour are worrying trends.

Despite falling per capita grain production in the period 1996-2010 and 30% population still below poverty line, Govt of India ended up with a stock of 65 MT in 2003, again a sign of falling purchasing power of the poor, which could be disposed off only by exporting about 28 mT on a highly subsidised rate. The scenario of rotting stocks in government godowns co-existing with hunger is surely to be repeated, as the stock position may cross 70 MT by July 2012!

This has happened because of structural imbalances (high minimum support price or MSP, rising capital intensity, lack of land reforms, failure of poverty alleviation programmes, no new technological breakthrough in agriculture, etc.) created in the economy, as well as due to production problems in less endowed regions (erratic rainfall, soil erosion and water run-off, lack of access to credit and markets, poor communications) which led to the dangerous situation of huge surpluses in government godowns coupled with widespread hunger. Another factor escalating hunger is spiralling food prices, because of over-stocking by government.

The policy approach to agriculture since the 1990s has been to secure increased production through subsidies on inputs such as power, water and fertilizer, and by increasing the MSP rather than through building new capital assets in irrigation, power and rural infrastructure in less endowed

regions. This has shifted the production base from low-cost regions to high-cost ones, causing an increase in the cost of production, regional imbalance, and an increase in the burden of storage and transport of foodgrains.

The equity, efficiency, and sustainability of the current approach are questionable. Subsidies do not improve income distribution or the demand for labour. The boost in output from subsidy-stimulated use of fertilizer, pesticides and water has the potential to damage aquifers and soils – an environmentally unsustainable approach that may partly explain the rising costs and slowing growth and productivity in agriculture, notably in Punjab and Haryana. Although private investment in agriculture has grown, this has often involved macroeconomic inefficiencies (such as private investment in diesel generating sets instead of public investment in electricity supply). Public investment in agriculture has fallen dramatically since the 1980s and so has the share of agriculture in the total gross capital formation. Instead of promoting low-cost options that have a higher capital-output ratio, present policies have resulted in excessive use of capital on the farms, such as too many tubewells in water-scarce regions.

Due to excessive withdrawal of groundwater, nearly 30% of the blocks in the country are presently classified as semi-critical, critical or overexploited (mostly in 'green revolution' areas), as groundwater use exceeds the rate of groundwater recharge. As there is no effective control over digging of tubewells in water-scarce regions, farmers are borrowing money from informal sources at high interest rates to dig tubewells, but many such borings fail leading to indebtedness, and even suicides. Since sinking a bore well involves a heavy investment upfront, only the rich or the affluent farmer goes in for it, whereas the small farmer continues to depend on the shallow dug well that has been in existence for decades. Bore wells drain much larger quantities of water and it is usually from the same aquifers that feed the dug wells. The affluent farmers owning bore wells and electric motors corner most of the benefit of electricity subsidy too. Ironically, they in turn sell their surplus water to the adjacent small farmers at commercial rates. The built-in biases of the green revolution strategy now stand exposed.

It is thus obvious that Indian agriculture is in a serious crisis and needs several policy interventions, some of which are discussed below.

Recommended Policy Shifts

At the outset we need to maintain the sustainability of water based ecosystems by ensuring adequate water supplies to meet the food and non-food needs of a growing population. As agriculture is the largest user of water in India, using more than 80% of usable freshwater, and a large proportion of the population derives its livelihood directly or indirectly from it, we need to build efficient irrigation systems and water conservation strategies, especially in semi-arid regions, through conjunctive use of surface and groundwater in India. The types of investment in wetter (east and northeast) versus drier areas (peninsular India) that are necessary are quite distinct, but improved management of water is essential in both. Whereas investment in electric power may itself lead to more tubewells in eastern India, interventions in central and semi-arid India are more difficult to manage.

The main thrust of the programmes to combat the impact of climate change in the rainfed areas should be on activities relating to rainwater harvesting, soil conservation, land shaping, pasture development, vegetative bunding, and water resources conservation on the basis of the entire compact micro-watershed which would include both cultivated and uncultivated lands.

Watershed projects cannot succeed without full participation of project beneficiaries and careful attention to issues of social organisation. Moreover, collective capability is required for management of commons and for new structures created during the project. Unfortunately most projects have failed to generate sustainability because of the failure of government agencies to involve the people and build their social capital. There is also political reluctance to control water hungry crops in low rainfall regions, such as sugarcane in Maharashtra and paddy in Punjab. One would need stricter implementation of environmentally sound cropping patterns, and unrestricted mining of groundwater. Incentives should be given to farmers to persuade them to move away from crops that tempt them to 'steal' water from their neighbours. Drip irrigation and water sprinkler approach, mulching and bed plantation, construction of tanks and check-dams should be promoted for water harvesting and conservation. Its impact is visible in Alwar region of Rajasthan, where barren lands have converted into lush fields. Dried up rivers got rejuvenated by making 'Johads', small earthen check dams.

The stated objective of the ambitious MGNREGS (Mahatma Gandhi National Rural Employment Guarantee Scheme) is to do drought proofing and increase agricultural production on marginal holdings, especially in semi-arid regions and uplands, but the sustainability and productivity of assets created is never monitored with the result that the programme is reduced to creating short-term unproductive employment with no focus on asset creation or soil and water conservation. Its impact on agriculture may even be negative, as alleged by the Ministry of Agriculture. In any case, it makes no sense to run the programme in labour-scarce districts of Kerala, Punjab, Haryana, Himachal Pradesh, and the north-east. On the other hand, the upper limit of work guarantee of 100 days should be enhanced to 150 days per household in the poorest 200 districts, with assets such as ponds, bunds, check dams, and planted saplings being monitored at least for five years.

Marketing

Regulated markets were supposed to improve efficiency, but many official market committees such as in UP, Punjab, and Haryana make it illegal for farmers to sell through alternative channels (i.e. selling directly to millers). The markets have thus emerged as taxing mechanisms, rather than facilitating farmers to get the best price.

The present extraction rates for both wheat and rice are about 10 to 30% below the international standards due to reservation of agro-processing units for small sector which uses inefficient technologies. Therefore, remove licensing controls on Roller Flour Mills and other food processing industry. De-reserve food processing units, especially rapeseed and groundnut processing units, from the SSI list. On the whole, laws and controls have repressed private foodgrain marketing, undercutting its potential contribution to long-term food security.

In addition, it is vital to shift the Food Corporation of India's (FCI) focus to East and Central India, where there is no government procurement of paddy, except in Chhattisgarh. A basic focus of policy should, therefore, be to ensure effective price support in states and areas with future production potential. Today farmers in eastern UP and Bihar get only ₹ 600 to 700 per quintal for paddy whereas the farmers in Punjab receive Rs 1100 per quintal, the government fixed Minimum Support Price (MSP) for the same crop.

In other words, the MSP should truly be a national level floor price, rather than remaining confined to established surplus regions.

Food based programmes

Major food related programmes, such as the Public Distribution System (PDS) and Integrated Child Development Services (ICDS) are plagued by corruption, leakages, errors in selection, procedural delays, poor allocations and little accountability. They also tend to discriminate against and exclude those who most need them, by social barriers of gender, age, caste, and disability; and state hostility to poor urban migrants, street and slum residents, dispersed hamlets, and unorganised workers such as hawkers. In Rangpur Pahadi, a slum area just a few kilometres away from Vasant Kunj in Delhi, people living since 1980 have not been given a voter ID card or a ration card. Thus their very existence is denied by the Delhi government!

The practice of bogus reporting is so widely prevalent in all the states, presumably with the connivance of senior officers, that the overall percentage of malnourished children under three years of age, according to state governments data, is 8%, with only 1% children severely malnourished, as against 46% reported by National Family Health Survey (NFHS-3), with 17% being severely malnourished. Field officials are thus able to escape from any sense of accountability for reducing malnutrition and hunger. One District Collector, when confronted with this kind of bogus figures, told me that reporting correct data is “a high-risk and low-reward activity.” The prime Minister may call government’s performance as a ‘national shame’, but he has not been able to persuade the states to accept that the problem exists!

A recent evaluation of ICDS in Gorakhpur, Uttar Pradesh, by the National Human Rights Commission (NHRC) showed that 63% of food and funds are misappropriated. In place of cooked food as directed by the Supreme Court, manufactured ready-to-eat food with only 100 calories is given to children, as against the norm of 500 calories. The food being unpalatable, half of it ends up as cattle feed. However, such reports, though few, are never discussed in State Assemblies, as they meet now for less than 30 days a year. We need a new law making it compulsory for Parliament and Assemblies to meet for at least 150 days a year.

More than half of the poor either have no card or have been given above poverty line cards, and are thus excluded from the below poverty line (BPL) benefits. These must presumably be the most poor tribal groups, women-headed households and people living in remote hamlets where administration does not reach. Thus, the people most deserving of government help are deprived of such assistance. On the other hand, almost 60% of the BPL or Antyodaya cards have been given to households belonging to the non-poor category. It is doubtful that the current Socio-Economic Caste Census will be able to weed out these errors of exclusion and inclusion.

The Food Ministry should have a greater sense of ownership of PDS and improve its oversight mechanisms. For instance, it should start an annual impact study of the PDS, especially in the poorer states. It is willing to spend ₹ 60,000 crore on the programme as subsidy but not willing to spend even ₹ 60 lakh on monitoring and evaluation of the programme. That means spending approximately one rupee on monitoring out of every one lakh rupees on food subsidy. But the ministry has not conducted a single multi-disciplinary third-party objective evaluation of PDS in the last eight years that would indicate state-wise leakages. Frequent assessments will put pressure on the states to reform PDS and reduce leakages.

Food Security Bill

On the positive side, the Food Security Bill will increase the BPL coverage of those getting subsidized foodgrains from the present level of 6.5 crore households to 10 crore priority households. Out of these the non-Antyodaya BPL households will have to pay only ₹ 2 and 3 per kg for wheat and rice as against ₹ 6 approximately that they pay right now. In addition another 8 crore households will be covered under the general category. Thus 18 crore out of the present population of 24 crore households will get subsidised rations. We need about 50 million tonnes of grain annually to meet this demand, as against annual procurement of 60-65 million tonnes in the last three years, thus leaving sufficient quantity for other programmes like mid-day meals. It is hoped that government will also push up direct purchase of paddy in states like Bihar, UP, and MP where the paddy farmers are largely dependent on rice millers who pay a pittance thus depriving farmers in these states the benefit of minimum support price that Haryana and Punjab farmers enjoy.

However, there are several problems with the Bill. Of these, the most important challenge is to decide the inter-state allocation of foodgrains for PDS as per the requirements of the Bill. At present this allocation is arbitrary and is neither based on population nor poverty, as illustrated for some of the states in Table - 1:

Table – 1 : % share of some states in the all India total

	Population (2011)	Poverty 2009-10	Annual PDS Allotment 2010-11
Andhra Pradesh	7	5.0	7.7
Assam	2.6	3.3	3.5
Bihar	8.6	15.3	7.5
Kerala	2.8	1.1	2.9
Punjab	2.3	1.2	1.6
Orissa	3.5	4.3	4.7
TN	6	3.4	7.8
UP	16.5	20.8	14.6
India	100	100	100

Thus poorer states like UP and Bihar get much less than their share in poverty, whereas it is just the opposite for Southern states. The southern and north-eastern states (also J&K, Delhi) may find their absolute allotment greatly reduced when compared with the present levels after the NFSB becomes the law, as the socio-economic caste census (SECC) results would come up with a lower share of these states in the priority category than their share in the annual PDS allotment right now. This is the reason why Tamil Nadu and Kerala have refused to do the SECC.

For several reasons it may not be possible to increase their allocation administratively by giving them adhoc or interim quotas.

Firstly, after meeting the minimum requirement of priority and general groups which will be in the initial year about 52 million tonnes of foodgrains (it will go up in subsequent years as population increases) and the requirement of 10 million tonnes for new and continuing welfare schemes (such as mid-day meals, supplementary nutrition for ICDS, community kitchens, armed forces, emergencies, etc), there would be no surplus left, considering that the procurement has fluctuated only around 60 million tonnes annually in the last five years.

Secondly, Section 15(1) read with Section 30 of the Bill prohibits the Central Government from making any allotment of foodgrains for people who are not in the priority or general lists, whereas inclusion of names in such lists can only be done through a procedure notified by the Central Government. Thus after passing of the Act if only 62% of the population of Tamil Nadu is covered under the priority or general lists, the rest 38% cannot be provided any foodgrain or cash from the Central Government, and they will have to depend entirely on State supplies and subsidies. The problem will be more serious in Kerala which is a deficit State and will be forced to procure rice from Andhra Pradesh and Tamil Nadu through its own efforts. As setting up of administrative machinery to buy grain from other States may take time, Kerala (and other states) should be allowed to import rice from Thailand and Vietnam. The Food Ministry should explore various possible options to reduce discontent from these states, which is very likely to assume an explosive shape after the Act becomes operational.

Identification of priority and general groups

Section 3 of the NFSB divides the entire population into three categories, priority, general, and excluded. 50% of urban and 25% of the rural population has to be excluded from benefits of central food subsidies. Proviso to Section 15 lays down that no household falling under the excluded category shall be included either in the priority households or general households. Preliminary SECC results indicate that the number of excluded rural households in the survey would be far less than the stipulated 25%. Hence the results of deprivation indicators in the SECC survey would have to be used to reach this level of exclusion.

In any case, the exact identity of those who are excluded would be known only when the SECC process is complete; which means almost two years from now. In no state the preliminary results are known to the politicians, discussed in the Assemblies, or analysed by the state governments. Even in those states where the process began in 2010, the list has not been shared with the households, after that they will file appeals which need to be disposed off. This all will take about 18 months more.

Clearly the percentage of households in the priority or excluded category cannot be uniformly at 46 and 25 for the rural area of each state. This would be grossly unfair to the poorer states. One option is to convert

this number, say 46%, into a state-specific cut-off line (which would be 10% more than the rural poverty estimates for that state) and ask states to honour the cap. However, the Deputy Chairman, Planning Commission and the Minister of Rural Development issued a joint statement in October 2011 that the present state-wise poverty estimates will NOT be used to impose any ceilings on the number of households to be included in different government programmes, and entitlements of rural households for different central government schemes will be determined on the basis of the SECC survey results.

If the intention of the joint statement is to be followed and there is not going to be any state-wise cap, the SECC results from all the states will have to be considered together by grading all rural households in the country into one masterlist based on their deprivations. This would benefit those States that deliberately increase the number of deprivations of their households, as this will affect not the poor of their States, but the poor of other States as well. In other words, so far with a cap on each state when a non-poor was selected as a BPL household it was at the cost of a poor in the same state, and it did not increase the total number of poor beneficiaries in that state because of the state cap. Once the cap is removed, showing more deprivations in a State will be advantageous to that State as it will be at the cost of the poor of other States. We will thus incentivise and encourage wrong reporting. Inter-State bickerings will also increase as the States with less number of priority households will blame states of deliberate fudging who turn out to have a higher number than what they would have if there was a cap.

Moreover the SECC determined results on identification may have credibility and legitimacy problems because its veracity is dependent on each state applying uniform standards of integrity, which unfortunately is not the case today. The methodology can also be questioned as the SECC indicators favour those states such as Punjab that have a higher ratio of landless and SCs and discriminate against states like Uttarakhand which are poorer because they have a large number of non-productive tiny holdings but lower ratio of SCs and landless.

The joint statement is also inconsistent with Section 14(2) of the Bill that lays down that the Statewise distribution shall, from time to time, be determined by the Central Government. Section 15(2) further prescribes

that within the State-wise number of persons belonging to the priority households and general households, determined under sub-sections (1) and (2) of section 14, identification of priority households and general households shall be done by the State Governments.

Thus on both administrative as well as legal grounds, it will be prudent to ignore the joint statement, otherwise there would be uncontrollable dissatisfaction amongst the states directed against the central government.

How would UID help?

The unique identity (UID) programme will certainly help in eliminating duplicate and fake beneficiaries from the PDS rolls as no resident can have a duplicate number since it is linked to their individual biometrics. The Wadhwa Committee appointed by the Supreme Court recently corroborated the problem of duplicate cards, noting that the practice of “multiple ration cards issued under a single name” is widespread nationally. In Delhi alone, RTI petitions uncovered 901 ration cards issued in the name of one woman in Badarpur. Even in Tamil Nadu, the problem of ghost ration cards exists which enables shopkeepers to make illegal gains.

High numbers of fake cards compel governments to make verification norms for issuing ration cards more stringent. Some state governments ask the applicants to provide various documents, such as the electoral roll number, a copy of the electricity bill, and house rent bill to receive a ration card. This tends to penalize poor and homeless families, and cuts off large numbers of BPL families who lack necessary documents from accessing rations. Once UID has been extended to the entire population (which may of course take several years), it would be easier to monitor full coverage of cards to each individual in a situation of universal coverage through PDS.

Another advantage with the UID is making PDS entitlements portable, as beneficiaries would be able to withdraw their entitlements from any ration shop in the state, in case their UID card allows them to do so. This would however require linking of future FPS allocations to the shopkeeper to authenticated offtake by beneficiaries, thus discouraging open market leakages by the shopkeeper and ensuring that only genuine offtake by consumers is permitted.

However, in most states (Tamil Nadu is an exception) PDS is not universal but is targeted to the BPL households. Their identification has to

be done by administration, based on certain criteria, and the UID would be of little help in such an exercise. Thus the problem of errors of exclusion and inclusion would still remain, though no individual, however rich and powerful he may be, would be able to obtain more than one card. On paper the rich are to be excluded from the list of eligibility for PDS, but in practice the technique of UID would not be able to prevent them from getting benefits of schemes meant for the poor.

Other policy options

In view of the delay in finalising SECC results and getting the Bill passed, some interim measures need to be taken to benefit the poor. This can be done by asking the states to increase the number of Antyodaya/BPL households from 6.5 to 10 crores by giving to the States a definite number of priority households State-wise.

A better option would be to make the scheme universal in 150 poorest districts and watch the results. The scheme can be gradually extended to other districts if we stop exports and improve both production and procurement. If containing subsidy is an issue, the non-AAY households can be asked to pay a higher price. People want certainty of regular supplies, the issue price though important is secondary.

DCT - Large-scale substitution of PDS by direct cash transfers (DCT) is not feasible, as foodgrains purchased from the farmers through MSP mechanism need an outlet for distribution. Besides, DCT needs a good banking structure, a functional registration system and widespread use of debit cards. At best, it could be tried on a pilot basis in a few poor localities of metropolitan cities.

Lastly, in no case export of cereals should be permitted. If basmati is to be exported, equal amount of ordinary rice must be imported. It is highly unethical to export foodgrains when our own people are dying of starvation.

Passing the Bill is only a necessary but not sufficient condition for reducing hunger. India requires a significant increase of targeted investments in irrigation, rural electrification, nutrition programmes, clinics, disease control, rural roads, and sanitation, accompanied by systemic reforms that will overhaul the present system of service delivery, including issues of control and oversight. This in turn requires improving the governance, productivity and accountability of government machinery.

ETHICS IN GOVERNANCE AND DELIVERY OF SERVICES

The Poverty Line Conundrum

Kathyayini Chamaraj*

India is competing for the first place in the number of the hungry, the malnourished and children who die early in the world. It has an IMR of 50 out of 1000 births. That 16.8 lakh children under five died in 2010 is a figure that has been provided by the Centre itself. Of the 2 crore 60 children that were to be born, 10,30,000 died in the womb itself. 70,000 pregnant women die due to pregnancy-related complications.

These figures are being reported even as India has been recording massive rates of growth of GDP upwards of 8%. But the above numbers are the true indicators of where the country is heading. Even while these facts reveal the real state of the country, the Montek Singh Ahluwalia-headed Planning Commission was tying itself in knots trying to justify to the Supreme Court in the Right to Food case its poverty line which initially said anyone spending (*consumption expenditure*) more than ₹ 20 in urban areas and ₹ 15 in rural areas at 2004 prices should not be considered poor. It had drawn flak from the Supreme Court which, on 14 May 2011, took exception to this poverty line definition. “The Planning Commission may revise the norms of per capita amount looking to the price index of May 2011 or any other subsequent dates,” the court had said.

Updating the poverty line cut-off figures, the Commission told the Supreme Court on 21 Sep 2011 that those spending in excess of ₹ 32 a day in urban areas or ₹ 26 a day in villages at 2011 prices will no longer be eligible to draw benefits of central and state government welfare schemes meant for those living below the poverty line. The Planning Commission said these were provisional figures based on the Tendulkar committee report updated for current prices by taking account of the Consumer Price Index for industrial and agricultural workers. The new tentative BPL criteria were worked out by the Planning Commission and approved by the Prime

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Minister's office before the government's affidavit was submitted before the Supreme Court. The plan panel said the final poverty line criteria would be available after the completion of the NSSO survey of 2011-12.

As per the Planning Commission's new criteria, anyone spending more than ₹ 965 per month in urban India and ₹ 781 in rural India would not be deemed to be poor. If a family of four in Mumbai, Delhi, Bangalore or Chennai was spending anything more than ₹ 3,860 per month, it would not be considered poor. Efforts were made by some newspapers to break down the overall monthly figure for urban areas to see what these numbers translate into. The *Times of India* reported that the Planning Commission suggests that spending ₹ 5.5 on cereals, ₹ 1.02 on pulses, ₹ 2.33 on milk, ₹1.55 on edible oil, just ₹ 1.95 on vegetables, 44 paise on fruits, 70 paise on sugar, were good enough to keep them healthy and above the poverty line. Further, ₹ 3.75 per day on fuel, ₹ 49.10 a month on rent and conveyance, ₹ 39.70 per month on health, 99 paise a day or ₹ 29.60 a month in cities on education, ₹ 61.30 a month on clothing, ₹ 9.6 on footwear and another ₹ 28.80 on other personal items were adequate to be considered not poor. The monthly cut-off given by the Planning Commission before the apex court was broken down using the Consumer Price Index of Industrial Workers for 2010-11 and the breakdown given in Annexure E of the Tendulkar report of expenditure calculated at 2004-05 prices.

In its affidavit, the Planning Commission defended its definition of the poverty line. The planning experts did a lot of arcane number-crunching to claim the nutritional adequacy of their poverty line. But they had not revised the poverty norms, but merely updated them with the CPI for the current year. The affidavit says, "The recommended poverty lines ensure the adequacy of actual private expenditure per capita near the poverty lines on food, education and health...".

The statistical experts in the Planning Commission believed — until they were made to retract their computations by public pressure — that these amounts were "good enough" and that such decisions were taken on the basis of "empirical and statistical data" and hence must be left to the judgement of experts. One minister has even condemned the common-sense debates by ordinary citizens about the poverty line as being "hysterically trivialised".

Pushed into a corner by the criticism, the Deputy Chairman of the Planning Commission claimed that the poverty line was only for statistical purposes and would not be used to decide the beneficiaries of welfare schemes. He also distanced himself from the figures instead of owning and defending them.

Who is poor? This is a question that has befuddled this country for long. When questioned on the meagreness of the poverty lines at an interaction in Bangalore last year, the Planning Commission Deputy Chairman had made the revealing but perplexing statement that the poverty line is only meant to determine whether a family is able to meet its food needs and not if it can cover all its basic needs with it. Now who can live on food alone? If this is the norm, then only beggars can qualify to be BPL and all others will be 'Above Poverty Line' (APL). This, when studies say that more than 70% of our population cannot meet the minimum calorie intake norm of 2400 Kcals. per day per person!

The confusion about "who is poor" is exemplified by the varied poverty lines and the lack of clarity on what a poverty line is really expected to cover. The recent Suresh Tendulkar report conceded that food alone was insufficient and added some costs for health care and education to determine who is poor and came up with the figure of 33.4% BPL. The N.C. Saxena report estimated the BPL category at 50% of the population.

According to the National Commission for Enterprises in the Unorganised Sector (NCEUS), 77% of the population or almost 836 million were earning less than Rs. 20 per day in 2004. As the NCEUS Report was a government-sponsored one, and since the Planning Commission also had fixed the poverty line at Rs. 20 per capita per day at 2004 prices, they should have accepted that 77% are poor. But this was not done. One sees a gross contradiction between the findings of these two government-sponsored organisations.

The Planning Commission seems to be juggling the estimates of the numbers of the poor to show only 36% of population are under the poverty line. The Planning Commission also does not seem to want to change the all-so-pleasing, beautifully smooth, downward curving graph it has made up its mind to draw, projecting that levels of poverty will come down to 17% at the end of this or that 5-year Plan and that there will be no more poor after another Plan or two. Never mind that almost 50% children are

malnourished and 75% women anaemic in the country. Never mind that India is 66th among 88 States on the World Hunger Index.

According to the National Survey (NFHS-3, 2005-06)
 43% children under age of five years are underweight (low weight for age).
 48% children under five are stunted (low height for age).
 20% children under five years of age are wasted (low weight for height);
 Over 6 per cent of these children are severely wasted (<-3SD).
 Since 'wasting' denotes acute malnutrition, these children are said to have Severe Acute Malnutrition or SAM.
 In addition:
 nearly 70% children (6-59 months) have anaemia. Of these 26% are have mild anaemia, 40% have moderate anaemia and 3% have severe anaemia.
 22% newborns have low birth weight (below 2.5 Kgs).

The history of using consumption expenditure as the basis for fixing the poverty line started in the 1970s with the now famous *Dandekar and Rath study* commissioned by the Ford Foundation. The section 'Defining the Poor' of their report proposed the now famous poverty line which is still used by the government to classify people in the BPL (below the poverty line) and APL (above the poverty line) categories. In the 70's the poverty line expenditure level was defined as that level of expenditure per capita per month, on all goods and services, of which the food component provided an energy intake of 2,400 calories per capita in rural areas and 2,100 calories per capita in urban areas.

Veena Shatrugna, former Deputy Director of the National Institute of Nutrition (NIN), Hyderabad, writes that "since goods and services other than food were not defined or quantified in the poverty line calculation, a person would be considered above the poverty line even if 90% of his expenditure were on food alone. She cites Utsa Patnaik who points out: "This is a very minimalistic definition of poverty since no norms are set for essential non-food items of spending such as on fuel for cooking and lighting, clothing, shelter, transport, medical care or education". According to Patnaik, poverty line calculations in recent years have used the early expenditure

figures, “simply adjusted upwards by using a price index while using an invariant 1973-74 consumption basket,” (Patnaik, 2005). She argued that “if calculations were done keeping in view the changed consumption necessities and constraints over the years, the percentage of people falling below the poverty line would be far higher”.

Veena Shatrugna adds (Shatrugna 2012) “...what we should note in this saga of the poverty line is that the calorie, which was meant to be one index among many of nutrition, acquires a life of its own, and is used for measuring and setting the social and economic standards of a nation.” This emphasis on cheap sources of calories was one of the factors that led to the focus of the Green Revolution on mono-cultures of cereals to the exclusion of pulses, oilseeds and the nutritionally superior millet; it led to the Public Distribution System, the purveyor of cheap cereals, and cereals formed part of the wages at food-for-work programmes. Cereals became the mainstay of even supplementary nutrition programmes such as the ICDS. “In every such welfare measure, the use of cereals to the exclusion of other dietary choices has led to the inevitable sharpening of the health deficit borne by the populations that are targeted by them,” says Dr. Shatrugna.

No doubt that the fixation with the monetary criterion of consumption expenditure seems to have been given up in the last few rounds of the BPL census conducted to determine how many should be classified as BPL to entitle them to benefits under the PDS, etc. The monetary criteria have been replaced by proxy-indicators based on socio-economic criteria which have been advised for use by the States to determine who is poor.

But the whole survey conducted by the States based on these socio-economic criteria gets nullified as the Planning Commission prescribes caps on the percentage of the poor that a State may have. These caps are fixed based on the NSSO surveys and the number of households having consumption expenditures that meet the requirement of the calorie norms considered adequate by the Planning Commission. These consumption expenditures are the ones that again determine the percentage of families that may be declared poor by a State. So where do the socio-economic criteria fit in and of what use are the socio-economic surveys conducted by the States? Thus while the Planning Commission claims there are only 31 lakh poor families in Karnataka as per the household consumption expenditure data, the state government says there are more than 90 lakh families that are poor as per the socio-economic criteria.

What has been missing in the abstruse debates about the poverty line is a clear enunciation of which basic needs should be included for the poverty line. Should it cover just a certain amount of calorific requirements, to the exclusion of other needed nutrients such as proteins, fats and micro-nutrients? Should it cover only food or also health and education as the Tendulkar Committee has postulated? Should it cover only food, health and education or also shelter, clothing, transport, fuel, recreation, ceremonies, etc.? If it is to cover all the above basic needs, what would be the cost of obtaining these at current prices?

International definitions of the poverty line is that it is “an international monetary threshold under which an individual is considered to be living in poverty”. It is calculated by taking the poverty threshold from each country – *given the value of the goods needed to sustain one adult* – and converting it to dollars. The international poverty line was originally set to roughly \$1 a day. As per the international norm of \$1/person/day (Rs. 14.91 at purchasing power parity in 2003) the poverty rate in India is 37.4% BPL. At \$1.25/day (line calibrated by the World Bank), the poverty rate in 2005 becomes 41.6% BPL. Internationally, absolute poverty is defined as “a level of poverty as defined in terms of the minimal requirements necessary to afford minimal standards of food, clothing, health care and shelter.”^[7] Absolute poverty is the absence of enough resources (such as money) to secure basic life necessities. It appears that these figures are not based on consumption expenditure. What is clear is that in computing absolute poverty all basic needs need to be included.

According to a UN declaration that resulted from the World Summit on Social Development in Copenhagen in 1995, absolute poverty is “a condition characterised by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services.”^[8]

David Gordon’s paper, “Indicators of Poverty & Hunger” for the United Nations, further defines absolute poverty as the absence of any two of the following eight basic needs:^[8]

- *Food:* Body Mass Index must be above 16.
- *Safe drinking water:* Water must not come from solely rivers and ponds, and must be available nearby (less than 15 minutes’ walk each way).

- *Sanitation facilities:* Toilets or latrines must be accessible in or near the home.
- *Health:* Treatment must be received for serious illnesses and pregnancy.
- *Shelter:* Homes must have fewer than four people living in each room. Floors must not be made of dirt, mud, or clay.
- *Education:* Everyone must attend school or otherwise learn to read.
- *Information:* Everyone must have access to newspapers, radios, televisions, computers, or telephones at home.
- *Access to services:* This item is undefined by Gordon, but normally is used to indicate the complete panoply of education, health, legal, social, and financial (credit) services.

The United Nations recognising that poverty is not just about income or consumption expenditures, has come up with the Multi-Dimensional Index (MPI) for measuring poverty. It says, “Measuring relative income poverty captures just part of the picture and does not fully describe the complexity of poverty. It is also important to measure other things that capture the multi-dimensional nature of poverty. These include things such as the level of indebtedness, the level of unemployment and joblessness, the extent of poor health or educational disadvantage, the number of people living in inadequate housing and poor environmental conditions and the extent to which people have inadequate access to public services”.

The Multidimensional Poverty Index (MPI) identifies multiple deprivations at the individual level in health, education and standard of living.Each person in a given household is classified as poor or non-poor depending on the number of deprivations his or her household experiences. These data are then aggregated into the national measure of poverty.

That we are still adhering to antediluvian concepts of what a poverty line should define is stupefying. It is interesting that a Working Group set up in 1962 itself by the Government of India to define poverty line defined a national minimum of Rs 20 per capita per month (Rs 25 for urban areas) at 1960/61 prices as adequate to ensure minimum food requirements and also minimum clothing and shelter. While accepting that health and education too form basic needs, it did not, however, compute the costs for these as it was assumed that health and education would be delivered free to citizens by the state, as required under the Constitution. Thus we have the

understanding as early as in 1960/61 itself that the poverty line should cover all basic needs.

The Report of the XI Plan Working Group on Poverty Elimination Programmes recognises that poverty in India is not merely an economic phenomenon but a social one as well. It says: The recent body of literature highlights the multidimensionality of poverty and also the heterogeneity of the poor. It also highlights the need to go beyond income poverty by using indices of human development and overall welfare. Poverty is not simply a matter of inadequate income but also a matter of low literacy, short life expectation and lack of basic needs such as drinking water. Human Poverty concept of UNDP highlights essentially the deprivations in health, education and income.”

The Report goes on to say, “Since these deprivations are inter-related, a comprehensive approach alone can eliminate poverty and ensure optimal utilization of human resources for sustainable development.”

It adds: “First, if the focus in the Eleventh Five Year Plan shifts to multiple-deprivation concept of poverty and categorisation of the poor rather than the familiar Head Count Ratio, the measurement of poverty at the level of NSS zones, states and all-India would have to be compatible with the changed focus though the measures now in vogue could also remain in use. Second, time has come to seriously ponder the adequacy of linking the measurement of poverty with the calorie norm or with an income norm related to it. If the growth has picked up and the Planning Commission is serious about pursuing the objective of poverty elimination, the measurement of poverty at the aggregate level would have to reflect the growing concern felt in the country regarding persistence of deprivations and the serious lag in employment growth. Third, The Expert Group on BPL Survey has pointed out the possibility of conflict between the magnitude of poverty as revealed by the BPL surveys and as estimated on the basis of NSS surveys. This need not be a major issue if the prioritisation and allocation of funds is done not on the basis of a single measure of poverty but on the basis of targets fixed for removal of deprivations and generation of wage and self-employment.”

Criticising the current method of fixing the poverty line, as per (Krishnaji N 2012) : “All procedures to derive a poverty line are inevitably artificial, based on contro-versial statistical manipulation....One such look

at the total household expenditure level at which a specified calorie intake norm is satisfied in per capita terms; the expectation is that at that level other minima are also attained so that households with expenditures below that level may be regarded as poor. Other procedures relying wholly on expenditure data are equally artificial, bearing little relation to the different dimensions of poverty. Another element of arbitrariness arises when a base level poverty line is adjusted upwards to allow for increases in prices from year to year. It is only recently that the crucial question of what and how much can Rs 25 or Rs 30 buy is -being raised. The Planning Commission has of course no answer to the question; instead it makes the claim that whatever poverty line one chooses the data exhibit a downward course in poverty. However, given the evidence of a declining trend in food intakes, the claim cannot be substantiated without further reference to how the poor are faring in housing, education, health and so on. Indeed, the sensible arguments some are now making in favour of a universal public distribution, and for free access to education and health hinge upon the abandonment of the poverty line.”

Thus one sees that several reports have questioned the existing narrow norms for fixing the poverty line and have advocated a shift towards looking at poverty in its multi-dimensional aspects. A blistering critique of the current poverty lines based on consumption expenditures and the calorie norm is contained in a paper (Saith, Ashwani 2005) where she draws attention to some forms of “conceptual exclusion” that lies at the heart of mainstream characterisations of poverty. According to her, “the dominant methodology renders a good deal of poverty invisible, distorts the understanding of poverty and thereby does disservice to the cause of poverty reduction”.

She points out that the first weakness in using income or food poverty lines stems from having to make choices about the composition of the food basket, adult equivalence scales and the inter-sectoral and inter-regional variations in diets and prices. While these difficulties are real, a second set of weaknesses raise doubts about the very meaningfulness of the poverty line, she avers. The 2,100 kcals for the urban and 2,400 kcals for the rural population are expected to make allowance for normal work. But these do not “adequately take account of the energy needs of the kind of hard and extended labour that has to be performed by a significant section of the population, predominantly by the poor”, such as cutting earth, felling trees, loading sacks, ploughing a field, etc. Such work is said to require energy in

the order of 3,550 kcals. daily. The poverty-line estimation procedure usually assumes that the stipulated calorie requirements will be met through the lowest priced calories available and hence the requirements of a balanced diet and the preferences of the poor are usually overlooked.

Ashwani Saith raises a number of ethical questions in regard to this. Should the poor be prescribed the cheapest or a balanced nutritious diet? Would this diet include the five portions of vegetables and fruits that are widely recommended for good health? Would the poor be allowed, at least occasionally, to indulge in 'luxuries' such as sweets, for feasts and rituals, or for social hospitality?

Apart from the food needs, the bigger difficulties are posed in determining minimum non-food needs. While dietary requirements are calculated on a somewhat "scientific" basis, the non-food component of the poverty line is not calculated on a needs basis. According to Saith, "the procedure essentially identifies households whose expenditure on food exactly matches the cost of food component in the poverty line basket, and then checks how much such households actually spend on non-food items. There is no guarantee that all basic non-foods needs are, or can be, adequately met. What these households actually spend on non-food items is assumed to substantively meet the non-food basic needs of health, education, housing, transport, communications, fuel, information, social and political participation". But this "remains an assumption, and one for which there are overwhelming prima facie grounds for rejection", says Saith. After spending on food, these households may not have enough to spend on other needs: children may not be able to be sent to school, health needs may be postponed or overlooked. With the out-of-pocket expenses on health and education rising, the assumption that the expenditure on non-food items of a household on the food poverty line is adequate is highly questionable.

An even more serious concern is that the poverty line fails to take into account "the extent, nature and forms of deprivation experienced in society". Even when a family has enough income, "it may be unable to obtain health and education services simply because these are not available locally". "These facilities may be available in the open market, but many households might not have the income to afford them..."

The ownership of assets determines whether a family has the staying power when faced with fluctuations in income. The poverty line does not consider whether the household is in debt. Since it is mostly in terms of expenditure and not income levels, the poverty line is silent on how the expenditure was financed: whether a child was earning part of the income of the household. The existence of disability or disease in a household which can have a “debilitating impact on the economic well-being of the household” get excluded. “Paradoxically,” points out Saith, “a heavy expenditure on health problems, financed by selling off some assets or getting into debt,could lift the poor household above the poverty line.” In short, Saith says that “the expenditure variable cannot be used as a proxy for the fulfilment of the basic needs of a household”.

One needs to now go beyond discussing the weaknesses of the present system and look at what possible alternatives could be thought of. It seems clear that the poverty line needs to cover all the basic needs earlier enunciated and that sole reliance on consumption expenditures fixed to a particular calorie norm are no longer acceptable.

Even earlier than the effort to define a poverty line, another development in post-Independence India was the effort to fix a ‘scientific’ minimum wage. The Minimum Wages Act was passed soon after Independence in 1948 which required the centre and states to notify a schedule of employments that were to be covered by the Act and to fix and revise wages for the same. This too involved answering similar questions to those raised in the fixation of a poverty line. What basic needs should a minimum wage cover? What should be the criteria for fixing one?

A Committee on Fair Wages was set up in 1949 to issue guidelines to the centre and state governments on the manner of fixing minimum wages. It enumerated four principles on what constitutes a minimum wage: that the minimum wage is not a poverty-level wage; that it may be called the minimum subsistence-level wage; that it must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker; and that it must also provide for some measure of education, medical requirements and amenities.

One sees very clear parallels here between the concept enunciated above of what a poverty line should cover and what a minimum wage should cover, viz., all basic needs. It is surprising that this linkage between the two

concepts has not been recognised in all these decades. The Supreme Court in several cases over the decades issued several further guidelines emphasising that the minimum wage “sets the lowest limit below which the wages cannot be allowed to sink in all humanity”.

The first linkage proposed between the poverty line and the minimum wage is contained in the Justice Wadhwa committee’s Meghalaya State Report which says, “...the estimation of poverty should not be made on a criteria which is less than the minimum wage fixed by the state for agricultural labourers or the wage fixed by the Central Government under Section 6 of the NREG Act 2005. It may not be out of place to point out that in several states including the state of Uttrakhand, the minimum wage for agricultural labourer is in the range of Rs 100 and even the NSSO in its estimate fixes the estimate of expenditure at Rs 20 per capita per day which works out to Rs 100 per day per family (a family is taken as 5 members)”. But since minimum wages are expected to support the worker, his/her spouse and two children, these minimum wages are per household daily income levels and not per capita. These come close to the Rs. 20 per day per capita fixed as poverty line by the Planning Commission at 2004 prices. So will prescribing a link between the poverty line and the prevailing minimum wage rates make any difference to the poor?

Certainly, it would make a difference if these state-fixed minimum wages had been determined as per the criteria evolved for their fixation. As per the 15th Indian Labour Conference of 1957, a need-based minimum wage (NBMW) should cover all the needs of a worker’s family consisting of a spouse and two children below the age of 14 (considered as three consumption units — husband: one unit, wife: 0.8 unit and two children: 0.6 units each). The food requirement was to be 2,700 calories, 65 grams of protein and around 45-60 grams of fat per unit as recommended by Dr Wallace Aykroyd for an average Indian adult of moderate activity. Dr Aykroyd former Director of FAO pointed out that animal proteins, such as milk, eggs, fish, liver and meat, are biologically more efficient than vegetable proteins and suggested that they should form at least one-fifth of the total protein.

The 15th ILC further resolved that clothing requirements should be based on per capita consumption of 18 yards per annum, which gives 72 yards per annum for the average worker’s family. For housing, the rent

corresponding to the minimum area provided under the government's industrial housing schemes was to be taken. Fuel, lighting and other items of expenditure were to constitute an additional 20% of the total minimum wage.

The Supreme Court upheld these criteria in the case of *Unichoy vs State of Kerala* in 1961. In the later *Raptakos Brett vs Workmen* case of 1991, the SC went one step further, and held that besides the five components enunciated by the 15th ILC, minimum wages should include a sixth component, amounting to 25% of the total minimum wage, to cover children's education, medical treatment, recreation, festivals and ceremonies. The SC also observed that a wage structure including the above six components would be "nothing more than minimum wage at subsistence level" which the workers must get "at all times and under all circumstances".

One of the few efforts at bringing to light the cost at current prices of the above criteria fixed by the 15th ILC has been made by Ashim Roy, General Secretary of the New Trade Union Initiative (NTUI), in a paper published in 2009 titled, "A Just Minimum Wage". The NTUI is an independent national trade union centre formally founded in 2006 and comprising several independent trade unions in the organised and unorganised sectors. Ashim Roy cites the Report of the Sixth Pay Commission which calculates the minimum wages as per the 15th ILC norms. The cost of food requirements alone as per the norms set by Dr Aykroyd and fixed by the 15th ILC comes to ₹ 5,018.79 per month for a family of four at 2009 prices. Taking other needs of shelter, clothing, education, health, fuel and recreation into consideration, as spelt out by the 15th ILC and the SC, the Sixth Pay Commission arrives at a monthly minimum of ₹ 9,337 and a daily minimum wage for a worker at ₹ 359.12 for a family of four at 2009 prices. (Table 2) This makes it about ₹ 90 per capita/day and around ₹ 1,30,000 per year for a family of four.

If salaried persons are entitled to these norms as per the Sixth Pay Commission Report, then all others are also entitled to it as per the 15th ILC and the SC. It is significant that the minimum wages for the poorest workers (including for the MGNREGA) are not even being considered along these criteria, let alone being paid along them.

Table 2 : Nutritional norms of 15th ILC as per Dr. Aykroyd adopted by the Sixth Pay Commission

Item	Per day consumption per consumption unit (in gms)	Per month consumption of 3 consumption units (in Kgs)	Price per kg as per prevailing rates in Dec 2009 (in ₹)	Total cost in Dec. 2009 (in ₹)
Rice/wheat	475	42.75	21.00	897.75
Dal (Toor/ Urad/Moong)	80	7.20	94.29	678.89
Raw vegetables	100	9.00	10.00	90.00
Green leafy vegetables	125	11.25	10.00	112.50
Other vegetables	75	6.75	28.53 (for onions)	192.58
Fruits	120	10.80	30.00	324.00
Milk	200	18.00	21.50	387.00
Sugar and jaggery	56	5.04	37.87	190.86
Edible oil	40	3.60	65.37	235.33
Fish		2.50	205.53	513.83
Meat		5.00	243.21	1216.05
Egg		90 pieces	2.00	180.00
Total for food				5018.79
Detergent, etc.				200.00
Clothing		5.5 mts	80.00	440.00
Total				5658.79
Misc @ 20%				1131.76
Total				6790.54
Addl. Exp. @ 25%				1697.64
Total				8488.18
Housing @ 10%				848.82
Grand Total				9337.00
Daily wage				359.12

Source: A Just Minimum Wage– booklet brought out by the “New Trade Union initiative”- e-mail: secretariat@ntui.org.in - website: <http://ntui.org.in>

It appears logical to infer that any family getting less than these amounts should be considered poor, as otherwise, one or other of its basic needs would not be met. Since the SC accepted this as the entitlement of each worker and his family, this has the force of law and has to be implemented. Any poverty line or law on nutrition security should be based on these norms if the intent is to banish malnutrition from the country. These amounts show how inadequate and irrational the current poverty levels fixed by the Planning Commission and several states are. The Rs 32/capita/day at current prices fixed by the Planning Commission for urban areas is about three times less than Rs 90 and the Rs 26/capita/day for rural areas is less than a third of this figure.

If at all it is necessary to fix a money-metric criterion, either of income or consumption expenditure, for deciding who is BPL, one has to accept that the need-based minimum wage level as per the 15th ILC should be the criterion. The People's Union for Democratic Rights (PUDR) has in a recent statement also demanded that the minimum-wage level recommended by the 15th ILC should be the poverty line.

One may argue that a lot of public provisioning of subsidised food, health and education services happens and the cash equivalents of these services need to be deducted from the expenditures that a household needs to make to meet its basic needs. But one needs to remember that the PDS provides only a limited amount of food grain (25 to 35 kg per month per household) which is adequate to meet the cereal needs of just about two persons in a household. The other food needs for a balanced diet, such as pulses, oil, fruits and vegetables, need to be necessarily bought from the open market and these are indeed the costlier items. Dependence on the private sector for health needs is also significant due to the poor quality of public services in this sector. Statistics reveal that 80% of health costs and 25% of education costs are met out-of-pocket by the poor.

According to George Kent, a food rights expert, the dominant view under international human rights law is that the primary obligation of the state is to create the conditions in which all human beings can live a decent life, providing for themselves and that the obligation of the state to provide directly applies only when people are unable to provide for themselves through no fault of theirs. Crucial in this is the number of days of employment available to a person (at least 300 needed) and whether

minimum wages enable that person to fulfil all his/her family's basic needs if he works for eight hours a day. The truth is that the country does not create the conditions in which people can provide for themselves, making it imperative for the state to step in for them.

Either the minimum wage should be high enough to enable a person to fulfil all his basic needs, or the cost of fulfilling these needs should be so subsidised that the minimum wage can cover all of them. If at all there has to be an income or consumption expenditure criterion for the poverty line, which itself is highly arguable, the NBMW should be the limit.

There is a view that there should be no upper limit on the salaries of CEOs in the corporate sector. Paradoxically, our planners appear to have been working on the premise that there should be no bottom limit below which the expenditure levels for determining the poverty line will not be allowed to sink. Hopefully, the Supreme Court in the on-going Right to Food case will direct that a more humane limit for this line be set.

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Ethics and Governance

Dr. Rajiv Sharma*

World over strong consensus is growing in public on ethical behaviour of leaders in public life. Instances where conduct of leaders has been questioned are increasing in frequency and in countries like Egypt and Syria, the rulers have faced public ire and outrage for their unethical conduct. Similar accusations have been levelled against important leaders in France and Italy. In India, over the last decade, conduct of leaders has come under the scanner of both the public and the courts. Needless to say, people all over the world expect the leadership to conform to ethical norms and expect their conduct to be absolutely transparent and ethical in public and personal lives.

Ethics means abiding by the ethos and values that are regarded sacrosanct in the society and acting in conformity with the ideology contained in the Constitution. It also implies strict adherence to the laws in force and not claiming any personal immunity from the writ of laws. Thus, ethical behaviour requires the leader to abide by law and the law enforcing agencies should be dispassionate in enforcement, booking any breach of regulations with impunity. Thus, even if the Prime Minister jumps red light, the traffic constable on duty should have the courage to issue the ticket and the Prime Minister should have the magnanimity to surrender to his diktat. Prime Minister has as much the right to use road safely as any other citizen and the traffic constable is duty bound to book anybody who jeopardises safety of others by violating the traffic rules.

Governance is the management of social and economic structure of society. It is the mandate of governance to ensure that the social and ethical values, as enshrined in the laws, are objectively, transparently and effectively enforced. Thus, governance is a system which regulates social behaviour and relations and also ensures peace in the society. Governance, in effect, is

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required to ensure that every individual enjoys his rights with impunity and has access to service and opportunities that are offered to the people by the State.

Governance, therefore, is necessary for the well being of society and well being can be ensured if people at large have faith in the institution created by law for managing economic, social and political affairs of the body politic. Faith of the people can be earned by governance if it is honest, transparent, responsive and sensitive. Like law, governance has to be absolutely objective in enforcement and fair in delivery of services. Credible governance is possible if the behaviour of the agents of governance is ethical and ensuring ethical behaviour is the main challenge before the leadership. Since leaders live in glass houses, their conduct is continuously watched by those working with them. Thus, if leaders do not conform to ethical norms, they would not have the moral right to insist on others to be honest. More so, a dishonest leader's summons on ethics are invariably scoffed at by their subordinates.

Morality in governance is of utmost importance because immoral conduct based on corrupt practices compromises the image and credibility of system in the eyes of the people. Corruption enables the mighty to transgress the rights of the poor and accentuates the divide between the have and have-nots. The have-nots, who generally constitute the majority become disgruntled with the system and express their ire either by revolting against the system or by taking up arms against the established order. Growing instances of insurgency in the country is a reflection of the reaction of people who are disgruntled with the de jure authority and strive to replace the inept legal system with a defacto system which, they feel, would be more just and fair in dispensation. The Maoists in Central India have set up their own administrative machinery in the so-called "liberated zones". Similarly in north-east and Kashmir, dilution of public faith in the governance systems has disenchanted people at large fomenting secessionist sentiments.

Corruption in the system invariably creates toutism. Often one finds that it is virtually impossible to get driving licence unless the services of a "facilitator" are hired. This facilitator has financial relations with the authorities and work for a fixed consideration. Similarly, a reservation in train can be secured instantly by approaching the right agent. Mushrooming

of tourism in the systems of governance has not only tarnished the image of government but has considerably affected its credibility adversely.

The edifice of a credible system of governance can be created only when the top leadership is absolutely honest and public oriented. It should present its example of integrity, transparency and sensitivity for the lower functionaries to emulate. When top leadership itself is facing allegations, it is inevitable for demoralization to percolate into the entire structure. There are many instances where money has played an important role in posting and transfers including appointments. States where such corrupt practices are rampant have poor governance; while States where merit is the guiding principle for appointment, governance is acclaimed and inculcates people's faith in the system.

In States where there is objectivity and transparency in implementation of development policies, the governance is rated highly. In these States, without exception, leadership has demonstrated its example for lower functionaries to emulate resulting in lowering of corruption and increase in sensitivity and response to public demands. Ethics also implies paying due regard to the ethos and sensitivities of the people. This implies that those at the helm of affairs pay due regard to the customs of the people and should not, in any way, scoff at their values or tradition, even if they do not conform to the modern way of life. One of the reasons why the British consolidated their position was their relentless endeavour to identify themselves with the people. It was their tolerance and respect for local culture and its values that facilitated not only consolidation but also integration of the massive Indian empire. Before the British, Akbar had shown tolerance which promoted fraternity in the Indian community, resulting in unity of the Indian nation. The gains made by Akbar were subsequently diluted by orthodox social policies of Shahjahan and Aurangzeb. The extreme fundamentalist policies of Aurangzeb resulted in dismemberment of the formidable Mughal Empire culminating in the writ of the empire confined to the walls of the Red Fort in Delhi.

In this context, ethics in public life assumes a wider ramification as it embraces personal morality as well as a strict code of conduct in interpersonal relationships. Thus, in the ethical fabric not only formal statutes but also conventions are woven. Conventions, though not enforceable in courts of law have sanction of the people and their violation erodes public confidence.

In modern times, the scope of governance has increased manifold. With the increasing role of the private sector in economic management, the policies of these mini-Governments also need to conform to legal requirements in earnest, not only for the benefit of their employees but also in their contribution to the national economy for overall development. Essentially these corporates are expected to abide by the relevant laws dutifully and pay their taxes honestly. There is no room for a quick buck in corporate ethics.

Ethics in governance consequently embraces both public and private sector. Another dimension that has been added to corporate governance is the corporate social responsibility which mandates corporations to share their gains with the local community and contribute to their well being. Thus, the erstwhile concept of private enterprise as solely a profit making mechanism has now undergone a change to imply a profit sharing venture. This ethical change has evolved in line with the evolution of welfare state.

In the Indian context, the philosophy behind public sector was essentially to improve national infrastructure, provide impetus of growth to less developed areas and also provide jobs to the unemployed people. However, with the increase in population density, land acquisition itself has become a serious issue, since in the wake of land ceiling the holdings have become small. Thus, every acre of acquisition affects several families. The issue before the Government is how to propel industrialisation and mining without causing large-scale displacement of people. Areas which have low population density are invaluable forest areas and the Forest Act prohibits any tinkering with these lands. Over the last decade, the issue of an acceptable relief and rehabilitation policy has been confronting the Government with no viable solution. Industrial development and mining of essential minerals has run into rough weather due to the absence of a plausible relief and rehabilitation policy. The examples of Posco in Orissa, Nandigram in West Bengal are some illustrations of such dichotomy. It cannot be denied that there is considerable merit in the contention that people cannot be deprived of their property and livelihood unless they are suitably rehabilitated. Since, even small land acquisitions involve displacement of large number of people, it is not possible for the industries to provide employment to unskilled workers since the numbers involved are much more than the capacity of the industry to productively deploy them.

Macro economic considerations and international commitment to conform to the regime of general agreement on tariffs and trade has resulted in globalisation of the Indian economy. Globalisation has led to paradigm shift from the erstwhile regulative regime to a regime that is totally free from controls. This change in policy has on the one hand created considerable leeway for private enterprises to function but at the same it has withdrawn the protection that was enjoyed by relatively weaker entrepreneurs who continued to rely on outdated production technologies that were labour intensive. Competition resulting from open markets and withdrawal of tariff barriers forced these enterprises to close down resulting in large-scale unemployment. A country where the Constitution ordains that the government should work for the welfare of the people, ethics in governance mandate the government to intervene effectively to protect these dislodged groups from hardship. Economic ethics at the macro level, therefore, implies that the adjustments should be with a human face. These adjustments need a virtual redefinition of role and goal of the functions of government and accordingly readjustment of the governance within the newly defined role. New social safety nets have to be created to save people from virtual starvation. In financial terms, it implies diversion of more funds for social sector programmes.

There is an increasing propensity of the government to shed its responsibility to the private sector with little regard for judicious control on their functions. Many times these partners in governance are accused of unethical behaviour. It is often reported that the employees engaged in outsourced activities are underpaid and do not enjoy social security or health coverage. In many public sector undertakings contract workers engaged for outsourced activities are deprived of Provident Fund and insurance coverage. This is contrary to the ethical norms within the government and it is an adverse reflection on ethics in governance.

Atrocities perpetrated on Jews by Nazis during the Second World War forced mankind to enlarge the ambit of ethics to include protection of human rights as a duty of governance. Universal Declaration of Human Rights has become a charter which is mandated to be sacrosanct for all governments. An international Criminal Court has been created to try and punish those government functionaries who dare to violate the articles of the Universal Declaration of Human Rights. The process initiated by the Nuremberg Trials has now been institutionalised.

Most governments in order to respect their commitment to protect human rights of their citizens have constituted a “Human Right Commission” as watchdog bodies. While some commissions are working effectively, most are devoid of powers to provide relief to the people and are basically a showpiece before the international community. Such initiatives are certainly unethical both in nature and in content.

It is also the duty of government to ensure that development, including mining and industrialization, does not affect health and livelihood of people in the vicinity of the project site. Thus, it is the duty of the government to create a system to conduct detailed social cost benefit analysis so that projects do not infringe upon the people’s right to clean environment. It is also the duty of government to ensure that projects do not compromise sustainability.

There are international dimensions governing ethical behaviour of governments. Governments are expected to conform to international law and treaties. Any violation thereof is treated as unethical and entails sanctions and sometimes international retribution. Fragile states and rogue states are often subjected to international armed intervention. Military action in Syria, Iraq and Afghanistan are examples of U.N. action against governments which did not conform to their commitments to the comity of nations. Unethical conduct of governments often entails suffering to large sections of the people.

International governance requires ethical conduct even in extreme situations like war. The laws of war are well codified and their violation invariably leads to action against those who violate them. Starting with the Second World War, many tribunals have been constituted to bring to justice those who violated the laws of war. Even as USA was forced to take action against its troops who had exceeded permissible limits of use of force.

Government is part of society and if social values and inherent discipline is weak within the society, it is obvious that the institution of government would not be above board. It is, therefore, necessary that the ethical fabric of the society should be strengthened which is possible only by a strong system of formal and informal education. Education in this respect should be inclusive, which means, that apart from instructions in various subjects equal emphasis has to be laid on character building and discipline. As a long-term solution, the entire infrastructure of education has to be streamlined and upgraded and teachers should be appropriately

trained to serve this basic requirement of a healthy environment in society. It is a serious commentary on our education system where instances of teacher raping the ward or schools remain understaffed or teachers facilitating cheating in examinations.

Apart from education, enforcement of laws, as stated earlier, has to be objectively implemented so that the culture of disciplined behaviour is enforced in the society. In countries where there is discipline and objective enforcement of laws is the norm, ethics within the country is high. This invariably contributes to more efficient delivery of services and higher level of public satisfaction. In fact, public satisfaction is the basic duty of governance.

Marx, while conceptualising the operation of dialectical process in the evolution of State underlines weakening of ethics in governance as the cause of transition from one form to another. This dialectical process ends with the dictatorship of the proletariat which, in the opinion of Marx, is the ultimate Utopia.

Liberal thinkers have postulated democracy as the best form of government, since it is guided by the ethical principle – “Government of the people, for the people and by the people.” However, even democracy is not a panacea because if its wheels are clogged with corruption, nepotism, discrimination, self-aggrandizement and inefficiency, it degenerates into oligarchy and hence, application of the dialectical theory of Marx can not be ruled out. In the Indian context, this needs to be viewed seriously. Naxalism, which started in Naxalbari has now covered the entire central India and is now making inroads in the East and other parts of the country.

Ethics in governance, therefore, casts a duty on the leadership to provide example for others to emulate and also create an environment for instruments of governance to function honestly, objectively and harmoniously, in line with the national objectives. Thus, it is imperative that for overall development and for creation of an egalitarian society, the conduct of systems should be clearly defined and should function objectively, transparently and strictly within the four walls of law. Ethics in governance has to be earnestly imbibed in the culture of Government.

The Shaking Edifice of Ethical Foundation: Renovation Strategy of the Broken Edifice of Governance and Public Service Delivery System in India

Madhu Sudan Sharma*

Introduction

“There are seven things that will destroy us: Wealth without work; Pleasure without conscience; Knowledge without character; Religion without sacrifice; Politics without principle; Science without humanity; Business without ethics.”

— Mahatma Gandhi

As against the above-mentioned Gandhian thought, India's rapid economic growth in the past decade masks a stark and growing rate of poor delivery of public services. India has some of the worst levels of human deprivation on the planet, despite it being one of the fastest growing economies. It is home to 220 million poor people and has levels of child undernutrition nearly double those in sub-Saharan Africa.

The four BIMARU (Bihar, Madhya Pradesh, Rajasthan, and Uttar Pradesh) states in India account for half of the child deaths in the country, while five are home to 71% of India's out-of-school children. Moreover killer diseases such as malaria, HIV/AIDS threaten to undermine the recent gains the standard of living. Hence there remains a large unfinished “first order” human development agenda of providing access to elementary education and basic health services. Despite progress in some of the indicators of the Millennium Development Goals (MDGs), India is now facing second order problems such as deficits of quality and equity barring some notable

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exceptions such as the IITs in India, quality and often access, remain poor. India is also witnessing a rapid increase in rich-country health problems such as obesity, diabetes and cancers putting further pressure on the public health systems.

The policymakers in India are getting increasingly concerned about the poor outcomes of MDGs. The current strong economic surge cannot be maintained without a quantum leap in the quality of public services. In the past, debate has tended to focus on the role of the state as a monopoly provider. Now, there is a more lively discussion on the role of the state in a diverse market-public, private and NGO as a standard-setter, monitor, regulator and provider.

The public sector in India faces a critical shortage of skilled labour. Moreover, globalisation has raised the competitive bar for governments. The second driving force for reform is the growing inequality of opportunity and access to quality public services. The lack of basic public health services for the poor has contributed to the huge numbers of people with disabilities (over 100 million in India), as many simple birth defects and child health problems go undetected.

The Indian government is conscious of it and major efforts are underway to ensure that all children have access to at least elementary education and primary health. The National Rural Health Mission (NRHM) aims at improving the health status of the people by providing assured, responsive and quality health services. The Central and state governments are paying increasing attention to the quality of service delivery at all levels of the system but results are not up to the mark.

This article offers a perspective for addressing the variety of public service delivery-related challenges by observing that they stem from a vicious and reinforcing cycle of poor governance and weak ethical foundation of policymakers and service providers at all levels barring few exceptions. This cycle is self-perpetuating because poverty decreases demand for the public services by them, thus continuing the cycle of low human capital accumulation. A strong ethical foundation of policy makers and service providers at all levels with strong elements of good governance like transparency, accountability and civic monitoring of public service delivery system will result in quality public services and a better life for poor and marginalised.

Get to know the key relevant terms

“A person who is fundamentally honest doesn’t need a code of ethics” as truly enunciated by Harry S. Truman.

Ethics is considered as a basic concept and a fundamental principle of right human conduct in all the realms of life including business and profession. Quality of public services can be maintained with the help of high level of governance system so that problems such as fiduciary responsibilities, quality service delivery, pro-poor schemes and development works, transparency, bribery or any form of corruption or discrimination and governance issues are examined in business ethics.

The issue of ‘delivery of public services’ is pertinent to discuss here because this sector is deeply related to ethics and governance. As per the meaning of public service delivery, it is the implementation of the services planned, funded and carried out by the government or non-government agencies to make sure that they reach those people and places they are meant to. Public services are those services provided by governments (local, municipal, or larger-scale) to the public. This is the area where most of the public institutions and governments fail to perform, especially in the BIMARU states.

This is because of poor accountability, lack of motivation, absence of performance appraisal, absence of a system of incentives and penalties, poor working conditions, and large-scale corruption.

MDGs as a Tool to Assess the Quality of Public Service Delivery in India

Most of the MDGs are reflected in the national and state government priorities and targets as laid out in the 11th Five Year Plan and the proposed planning documents of the ensuing 12th Five Year Plan. There has been an effort to ensure that the focus on these priorities and commitments remains strong right from planning through implementation stages so that MDGs can be achieved.

In addition to the priority areas, there are several cross-cutting issues that provide an important context for the achievement of MDGs. These include gender equality, fiscal space and the availability of resources to meet

these priorities, and migration, amongst others. There has been a systematic effort to collect the data for all indicators of MDGs from India which indicates the progress made in this regard.

Current Scenario of MDGs: A Difficult Way Forward

A 2011 report of the Government of India (Ministry of Statistics and Programme Implementation, 2011) indicates that for India as a whole, only about 60% of the 2015 MDG targets are likely to be achieved in quantitative terms. The MDGs, in which the nation is likely to meet its 2015 commitments, include poverty reduction, enrolment in primary education, youth literacy, gender equality in primary and secondary school education, gender parity in youth literacy, control of HIV, malaria and TB, increase in forest cover, biological diversity through protected areas, per capita energy consumption and energy intensity, availability of safe drinking water, and telephonic and internet-based connectivity.

But it may not be able to meet the 2015 targets in reducing the percentage of malnourished children, school dropout rate in primary school, share of women in wage employment in the non-agricultural sector, under-five child mortality rate, infant mortality rate, measles immunisation for infants, maternal mortality rate, percentage of births attended by skilled medical personnel, and improved sanitation. Information contained in the report indicates that most of the BIMARU states lags behind the all-India average or is likely to miss the 2015 targets set for them for a number of MDGs.

In India, MDGs are delivered by a host of developmental and poverty alleviation programmes. Some very large ones are sponsored by the Central government in partnership with states. The Centre provides the bulk of the finance, the implementation is mostly in the hands of the states. The programmes that more or less directly impact the delivery of MDGs of India and the states include National Employment Rural Guarantee Scheme, *Sarva Shiksha Abhiyan*, Total Literacy Campaign of the National Literacy Mission, National Rural Health Mission, Total Sanitation Campaign, *Bharat Nirman*, Watershed Management Programme, *Indira Awas Yojana*, Jawaharlal Nehru National Urban Renewal Mission, Integrated Child Development Services, and National Programme on Nutritional Support (Mid-day Meal Scheme). Besides the Central programmes, states have their own programmes that they administer that may be directly related to their attaining their

respective MDGs. There may be many local factors contributing to the poor performance on several MDGs, but systemic problems may be at the root of how these programmes are administered.

All-India trend of the proportion of underweight (severe and moderate) children below 3 years of age shows India is going slow. From an estimated 52% in 1990, the proportion of underweight children below three years is required to be reduced to 26% by 2015. According to the officially acclaimed estimates by the new standard, the proportion of underweight children has declined by 3% points during 1998-99 to 2005-06, from about 43 to 40% respectively and at this rate of decline is expected to come down to about 33% only by 2015.

By the measure of net enrolment ratio (NER) in primary education the country has already crossed by 2008-09 the 95% cut-off line regarded as the marker value for achieving the 2015 target of universal primary education for all children aged 6-10 years. In the years 2008-09 and 2009-10, India's NER by the DISE statistics, are 98.6 and 98.3% respectively. India is likely to achieve 100% NER for girls. The survival rate at primary level up to Grade V (i.e. proportion of pupils starting Grade I who reach the last grade of primary) has risen from 62% in 1999 to 81% by 2002 and declined thereafter to 73% in 2004. However, DISE 2009-10 indicated an improvement to 76% in 2008-09. But schools do not have adequate facilities for continuance and the quality of education is still very poor. Very few pursue higher education and only 40% of the population above 15 years, complete education up to the secondary level and around 7% complete up to higher secondary.

The rate of change over time in India in respect of the share of women in wage employment in the non-agricultural sector is rather slow. As per NSS 66th round on employment and unemployment during 2009-10, the %age share of females in wage employment in the non-agricultural sector, stood at 18.6%. The share of women in wage employment for rural areas was 19.6% and for urban 17.6% in 2009-10.

The Under-Five Mortality Rate (U5MR) is the probability (expressed as a rate per 1000 live births) of a child born in a specified year dying before reaching the age of five if subjected to current age specific mortality rates. U5MR at national level has declined during the last decade. SRS based U5MR in India for the year 2009, stands at 64 and it varies from 71 in

rural areas to 41 in urban areas. Given to reduce U5MR to 42 per thousand live births by 2015, India tends to reach near to 54 by that year as per trend shown above missing the target by 12%age points.

The national level measure of the proportion of one-year old (12-23 months) children immunised against measles has registered an increase from 42.2% in 1992-93 to 74.1% in 2009 (UNICEF &GoI Coverage Evaluation Survey 2009). India is expected cover about 89% children in the age group 12-23 months for immunisation against measles by 2015. Thus, India is likely to fall short of universal immunisation of one year olds against measles by about 11% age points in 2015.

The Maternal Mortality Ratio ((MMR) is the number of women who die from any cause related to or aggravated by pregnancy or its management (excluding accidental or incidental causes) during pregnancy and childbirth or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, per 100,000 live births. SRS6 data indicates that India has recorded a deep decline in MMR by 35% from 327 in 1999-2001 to 212 in 2007-09 and a fall of about 17% happened during 2006-09. The decline in MMR from 1990 to 2009 is 51%.

It can be concluded that though the progress on the key indicators of MDGs has been achieved but achieving the targets by the stipulated time is a challenge for India and unless the quality of the service delivery system improves these targets will remain a dream.

Hiding the Facts by Ambitious Reporting: Need of Transparent Reporting System

“In keeping silent about evil, in burying it so deep within us that no sign of it appears on the surface, we are implanting it, and it will rise up a thousand fold in the future. When we neither punish nor reproach evildoers . . . we are ripping the foundations of justice from beneath new generations.”

Ambitious reporting has always been a ‘low risk and high reward’ activity for the service providers that is why most secretaries, both at the Central and state level are doing exactly as per the above mentioned saying. They all are not prepared to accept the reality of poor service delivery as per

the available data, lest they and their ministers would be taken to task in the Parliament/Assemblies. Thus, vested interest develops from top to bottom in hiding the reality and resorting to bogus reporting. In UP the number of fully immunised children that is being reported by the state government is almost cent%, but independent surveys put the figure of fully immunised children as less than 30%.

To give another example, Integrated Child Development Services (ICDS) faces substantial operational challenges, such as lack of accountability due to lack of oversight and irresponsible reporting system. It appears that state governments actively encourage reporting of inflated figures from districts, which renders monitoring ineffective and accountability meaningless.

Objective evaluations show that 43.5% children are underweight, of which 17% are severely malnourished. However, the state governments report 13% children as underweight, and only 0.4% as severely malnourished (India Human Development Report 2011).

A recent evaluation of ICDS in Gorakhpur by the National Human Rights Commission showed that despite Supreme Courts' orders to provide hot cooked meals, all centres supplied only packaged ready-to-eat food, which had only 100 calories, as against a norm of 500 calories, and 63% of food and funds were misappropriated. The food being unpalatable, half of it ends up as cattle feed.

Key Reasons of Poor Public Service Delivery in India

- Poor coordination between Central-State-District and Local Administration.
- Lack of Empowerment of the common masses.
- Lack of transparency and accountability.
- High rate of Absenteeism among service providers.

Poor Coordination between Central-State-District and Local Administration: Frequent Transfers of Babus is the Culprit Factor

The systemic problems related to poor coordination between, the Centre and the States, and down the line to district and *panchayat* level,

arise from the fact that in Centrally-sponsored schemes, bureaucrats, mostly IAS officers, administer these schemes at three levels, the Central government level (disbursal of the bulk of the funds), the State level (disbursal of the State's contribution and overall administration of the scheme in the State), and the district level where the spending takes place. Those who head these programmes at the Central, State, and district levels shoulder many other responsibilities besides the implementation of these schemes, so that their attention to a scheme is often inadequate despite their full willingness and coordination tends to be poor between these three levels because of the frequent transfer of officers in charge at all three levels. There is simply no continuity of management and the speedy way of handing over the official charges from one official to another is very poor. By the time an officer in charge gets some idea about the operating complexity and related issues of the scheme, he or she is transferred. In addition to these sometime political reasons also create problems especially when at Central and state level if two different political parties are in power.

An additional problem may arise at the grassroots, since the scheme is usually locally implemented through the *Panchayati Raj* Institutions. *Panchayats* are political institutions that are frequently plagued by inter-caste divides, lack of technical capacity, weak voice to relatively small or disadvantaged communities and want of civic engagement in decision making process. If we see the management structure of *Sarva Shiksha Abhiyan* which has a mission of literacy for all, it is very complicated at the central as well as state level involving the Prime Minister, HRD Minister, Secretary, HRD Ministry, Joint Secretary (Elementary Education), Member-Secretary, Director General, with several directors and deputy secretaries, also bureaucrats, designated as Deputy Director Generals having specific functional responsibilities. Several under-secretaries and section heads, all bureaucrats, were also attached to the *Abhiyan*.

Each participating state had to set up a State Mission Authority, headed by the state's Chief Minister, and an Executive Committee, headed by the Chief Secretary/Development Commissioner/Education Secretary, a bureaucrat. There could be involvement of NGOs, social activists, university teachers, teacher union representatives, *panchayati raj* representatives, and women's groups toward the *Abhiyan* permitted each state to develop its own management structure, and it required each participating state to set up an effective monitoring and operational support unit. District

and sub-district units were to be set up by the participating state, consisting of bureaucrats and non-government persons. A 'vibrant' partnership was conceived with the civil society in the area of capacity building in the community, resource institutions.

These systemic problems may well be present in the MDGs-related development and poverty alleviation programmes initiated and administered by states but these can be sorted out by putting a full stop of frequent transfers of management officials by devising a transfer policy. The concept of good governance needs to be translated into a quantifiable annual index on the basis of certain agreed indicators such as infant mortality rate, extent of immunisation, literacy rate for women, sex ratio, feeding programmes for children, availability of safe drinking water supply, electrification of rural households, rural and urban unemployment, %age of girls married below 18 years, %age of villages not connected by all-weather roads, number of Class I government officials prosecuted and convicted for corruption, and so on. Some universally accepted criteria for good budgetary practices may also be included in the index. Once these figures are publicised states may get into a competitive mode towards improving their score. Central transfers should be linked to such an index.

Another solution could be use of technological devices which can enhance the level of official interface regularly — electronic methods like teleconferencing, e-banking, online meetings, online tracking of results, electronic service delivery etc. The use of modern technology can ensure citizen. Centric services which involves designing of services from the user's point of view rather than that of the perspective of any government department. The bureaucratic silo approach 'would not provide the result as expected Computerisation in the government departments can make all government services accessible to the common man in his locality round the clock.

Disempowered Common Masses: Achieving it through Decentralisation, Vibrant *Gram Sabhas* and Effective Grievance Redressal System

Historically the empowerment of common citizenries has been done by political parties, religious groups or philanthropists, such as non-violence

movement of Mahatma Gandhi, Justice Party in Tamil Nadu, Erawah movement in Kerala, Arya amaj movement and Bhoodan Movement of Vinobha Bhave in the north, and by DrBheem Rao Ambedkar in the north and central India. Recent examples would be the Swadhyay religious movement in Gujarat and by civil society organisation on various issues like consumer, regulation and access to information, health and rural development by some NGOs in isolated places.

In the recent years, empowerment has been one of the goals in many development projects but it has remained more or less a political rhetoric, as an ideology without a methodology.

Empowerment has also been sought to be achieved through democratic decentralisation in India, by creating institutions of self-governance at the district, block and village levels. Creation of *panchayats* in India through an Constitutional Amendment in 1993 had initially raised hopes about their role in improving services. But studies show that although some village level *Panchayat* leaders have done commendable work, elected local bodies too on the whole have not benefited the people to the extent of funds provided by central and state governments.

Several empirical studies on the working of *panchayats* have revealed that *Gram Sabha* meetings were conducted regularly in a few places only, and in majority of cases, participation in *Gram Sabha* meetings was not even 8%. Often such meetings were in only paper. Awareness among villagers about the amounts of funds received by the *panchayats* and the heads under which expenditure had been incurred was very low. The quality of delivery of benefits to the poor was low and leakages ranged from 20 to 70%. Most elected officials had the propensity to make money, and almost in all cases, *Panchayat Sarpanch*/beneficiaries paid 'commissions' to officials. *Panchayats* at all levels are mostly busy implementing construction-oriented schemes, which promote contractor — wage labour relationship. In such a situation *panchayat* activities get reduced to collusion between the *Sarpanch* and the block engineers. *Panchayats* should be made more active in education, health, self-help groups (SHGs), watershed, nutrition, pastures and forestry programmes, which require people to come together and work through consensus.

The vicious cycle of distortions in politics leading to bureaucratic apathy and vice versa, and both resulting in poor service delivery can be set

right through reform measures and one of them could be of strengthening the public grievance redressal system in all departments and ministries disposing off complaints in a time bound manner and usage of computers and mobiles to keep track of the input and output. Because of weak complaint redressal mechanism many states in India, especially the the economically backward ones, have lost the dynamism and capacity to improve the quality of the services. The service providers who only understand the language of power, patronage, transfers, money and coercion how will have to understand the language of governance, professionalism, goal orientation, transparency, accountability building of institutions and common peoples' empowerment to uplift the status of public services.

Lack of Accountability: Public Service Guarantee Acts are a Leap Ahead

As a consequence of its colonial heritage as well as the hierarchical social system, administrative accountability in India has always been internal and upwards, and the civil service's accountability to the public had been very limited. Today, the accountability of the elected MPs/MLAs and PRIs is only to the Parliament and legislatures but not the common masses who chose them. In such a scenario, effective implementation of the legal framework favoring good governance, transparency and accountability such as Whistleblowers Act, Criminal Property Confiscation Act, Lokayukta Act, Citizens Charters Act, Public Services Guarantee Act is also extremely important to enhance the quality of public services.

Passage of the pathbreaking pro-governance legislation like Service Guarantee Act in several states like Madhya Pradesh, Bihar, Punjab and Rajasthan, Uttarakhand, Jharkhand, Karnataka, Himachal Pradesh, Orissa and Chhattisgarh in India is a welcome step to ensure the delivery of public services in these states on time. These acts are similar to some flagship legislations, having a direct impact on governance in terms of transparency, accountability and corruption, and is akin to Right to Information. In the Public Service Guarantee Act if a designated official is found to be a typical case of non-compliance, where he is not able to deliver the services in time, there are provisions under which an applicant can go to a 'first appellate' authority, who would look into the matter and take a decision within a fixed timeframe which varies from service to service and state to state. If the

first appellate also fails to do so, or if the applicant seeks to pursue his case further, he or she can make an appeal to the second appellate authority, who has to again dispose the case in a pre-scheduled duration. Failing to deliver the service on time, the designated official is liable to punishment and the failing officers would be penalised with deduction of ₹ 250 or ₹500 (varying from state to state), each day from his/her own salary. If the first appellate officer fails to ensure delivery of services, without valid reasons, he will be liable for a fine of minimum ₹ 250 to 500 per day, but the total fine would not exceed the limit of ₹ 5000 ordered by the second appellate authority. For the overall administration and management of work under the legislation, the law also proposes to set up a Public Service Delivery Commission at the state level. The legislation intends to sensitise the public officials towards pro-actively responding to the citizen's demands.

Lack of Transparency: Effective implementation of RTI Act, 2005 is the Need of the Hour

Transparency builds external demand for reform and makes administration more responsive and performance-oriented and several domain experts believe that only if transparency is maintained within the service delivery system then it is enough to enhance the quality of these public services. One of the chief causes of poor public service delivery system in the country the Indian administration and the service delivery mechanisms has not been in favour of transparency, because they grew up with the Official Secret Act, 1923 which had provision of hiding everything from the common masses Even getting a photocopy of any public document was not possible because of this act. Everything was confidential and Indian bureaucracy was heavily affected by this was that the Contrary to the Official Secrets Act which has been repealed and replaced with the progressive RTI Act, 2005 it has opened up all the business dealings of governments and except some clarified information nothing is secret now. File notings are accessible to the common people. Property and tax returns of all senior officers are available for scrutiny by the public. The 17 types of defined categories of information has to put on proactively the 'home page' of the government on the internet, so that anyone having internet can access it and can inform government if the stated facts are contrary to his knowledge. Many states have tried to computerise land records, but feeding incorrect and out-of-date entries in the computer without field verification has not added to consumer satisfaction, and for most states it is 'garbage in, garbage out'.

So the hope of transparency in the service delivery and decision making process of government system lies in the effective implementation of the RTI Act, 2005.

Weak Provisions for Third party evaluations: Reforming the Monitoring System through Civic Participation

Public participation and civic monitoring of the public service delivery system is very feeble thing to it is essential for greater responsiveness to the needs of the public and thus to improve service quality. Departments such as Rural Development, Public Health, Education, Police and Revenue, which have more dealings with the people, should be assessed once in three years by an independent agency, civic organisations or commission, consisting of professionals such as journalists, retired judges, academicians, activists, NGOs, and even retired government servants. Presently, of inspection are elaborate but preclude the possibility of a 'fresh look' as they are totally governmental and rigid. The monitoring system should be made more open and participatory.

Third party monitoring provisions which include social audits, using social accountability tools and other methods should be more and more institutionalised in the service delivery system so that the civil service can gain from the expertise of outsiders in the mode of donor agency evaluations of projects. These will set priorities for enhancing both internal and external civil service accountability and ensure improved information systems and accountability for inputs; better audit; face-to-face meetings with consumers and user groups; publishing budget summaries in a form accessible to the public; a stronger performance evaluation system; scrutiny and active use of quarterly and annual reports; and selective use of contractual appointments. In its absence, such initiatives of reforms remain only on paper.

Conclusion

The state of Indian public service delivery system in general is dissatisfactory due to want of personal integrity of the service providers, poor executive skills and lack of reforms in the entire chain of delivery mechanisms till grassroots. A government that fails to take steps to produce

a climate conducive to positive work-related ethical attitudes may create a vacuum in which employees so predisposed may foster a frontier-style, 'everyone for themselves' mentality.

This article notes the great India paradox – a rapidly expanding economy fuelled in part by high-tech and service sectors, growing income inequality, huge human development challenges and emerging skills shortage. It also noted the close link between the quality of services in education, health, infrastructure and rural development and economic growth and tried to proportionately compare the progress made in MDGs and service delivery mechanism in India in that particular sector or department.

The current buoyant economic prospects provide a window of opportunity to propel human development in all the states of India up to a quite higher level and sustain high growth levels.

The poor in India face a double and reinforcing crisis of age old poverty and poor public service delivery systems which increase the chances that children are malnourished, suffer from avoidable disease and disability, learning disabilities and drop out of school, thus perpetuating a vicious cycle of poverty. Because of numerous market failures, the services needed by poor people cannot be left to the market to provide, but the government services provided to the poor often fail due to "government failures". Governments have begun to tackle these failures by strengthening accountability along various dimensions. Efforts at strengthening accountability at times face strong resistance. Indian states and their departments and allied development agencies are struggling to find additional creative ways of addressing this problem by adopting a four-pronged approach.

First, greater investments in programmes which increase the income of the poor are required. Second, a major effort to focus on human development paying attention to the political economy of service-delivery reform; strengthening decentralisation; and nurturing a culture of impact evaluation, and third, efforts to increase demand for education and health from disadvantaged and marginalised groups and fourth to formulate a new generation pro governance, transparency, accountability and civic participation laws at the Central and state level.

It is noticed that all the state governments are not equally sympathetic to PRIs. Therefore, it is pertinent to advocate to the Government for making PRIs more and more functional on the fiscal and performance front by redesigning mechanisms for transfers to PRIs to increase expenditure autonomy and reduce revenue dependency. The Planning Commission of India may also consider if hundreds of schemes and programmes assigned in principle to PRIs can be simplified. However, a period of a few years is not sufficient to judge whether the stated physical, financial, institutional or policy related goals have been met or are likely to be met. Their successful implementation should draw strength from documentation and knowledge about grassroot experiences. Experience so far shows that unless the process through which participation is to be secured is described in detail and monitored, it is likely to be ignored both because of lack of commitment among the government staff and lack of knowledge about the road map to the destination.

By creating institutionalised spaces for participation and accountability, the 73rd Constitutional Amendment has ushered in an unprecedented opportunity for participative, transparent and accountable governance. However, mere presence of these spaces does not implicitly result in participation by citizens and establishing an accountable system. The dynamics of participation and accountability are clearly more complex and require a number of institutional reforms.

In many parts of India, achieving health MDGs continues to be a major challenge. Public health services have a number of challenges. Adult illiteracy, lack of women's empowerment, cultural practices and lack of community involvement are some of the barriers external to health systems. Factors internal to health systems like poor management, lack of human resources in remote areas, moonlighting of staff, corruption, poor quality of care, inadequate financing, among others, are responsible for poor public health services. The poor and unpredictable quality of public health services has led the public to seek care from private providers, including informal and unqualified health providers. This has led to underutilisation of public health services, and reduced access to critical health services for the poor who cannot afford private health services.

India's education sector has made significant progress in terms of increasing coverage, infrastructure developments in urban areas, provision

of midday meals and other ancillary services to improve the retention ratios. However the main challenges include (i) gaps in terms of infrastructure (e.g. buildings), quality and capacities, proper toilets for girl students, electricity, drinking water, and 'Information and Communication Technology' (ICT) facilities; (ii) teacher absenteeism and low teacher morale; and (iii) lack of leadership and poor management quality at school level. Also, educational opportunities remain out of reach for a large number of the rural poor. Discrepancies in access to and quality of education between rural and urban areas remain. Illiteracy is higher in rural areas as access to education remains a challenge with students in rural areas who sometimes have to travel long distances to attend school.

Ethics in Governance and Delivery of Services with Specific Reference to the North East Region of India

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“The ultimate aim of government is not to rule or restrain by fear nor to exact obedience, but contrariwise, to free every man from fear, that he may live in all possible security, in other words to strengthen his natural right to exist and work without injury to himself or others”

Baruch Spinoza, 17th century philosopher

Introduction

In a discussion, such as this, with intent to examine a situation or issue of national importance at the regional level, one is always attracted towards a partition of the discourse into the existing administrative divisions. The author has refrained from doing so for the reason that this region, known as India's North Eastern region was 'assembled' during a specific period — from 1947 to 1971 — though various Constitutional and administrative amendments. Moreover, the overall state service delivery institutions, agencies, bodies and mechanisms that exist today follow a common national pattern, and are governed by national constitutional, legal and administrative norms. A normative framework of ethical governance exists that is to be followed across the country.

India's prime bureaucratic services forming the executive branch of government, known as the central civil services, has a foundation course

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that lays down the normative framework of 'good governance' in service delivery.¹ "Governance is admittedly the weak link in our quest for prosperity and equity. Elimination of corruption is not only a moral imperative but an economic necessity for a nation aspiring to catch up with the rest of the world. Improved governance in the form of non-expropriation, contract enforcement, and decrease in bureaucratic delays and corruption can raise the Gross Domestic Product (GDP) growth rate significantly. The six perceived governance quality measures, each an aggregate of a number of sub-measures, are: voice and accountability; absence of political instability and violence; government effectiveness; reasonableness of the regulatory burden; the rule of law; and the absence of graft. Of these, the last two are the most directly significant in the context of ethical governance."²

"The line separating good and evil passes not between states nor between classes... but through the middle of every human heart" (Aleksander Solzhenitsyn).

The assumption that governance and good government are always founded on, and motivated by benevolence, and with the best interest of the people at their core trajectories, can be a misplaced one. In the same vein, democracy can also be two wolves and a sheep deciding on what to have for dinner. Democracy and so-called democratic governance does not always lead to a good economy or even a good political system.

During the apartheid era in South Africa, the then South African Police Force (SAPF) was not constituted to provide services to the community in a manner consistent with human rights and democracy. Rather, the organisation including its notorious Security Branch had an objective to suppress popular resistance against the apartheid state and

¹ "...a wide training canvas to develop administrative and technical skills, to understand the principles and practice of good governance and at the same time help in shaping behaviour patterns, most suited for an effective, transparent and responsible civil servant." (87th Foundation Course Manual, Dr. M.C.R. Human Resource Development Institute of Andhra Pradesh, 2012) The key values are accountability, flexibility and innovation in performance and behaviour according to this course manual. At the end of the course, trainees are expected to (a) display the right values, ethical standards, norms of behaviour and personal conduct expected of civil servants; and (b) have full appreciation of the principles of good governance, and their application to meet the needs of the citizens of India.

² Ethics in Governance; Fourth Report of the Second Administrative Reforms Commission; January 2007. The rule of law and corruption are identified as major areas of concerns regarding governance more than sixty years after the democracy was established. Delays in the criminal justice system and its reforms are critical areas of ethics in governance in India today.

vigorously enforce its racist laws.³ However, from this unfortunate chapter in the history of the peoples of Africa came positive changes that have become the role-model of good governance for the democracies of the world. At the heart of such changes, it is clear that democratic institutions, economic reward systems, the legal systems, ethical schemes and pedagogical socio-cultural environments, all have the cornerstone of tacit assumption of rational and autonomous individual selves capable of choosing what is right, and taking responsibility for each choice and that there are no passive receivers in the true sense of the term.

Contextualising the international debate on ethics in governance

Good governance is a basic right of the people of the country, and should therefore be adhered to throughout the country notwithstanding whether there is conflict or not. The Governor of Manipur remarked during a recent seminar on *Good Governance in Manipur: Dialogue with Civil Society and Capacity Building and Management* in Imphal that “resolutions to conflicts would emerge when there is good governance. People want peace along with justice, education and health facilities for their children, guidance in their agriculture work and closer rapport with the politicians and bureaucrats; that bureaucrats and politicians should start behaving as ‘service’ and not as a ‘ruling class.’”⁴

Good conduct and how to foster it in public services is presently a powerful debate in academic and international circles involving states and private entities. While a number of formulaic simplistic prescriptions have already been mooted and adopted even seeping down to the district level civil administration of rural India⁵; nevertheless, the many reviews based on empirical evidence from development management, psychology, decision theory, normative discourse and more suggests that ethical decision making

³The SAPF was the major security institution in the country known for its militaristic, hard-core, bureaucratic unresponsiveness to members of the public. (Nakamte Michael Masiapata; *Ethics and Ethos in the South African Police Service*; Pretoria 2007)

⁴<http://www.thesangaiexpress.com/tseitm-19519-seminar-on-good-governance-in-manipur-kick-starts-good-governance-key-to-conflict-resolutions-jagat>.

⁵ The promotion of e-governance has been gaining coinage in India Inc. lately, while the overwhelming majority of the Indian Republic has no access to this new-fangled mode of governance despite efforts to develop rural telecommunications connectivity. In the end, ethical governance in service delivery is not measured by technological fixes but by evidence of equity, reach and results.

and behaviour is multi-dimensional and variable across time and context.⁶ This is a lot of disconnected jargon in one sentence, and does not include the bizarre dimensions of cultural and social *anomie* that affect everyone, and founded on a long-standing policy directed and perpetuated conflict situation in a colonial set-up. India has learnt to practice the fine art of governance in armed conflict situations, but at the cost of universal ethical norms and principles. If the military provides the moral norm, the militant becomes a partner. No wonder then that the only sustained robust 'service' in the North East region is the military and the security sector, and the militant, cohabiting through regular recruitment and surrender matrimonial exercises, through clandestinely existing reality of 'parallel government' or 'shared governance' between state and non-state actors.

Ethics is based on a foundation of what is rational, the normative sources of moral tradition included in the philosophical traditions associated with using human reason. There are numerous formulations of good conduct (drawing on, for example, motivation or purpose, harm or benefit, or mode of reasoning) and its negatives, corruption and moral judgment. All of them are based on the notion of rationalism, lacking or corrupted in a prolonged armed and violent conflict situation. When covert and overt forms of plutocracy are evident in all forms of governance with any semblance of a peoples' government, peace and security evidently *non sum*, can ethical governance be a reality?

When we address the question of good governance and the ethics that govern governance in the North Eastern States, therefore, we must think in terms of recovering equilibrium, even of establishing better and innovative balances; of the legitimacy of contracts between the States and the "Centre", between the States, even within each State, between the state and peoples, between different and often apparently irreconcilable priorities, needs and aspirations⁷; of what, as Stewart call, "horizontal inequalities" in

⁶ Carol W. Lewis (2005). Ethical Norms in Public Service: A Framework for Analysis, "Ethics and Integrity of Governance: a Transatlantic Dialogue," under the auspices of the Study Group on Ethics and Integrity of Governance of the European Group of Public Administration and the Section on Ethics of the American Society for Public Administration and hosted by Public Management Institute of the Katholieke Universiteit Leuven, Belgium, June 2-5, 2005.

⁷ Legitimacy plays a complex additional role in shaping expectations and facilitating political process as well as in being produced and replenished by the interaction among all of the other factors. Legitimacy has various domestic forms and sources, which are not always mutually reinforcing: embedded or residual legitimacy, deriving from prior state-formation or other historical dynamics; performance legitimacy that arises from effective and equitable service delivery; and process legitimacy. Legitimacy also can derive from international recognition and reinforcement, though this especially can be at odds with domestic sources of legitimacy (OECD 2008a: 17).

matters of access to resources due to inequalities between culturally defined groups⁸ brought about by a high level of plutocracy.

Given the Central Government's approach to the region, what is the real plan for its purported development and what are the ethics underlying such plans? Clearly, pacification at as low a cost as possible regardless of local needs and aspirations is the highest priority. From what can be seen about the trajectory of recent infrastructure, the much vaunted policy sees the region as a storehouse of power, water and natural resources to dip into at will. It also sees a sort of mammoth transit point, a convenient bus stop or truck halt between the eastern Asian markets and the rest of India. The peoples, their cultures, ecologies and aspirations are more or less so much interference to be muted, placated or removed surgically.

Tragically, this is done with the collusion of local leadership

Returning to the normative traditions, foremost among these are traditions primarily defining ethics either by (1) universal principles and duties of good conduct, or (2) proper effects on others and the community. On the roster of other normative sources is thinking grounded in natural rights, virtue and moral character, and some approaches relating to common sense and human emotion. Culture also is widely accepted as another source of distinctive moral traditions. There are also certain instances where an amalgamation of both traditional concepts and modern concepts actually bring about more coherence and continuity in ethics of governance. However, this is hardly the case. When alien or alienating cultures, legal concepts of natural rights, virtue or moral character are cleverly interwoven into an overarching ethos of subjugation and assimilation by force, 'traditions' defining ethics become unrecognisable from their roots or transplanted terrains.

Tradition may generate different answers or different reasons like problems posed by ethical dilemmas that demand judgment from each one of us, but it is the grey problematic arena of moral judgment that poses the most significant challenges to individual and organizational integrity in today's public service. In a colonialist scenario where armed and violent conflicts prevail as the 'white noise', moral judgement can foist inhuman challenges on the individual and public service institutions.

⁸ Stewart, Frances (2005). *Horizontal Inequalities: A Neglected Dimension of Development*. In UNU-WIDER "Wider Perspectives on Global Development". London: Palgrave

Ethics is important in modern bureaucracies and public service because such ethics translates in practical terms into the use or abuse of power (including political, professional, governmental, organisational, and personal power) and legitimate authority. The link between power and ethics goes back to ancient times, as reflected in Thucydides's *The Peloponnesian War*: "You know as well as we do that right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must." The power of people in public service compared to those they serve is behind the idea that "public service is a public trust" and explains why so many governmental and professional codes impose strong obligations on public servants who, as *temporary stewards*, exercise public power and authority. Their position is neither theirs to own, nor is it theirs to keep. In the North Eastern States of India, is the concept of 'stewardship'⁹ dominant or unhinged?

Five core values in public service flow from the definition of public servants as temporary stewards of public authority. Depicted as a wheel around the key element of temporary stewardship, these are (1) accountability, (2) impartiality,¹⁰ (3) justice and fairness, (4) beneficence, and (5) avoiding doing harm (non-maleficence). While each of the five is bedrock - a foundation for principled action by the temporary steward, it is together that they represent the common core of public service.¹¹ Do these core values exist in the public services of the North East region of India, where the very definition of "public service" and "public servant" have been long distorted to, and well established by public opinion as 'public looting' and 'public tyrant'?

Does public administration place the citizens at its centre in the North East region?¹² The answer must be an emphatic "no".

Corruption is an important manifestation of the failure of ethics in governance and service delivery.¹³ Just as one needs two hands to clap,

⁹ Stewardship is defined as the "willingness and ability to earn the public trust by being an effective and ethical agent" and "signifies the achievement of both effectiveness and ethicality" (Kass, 1990. pp. 113, 129).

¹⁰ Impartiality refers to the application of rules, whereas justice and fairness refer to the rules themselves.

¹¹ Op. cit.

¹² "The concept of good governance and citizen centric administration are intimately connected." See Citizen Centric Administration: The Heart of Governance; 12th report of the Second Administrative Reforms Commission, February 2009

¹³ Op. cit. Fourth Report of the Second Administrative Reforms Commission; January 2007

corruption cannot exist without the involvement of the public, the community, and the supplicant being party to its existence as a 'habit'. However, it would be simplistic and dishonest to point the finger at the community for the corrupt practices rampant in service delivery system in the region, or in India. Civil servants are trained to be 'leaders' of society, and exhibit exemplary behaviour that can be emulated by the public. For this reason, service providers have a conspicuous responsibility to promote and protect ethical socio-cultural norms through good governance.

Borrowing from Goulet, it must be understood that ethics in democratic governance are above all else a question of values and attitudes, goals self-defined by societies, and criteria for determining what are tolerable costs to be borne, and by whom, in the course of change. These are far more important things than modeling optimal resource allocations, upgrading skills, or rationalizing of administrative procedures. Nor is the road to good ethical democratic governance a harmonious process but rather a traumatic one full of contradictions and conflicts. Democratic governance is an ambiguous adventure born of tensions between *what* are sought, for *whom*, and *how* these are obtained.¹⁴

The basis of the evaluation of human behaviour is to be found in a system of values. Ethical values and integrity as a basic value as well as the rule of law are key elements of every democratic society. Public officials in their daily execution of their functions and management of public funding, dispose of discretionary competencies. These values must not only protect the citizens against arbitrary use of this public power, but also the public authority itself against any improper use of this power by its public officials. The public officials themselves must be protected against any abuse or diversion of law or authority on behalf of the public authority or its official bodies.

In addition, ethical behaviour is essential for an effective and stable political-administrative authority as well as social and economic structures. Corruption can criminalise economic competition and endanger free trade

¹⁴ Goulet, Denis (1997). Development Ethics: A New Discipline. In "International Journal of Social Economics". Vol. 24: 1160–71.

____ (2000). Changing Development Debates under Globalization. Workshop paper on "Social Dimensions of Globalization". Vatican City: Pontifical Academy of Social Sciences.

and stability on which the free market economy is based.¹⁵ But, the moral-ethical culture which prevails in the public sector is dependent on the values of society. A society which does not, or is not allowed to express moral protest in public can cause political office-bearers to have a low sense of responsibility and integrity. Consequently, corruption and maladministration takes root.¹⁶

In the context of the North East region, we see that while the Indian Constitution protects the public from abuse by arbitrary and vindictive treatment by public officials, errant officials are also protected from prosecution and punitive measures by the same measures in Article 311.¹⁷

Systems of values evolve over time providing a complication in the evaluation of ethical normative behaviour. This problem is further compounded by the fact that while the establishment of effective ethical governance is a complex process, the reversal of unethical and corrupt practices is equally so. A recent South African study on the impact of accountability and ethics on public service delivery attempted to summarise the evolution in ethical normative standards in the public sector in the 20th and 21st centuries.¹⁸

¹⁵ Hondeghem, A. 1998. Ethics and accountability in a context of governance and new public management. Amsterdam: IOS Press.

¹⁶ Esterhuyse, W.P. 1989. Die aard en rol van moraliteit. (The nature and role of morality) Speech during the Second Winelands Conference, University of Stellenbosch, 28 - 29 September 1989.

¹⁷ "Constitutional safeguards have in practice shielded the guilty against the swift and certain punishment for abuse of public office for private gain. A major corollary has been the erosion of accountability. The huge body of jurisprudential precedents has crowded out the real intent of Article 311, and created a heap of roadblocks in reducing corruption. Such a provision is not available in any of the democratic countries including the UK. While the honest have to be protected, the dishonest seem to corner the full benefit of Article 311." (Op. cit.; Preface; Fourth Report of the Second Administrative Reforms Commission; January 2007) Subsequently, Indian legislation always requires a sanction from government authorities, rarely accorded, before legal proceedings can be initiated against delinquent officials.

¹⁸ Raga, K. and Taylor, D. 2005. Impact of Accountability and Ethics on Public Service Delivery: A South African Perspective; Nelson Mandela Metropolitan University, Port Elizabeth, Republic of South Africa

Twentieth-century ethics	Twenty-first-century ethics
Determinants — ruling elites	Determinants — authentic discourse among all who will be affected
Common ethical code — belief in final solutions	Constantly managing code(s)—based on continuous authentic discourse
Support guaranteed through coercion	Support guaranteed through consensus
Dissenters subject to punitive measures	Dissenters subject, based on issue, to dialogue first before punitive measures
Western (colonial) ethics	Ethics based on anthropological and sociological pluralism
Corporate accountability (amounts to non-accountability)	Personal accountability
Exercise of personal morality stifled and discouraged	Exercise of personal morality encouraged
Exercise of personal discretion discouraged	Exercise of discretion encouraged
Public interest nebulous, determined by governing elites	Public interests(s) disparate but relatively distinct, determined with all involved (authentic discourse), constantly redefined

Currently, ethical norms have been clearly evolving into a universal model, rather than a largely colonial Eurocentric legacy. However, it can be inferred that the above-mentioned examples of era-specific ethics can neither contribute to high quality public service nor a more equitable distribution of scarce resources in the 21st century and beyond. As individual rights and entitlements came to be elaborated and standards set as universal human rights, individual responsibility and accountability became norms of ethical choice while cultural dimensions were also respected, protected and

promoted. But cultural dimensions in public service ethics brings to fore another aspect, that of collectivities and their entitlements and rights.¹⁹

The Second Administrative Reforms Commission (ARC) of India set up in 2005, presented 15 reports to the government²⁰, and made many sets of recommendations specifically relevant to the North East region, which all have critical significance to the current and future approaches and modes of ethical governance and public services delivery. A review of these recommendations being outside the purview of this article, it would suffice to assert that further delays in implementing these recommendations sincerely would amount to a negation of international standards as well as the rights of the peoples of this region.

Some specific cases of breakdown in ethical governance and delivery of services in North East India

Today, democratic governance in North East India has become an almost obsolete term. Denied and delayed justice system with a failing judiciary apart from denial of several democratic rights to the people, election violence and the lack of transparency and accountability of bureaucrats and politicians alike in the election processes, poverty, lack of proper development infrastructure, lack of participation of the people in the decision making processes, et.al., have all been instrumental in effectively depriving people of almost every democratic rights. Institutions of the state appear to have utterly failed to promote democratic governance in Manipur. Corruption is rampant in official circles; there is a general lack of commitment by the local political leadership to public welfare, and respect for the rule of law by all entities has alarmingly diminished.

¹⁹ The international human rights discourse has evolved gradually to embrace 'collective rights'. The United Nations system has adopted several standards, declarations and principles with far reaching consequences on ethical governance and public service delivery for culturally and historically distinct minorities, groups, communities and peoples. (see, for example, the International Convention on the Elimination of All Forms of Racial Discrimination, Convention No. 169 of the International Labour Organisation, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and UN Declaration on the Rights of Indigenous Peoples)

²⁰ See <http://arc.gov.in/> or http://en.wikipedia.org/wiki/Administrative_Reforms_Commission for the reports.

Militarisation and Security Laws/Apparatus

Due to historical and political reasons, the North east of India (Nagaland, Manipur, Assam, Meghalaya and Arunachal Pradesh) have been sites of insurgency movements for more than two decades. With very heavy military deployment in even in civilian areas, Kashmir is widely considered one of the most militarized zones in the world. Unofficial estimates place the presence of troops at half a million.

In the North-East, a state of exception exists through the presence of the Armed Forces (Assam and Manipur) Special Powers Act, 1958 with minor modifications to the preceding ordinance.²¹ The Act, along with several other acts like the National Security Act, 1980; Disturbed Area Act, 1978; Unlawful Preventive Detention Act, 1967 amended 2004; etc., is alleged to have created a culture of impunity and, in extreme cases, gave security forces a *carte blanche* to commit rape, molestation, arbitrary detention, looting, force labour, torture and carry out custodial killings.^{22 23 24} In November 2011, the Attorney General in his legal opinion to the Central Government stated that the Governor of the State, the representative of the President of India, is the final authority for declaration and revoking of the *Disturbed Areas Act (DAA)* and the *Armed Forces Special Powers Act, 1958*, leaving the reasonableness or otherwise of the imposition

²¹ AFSPA grants extraordinary powers to the armed forces of the Union. According to the AFSPA, in areas declared to be “disturbed”, even a non-commissioned officer of the armed forces has powers to “fire upon or otherwise use force, even leading to death, of any person who is acting in contravention of any law” or is in possession of deadly weapons, or against an “assembly of five or more persons”; arrest without a warrant and with the use of “necessary” force anyone who has committed certain offence(s) or is suspected of having committed offence(s); enter and search any premise(s) in order to make such arrests. No legal action can be taken up against the armed forces unless prior sanction is obtained from the Union government.

²² According to documentation by human rights defender organizations of Manipur including CORE, Human Rights Alert, Committee on Human Rights Manipur and Human Rights Initiative, there have been, from till date (2006 till February 2012), extrajudicial executions involving alleged torture total 898 persons (103/2006, 124/2007, 286/2008, 289/2009, 73/2010, 9/2011 and 14/2012). Documented torture cases from 2005-2009, according to CORE, totaled 413 (131/2005 with two events of mass torture, 80/2006 including one event of mass torture, 133/2007, 52/2008 and 17/2009).

²³ “In 2012, Manipur worst hit by terror” <http://timesofindia.indiatimes.com/india/In-2012-Manipur-worst-hit-by-terror/articleshow/12361177.cms>.

See also *Murder in Plain Sight*; a report in the Tehelka Magazine, Vol. 6, Issue 31, Dt. August 08, 2009 (http://www.tehelka.com/story_main42.asp?filename= Ne080809murder_in.asp)

²⁴ Once an area is declared “disturbed”, the armed forces in such areas are granted extraordinary powers and immunity from prosecution.

of the DAA outside the purview of judicial review.²⁵ This has led to gradual replacement, over the past three to four decades, of democratic rule of law by an authoritarian military oriented rule. Thousands of people are estimated to have been killed in the last three decades by the armed forces of the Union and other law enforcement officials in an undeclared armed conflict.

The *Armed Forces Special Powers Act, 1958* (AFSPA) has come under severe criticism both domestically and internationally. At the national level, government appointed committees like the Justice Jeevan Reddy Committee and the Administrative Reform Commission, and the civil society have called for its repeal.²⁶ Internationally,²⁷ UN human rights bodies like the Human Rights Committee (1997), CEDAW (2007), CERD (2007) and CESCR (2008) as well as international NGOs have also criticised AFSPA for contravening international human rights law. AFSPA works in conjunction with the Disturbed Area Acts of J&K and Assam (1990 & 1955 respectively). While upholding the constitutionality of AFSPA, the Supreme Court laid down guidelines, which are routinely violated.²⁸ These guidelines include: (a) The army cannot act as a substitute for state civil authorities, but is strictly required to act with their cooperation to maintain public order; (b) The power of arrest of a person without warrant under Sec. 4 is to be read with Sec. 5 which requires the detainee to be handed over to the nearest police station with 'least possible delay', which under the Cr.P.C means within 24 hours; (c) In conducting search and seizure, armed forces are bound by the same rules as the civilian authorities under Cr.P.C; (d) The court interpreted the search and seizure powers under Sec. 4(d) to mean that the armed forces have to turn the seized property over to the local police.

²⁵ The Hindustan Times, AFSPA: Law says Government, not CM, has the last word, New Delhi, 23 November 2011

²⁶ The "Jeevan Reddy Committee" and the Administrative Reform Commission (ARC), available at: <http://www.hindu.com/nic/afa/afa-part-iv.pdf>) and civil society.

²⁷ See: Human Rights Committee (1997), CEDAW (2007), CERD (2007) and CESCR (2008), available at: www.wghr.org/pdf/compilation-AFSPA.pdf; Also See: Amnesty International, Public Statement: Parliamentarians must repeal The Armed Forces (Special Powers), December 10, 2009, available at: <http://www.amnesty.org/en/library/asset/ASA20/022/2009/en/014577cc-00bc-40c7-9177-8571efc0950a/asa200222009en.html> and Human Rights Watch, India: Repeal Armed Forces Special Powers Act, August 18, 2008, available at: <http://www.hrw.org/news/2008/08/17/india-repeal-armed-forces-special-powers-act>

²⁸ NPMHR vs. Union of India, Supreme Court, Writ Petition (Crl.) No. 550 of 1982, 27 November 1997. Also See: South Asia Human Rights Documentation Centre, Masooda Parveen: Judicial Review of India's Special Security Laws Goes from Bad to Worse, HRF/168/07, July 07 2007, available at: <http://www.hrdc.net/sahrdc/hrfeatures/HRF168.htm>

Violations of international Humanitarian Laws are common in these areas, however, the International Committee of the Red Cross (ICRC), has not been granted access to any of these states except J&K²⁹. The Ministry of Home Affairs' Annual Report (2009-10) states that the number of insurgency related incidents and casualties in North East India have progressively reduced between 2004 and 2010 with reduction in the levels of violence and casualties.³⁰ A ceasefire is effective in Nagaland since 1997 and a major insurgent group, United Liberation Front of Asom (ULFA), operative in Assam, has also declared ceasefire since early 2011. However, despite the decrease in insurgency related violence, the state's response to these political issues has remained mainly militaristic, accompanied by draconian security laws that lead to widespread human rights violations and a culture of impunity like extra judicial executions, arbitrary detentions, torture, etc. This militaristic approach and the ongoing conflicts contradict GoI's position at the UN, that "*India does not face either international or non-international armed conflict.*"³¹

Militarisation has also led to denial of Economic, Social and Cultural Rights (ESCR) with the security apparatus increasingly used to implement the government's 'development' agenda. In the north east, development sites such as dams are manned by armed forces to suppress protest. For example, the Mapithel Dam area is one of the most militarised zones in Manipur. Security forces beat and tortured 40 women during protests against construction of the dam. Public hearings are controlled through cash payments and heavy militarisation. This phenomenon is particularly acute in Arunachal Pradesh.

²⁹ The State of Human Rights in India: Asian Centre for Human Rights Joint Submission on Behalf of the People's Forum for UPR II.

³⁰ Ministry of Home Affairs' Annual Report (2009-10), available at: [http://mha.nic.in/pdfs/AR\(E\)0910.pdf](http://mha.nic.in/pdfs/AR(E)0910.pdf).

³¹ India's National Report on the Option Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, available at: http://wcd.nic.in/crc3n4/crc3n4_2r.pdf

Illegal use of force by security and police forces against protesters at Mapithel Dam ³²

North east India, comprising the states of Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim and Manipur are considered to be the country's 'future powerhouse' with at least 168 large hydroelectric projects set to acutely alter the riverscape and large dams is emerging as a primary cause of conflict in the region. A serious challenge posed with the launch of developmental projects in the area is the non-recognition of indigenous peoples' rights to control and manage their own land and resources; define their development priorities and needs; be consulted and provide free and prior informed consent before such projects reach the state of implementation. The use of military and security cover for large-scale infrastructure construction has become a norm in the region.

Mapithel Dam is one of the unsustainable, detrimental development projects that have been introduced in Manipur. Its construction has been approved by the Planning Commission of India in 1980 and was conceived to create additional irrigation potential, augment potable water supply and generate hydroelectric power. The construction of the dam began in 1990, allegedly without prior consultation or the free, prior and informed consent of the affected tribal communities who are entirely dependent for their livelihood and sustenance on the lands that will be submerged. The construction of the dam will adversely impact 17 tribal villages, out of which 6 will be entirely submerged, and around 10,000 indigenous people will either be displaced or lose their primary source of livelihood.

As soon as the construction of the dam was initiated, a Rehabilitation and Resettlement (R & R) package was prepared by the government, without any prior consultation with the communities affected. An outbreak of widespread protests against the package and the construction of the dam resulted in the signing of a Memorandum of Agreed Terms and Conditions (MOATC) in 1993 between some of

³² Naga People's Movement for Human Rights, Report of the Fact-finding Team on Mapithel Dam, 19th November 2008, page 7.

the affected villages and the government, however, the government of Manipur unilaterally modified the terms of the agreement. In 1998, another R & R programme was formulated with significant inconsistencies, excluding from its ambit many of the downstream inhabitants affected by the dam.

On 3rd November 2008, a group of around 500 women marched towards the dam site to submit a memorandum to the government officers in which they set out their grievances and demanded review of the R & R plan. But security and police forces stopped them from proceeding. When the women's group insisted on meeting with the officers to submit the memorandum, security personnel used violence to disband the protest. Afraid of the brutality that was launched against them, the women, some of whom were carrying babies on their back, fled to protect themselves, but even so, the security forces chased them, violently beat them with batons and fired tear-gas shells.

During the incident 45 women were injured. Some of the protestors were so brutally beaten that they were either hospitalized or carried home by other protesters on their backs. Even though, they pleaded the police to help them take the injured to the hospital (a one and a half hour journey by car), their pleas were outright rejected. The use of tear gas and other crowd-controlling weapons is governed by carefully formulated rules and regulations that mandate police forces to use these weapons only when absolutely necessary.

The initiation of the construction of the Mapithel dam begun with a massive influx of security personnel in the area, including personnel from the Assam Rifles, BSF and the Indian Reserve Battalion (IRB). Three check-posts were set around the dam site while checkpoints were arbitrarily established by the security forces in all the roads leading to the dam site. According to villagers' claims, a curfew was enforced by the security forces, preventing them from venturing out from their houses after 5 pm. Villagers had to pass through the dam's checkpoints since their paddy fields are located around the dam site. In cases where they have to work later than 5 pm, especially during the harvest season, they have to provide a letter from their Village Secretary, with details such as purpose for the lateness and number of individuals in the group, and in case that they pass a checkpoint the same number of individuals

are required to return, otherwise the whole group is subjected to questioning regarding the whereabouts of the missing person. The roads of some villages to Imphal have been blocked interrupting the bus transportation and forcing many to walk long distances to reach their villages.

There are allegations of incidents in which villagers were arbitrarily picked up and interrogated by the security forces or were severely beaten. Some of these documented incidents include the beating of Mr. M. H. Silas, 60 years old at the time of the reporting, and Mr. K. A. S. Ramshim, 64 years, by 19 Assam Rifles on 14 April 2004. In December 1995, Mr. K. S. Enoch was arrested, arbitrarily detained, interrogated and tortured by para-military forces of the 19 Assam Rifles with the accusation of being part of an underground group. A more recent incident of abuse perpetrated by security forces is the arrest and detention of 4 Mapithel Dam Affected Ching-Tam Organization (MDACTO) members by a contingent of the Manipur Police Commandoes who were released only after they renounced their membership to MDACTO.

In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, called the attention of the Government of India regarding the construction of the Mapithel Dam, its relevant effects on the indigenous population in the area, as well as the illegal use of force against the protestors. In its response the Government of India has reiterated its position on the definition of the word 'indigenous' by stating that the Government regards the entire population of India as indigenous. It characterised the communication of the Special Rapporteur as incomplete and misleading picture of the actual situation. On the issue of illegal use of force against protestors on November 3, 2008 the Government maintained that "the police were left with no alternative but to resort to a mild baton charge after the protestors tried to enter the project area forcibly, and started pelting stones and pushing women constables at the site".³³

³³ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, 2009, A/HRC/12/34/Add.1, para 171, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add1.pdf>

Central, State government and district civil administrative services in urban and rural areas

It is often said that the Indian bureaucracy—whether Central or State, is based on autocracy. Civil administration depends heavily on the bureaucracy for dependable and efficient delivery of services. Civil administration is also supposed to be the nerve centre for acceptable ethics in democratic governance.

In 1854, the British rulers introduced the principle of open competitive examination for entry into the Indian Civil Service (ICS). The 'Brown Sahibs', as the Indian civil servants used to be called, were in a difficult position during the non-cooperation movement as they were tempted to align themselves with their white masters. Hence, after Independence the loyalty of ICS officers was suspect. Public opinion was generally hostile to the ICS in view of its identification with foreign rule and its obstructing role during the freedom struggle. But Sardar Patel, the leader of the conservatives in Congress, ultimately succeeded in forcing his proposals down the throat of an unwilling Constituent Assembly. He advocated the importance of administrative continuity for the stability of the country. Finally, the institution was maintained under a new name, the Indian Administrative Service³⁴.

The situation in North East is such that the bureaucracy has become the system that foster, wanton corruptions in service delivery while at the same time corrupting the very ethics of governance. The argument that the Central and State bureaucracy serve to promote the unity and integrity of the nation, transcending cleavages and differences which form the basis for states' identities, seems much less convincing in North East India. How could an elite administration itself affected by casteism, communalism and regionalism offer the perspective of a collective quest for common goals or free itself from the system that was created by it? Vertical solidarity between bureaucrats and politicians seems to prevail over the horizontal solidarity of a composite body of Central and State officers, who align themselves with political parties for opportunist motives of career advancement.

³⁴ Dalal Benbabaali (2008). Questioning the Role of the Indian Administrative Service in National Integration. In "South Asia Multidisciplinary Academic Journal". Free-Standing Articles, Online since 05 September 2008, connection on 02 October 2012. URL : <http://samaj.revues.org/633>

Some upright civil servants resist this trend, but they cannot alone change a system which victimises them through harassment and pressures from local politicians, frequent punitive transfers and threats to their families. To put an end to this abuse of power, the current Manmohan Singh's UPA led government has decided to limit the prerogatives of Chief Ministers with regard to All-India civil servants. But in a democratic set-up, politicians will continue to be at the helm of affairs. If they do not find political incentives in reforming public service institutions towards achieving good governance, any alternative institution, however well designed in theory, is likely to face similar pressures³⁵. This chronic condition has therefore affected deeply the ethics in governance and also the delivery of services.

Thus, instead of improving the delivery of services or making the systems of governance more ethical, both the Central and State bureaucracy has contributed in deepening even more the existing discrepancies, irregularities, corruptions, flouting of ethical conducts and social cleavages by their partiality. This then finally makes the whole institution lost its *raison d'être*. A case in point is the recent allegation of irregularities in public service delivery in Manipur.

Hungpung body alleges irregularities³⁶

Thawai-jao Hungpung Youths and Students' Organisation has alleged sub-standard road development work as well as inordinate delay in sports complex and hospital construction activities. Speaking to newsmen at Manipur Press Club today, Organisation president Isaac Kasom and former secretary T.S. Albis said that development of a 6.6 km long road connecting Dungrei Junction to Kaziphung via Sacred Heart Higher Secondary School section from National Highway 150 was taken up under the State PWD in 2010.

In spite of year 2012 set for completing the Rs 4 crore road project, earth cutting work has been carried out for only about 4.2 km of the total road length after which there is no sign of construction activities since, they said while contending that ring culverts laid in some section of the road are smaller than the prescribed size. Similarly, concrete slabs over the ring culverts are also on sub-standard size and material composition, claimed Isaac who identified the contractors as S.K. Redeem and Ngaranmi, both from Ukhrul.

³⁵ Ibid

³⁶ <http://www.thesangaexpress.com/tseitm-19564-hungpung-body-alleges-irregularities/>

With regard to development of a sports complex in Pakshi Ground, he informed that Chief Minister O Ibobi Singh had laid the foundation stone in March 2009 for the ₹ 9, 90, 87,285 projects to be implemented under the NLCPR funding. While the existing gallery was dismantled in March this year no further construction work has been initiated till date, said Isaac who conceded that he has no idea to whom the work was assigned. Ukhurul Deputy Commission is said to have assessed the condition but there is no report of any action taken in connection with the delay.

The CM also laid the foundation for construction of a 50-bed hospital in Hungpung in March 2009 but only about 30% of the construction has been completed, both the Organisation representatives maintained while identifying the contractor as one Asui. Demanding resumption of relevant works at the earliest, they also threatened to launch intense agitation if the proposal fails to evoke positive response.

Breakdown of SHRCs

Another evidence — both the driver and product — of the breakdown of democratic rule of law in North East India is the breakdown of State Human Rights Commissions (SHRCs) who have the authority to look into cases of human right violations and have the power to prosecute³⁷. In paper, SHRCs are supposed to be instituted in states where there is a need to as per the provisions of Protection of Human Rights Act of 1993 (PHRA)³⁸, amended in 2006.

The functions and powers of SHRCs are crucial for the promotion and safeguard of human rights in the states of North East India as can be seen from the content of the directive of the Guwahati High Court order (PIL No. 15 of 2011, date 19th October 2011). The power and functions of the Commission and its power to enquire are mentioned in Sections 12, 13 of the Act, 1993. Under these, discretionary judicial power over any issues related to human rights violations committed by the government is given to the Commission. A few among them includes the power to oversee the implementation of Juvenile Justice (Protection of Children) 2000,

³⁷ The National Human Rights Commission, on 2nd December 2003, issued directive to all Chief Ministers that “whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect should be registered under appropriate sections of the IPC. Such case shall invariably be investigated by State CBCID” (<http://nhrc.nic.in/Documents/CasesOfEncounterDeaths.pdf>)

amended in 2006; the power to inquire cases custodial torture, custodial death; extra-judicial, enforced disappearance, sexual abuses including rape; promote the right of vulnerable section of the society such as people with special abilities, people with HIV/AIDS, people living with illness or physical abnormality, religious and linguistic minorities, LGBTs; power to promote right to freedom of association and assembly, expression and speech and so on. In addition to violations of basic fundamental rights of every Indian citizen as enshrined in the Constitution, the absence of a SHRCs has led to human rights such as rights of child and the infirm, detainees and prisoners, freedom of speech and expression, right to freedom of association and assembly, etc. being violated with impunity with no fear for reprisal or scrutiny by a Commission with judicial powers. At the same time, the absence of the SHRCs has also encouraged the continued and increasing practice of corruption, discriminations on grounds of sex, religion or creed, abuses and manipulations within the state machinery, deprivations and marginalizations on social and cultural grounds, so on.

Therefore, taking into account the rampant violations of human rights and the conspicuous absence of an effective mechanism or institution to check such violations, reinstatement of SHRCs with a wide range of powers and functions as given in Sections 12 and 13 of PHRA makes it a sine qua non for a truly democratic and humane process of governance. The very absence of such crucial and critical institution in areas where human right violations upon all walks of life are blatantly committed with impunity by state and non-state actors makes the whole rhetoric of democratic governance a mockery; an impediment to the holistic development and a dignified restoration of the lives of the people of North East India.

³⁸ The PHRA is the only law in India that defines human rights and enables their applicability in the national courts of law. In its section 2 "Definition", clause 1(d) says, "*human rights* means the rights related to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." Clause 1(f) says "*International Covenants* means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966."

The Case of Manipur Human Rights Commission

Manipur State Human Rights Commission (MHRC) was instituted under the PHRA under Central Legislation on 27th June, 1998 and a Chairperson for the Commission appointed on 10th December, 2010 after much pressure from civil society organizations³⁹. The commission functioned till the second term of SPF government in the State. In spite of various shortcomings like lack of proper infrastructure, staff, finance, etc., the State Human Rights Commission (SHRC) functioned against odds to deliver justice to hundreds of people whose rights were being violated by the state. These violations include enforced disappearances, arbitrary detentions, custodial deaths, extrajudicial executions, torture, rape, etc.

However, following the retirement of its Chairperson and members, the Commission has literally become defunct since May, 2011. Regarding this, it is to be noted that in spite of the retirement of the Chairperson along with all its members on 9th May, 2010, only the post of the Chairperson is officially vacant as per the current MHRC website nor do the Manipur government correct the anomaly even after being given many reminders by civil society organisations, individuals, youth organisations, and other community based bodies.

Taking serious cognizance of this neglect of the SHRC by the state government, a Public Interest Litigation (PIL No. 15 of 2011) demanding re-installation of Manipur SHRC was filed in the Guwahati High Court by Shri. Chaoba Takhenchangbam. Earlier, PIL No. 5 of 2005 was already filed for the same reason. In response to this PIL, the honourable (Division Bench) of Guwahati High Court directed the state government of Manipur that Manipur SHRC should be made functional within four months of the directive, i.e., between 19th October, 2011 (which is the date of the directive) and 19th February, 2012. The order as given include "...it is stated as on today, there is no State Commission i.e. Manipur Human Right Commission constituted under Section 21 of the PHRA as the term of Manipur Human Rights Commission consisting of earlier Chairperson and members had already been expired on 09.05.2010. It is the mandate of Section 21 of Protection of Human Right Act, 1993 that the State Government shall constitute a body known as the State Human Rights Commission to exercise the power conferred upon, and to perform the function

³⁹ It is to be noted that only three state in Northeast India have SHRC viz., Assam, Manipur and Sikkim

assigned to the State Commission. The composition of the State Human Right Commission is mentioned in Section 21 (2) of the Protection of Human Rights Act, 1993.”

As the State Government failed to comply with the honourable court’s directive and a contempt notice was given to the State Government according to which the State Government requested a six months’ extension (i.e., till 20th September, 2012) of the notice or till a new government is formed. However, even after a new government has been formed, there have been no attempts at reinstating the State Human Rights Commission nor has there been any effective pressure on the government in the State Assembly possible due to the absence of an opposition leader.

In essence, democratic governance is supposed to bring justice, peace, and respect for rule of law, provide and efficiently deliver certain facilities so crucial for human development like healthcare, education, transport and communication and so on. However, the reality, especially in the context of Manipur, is far from it. Even though efforts to check or ease this degradation of democratic principles in the region have been undertaken by the government, there is unfortunately a dearth of any positive results. While the answer to correcting these lacuna lays in active grassroots population participation in the whole governance processes especially in election- the rudiment of a democracy, they have been sidelined, subjugated and manipulated.

Democratic elections and civil rights may be prerequisites for politically potent democratic and associational life. Naturally occurring forms of associational life as in families and neighbourhoods may provide the basis for the construction of more purposive and effective governance system. Nonetheless, families and neighbourhoods, elections and civil rights—even in societies where basic illiteracy is widespread are unlikely to be sufficient in themselves. Dense, diverse, organised collective action is necessary to exploit the opportunities created by elections and civil rights, and complement the dispersed efforts of groups and individuals. Public policy that explicitly acknowledges the importance of collective action, public mores that are open to contestation and collective struggles, and focused efforts to stimulate and sustain organisations that transcend primordial and parochial interests are all necessary components. Borrowing from Rosseau, people were

born free but are everywhere in chains. At the same time, nobody wants to be in chains. Therefore we see a lackadaisical attitude and unintended results almost everywhere sometimes even to the extent of violent uprisings and rebellions by the masses against governments. The abundance of thoughts is matched by the unavailability of actions leading eventually to such situations mentioned above. Noam Chomsky said “Freedom without opportunity is a devil's gift, and the refusal to provide such opportunities is criminal.”⁴⁰ Amartya Sen argues (*emphasis added*) that to counter the problems we face, we have to see individual freedom as a social commitment. Expansion of freedom is viewed both as the primary end and as the principle means of development... The linkages between different types of freedoms are empirical as well as causal, rather than constitutive and compositional. If the point of departure of the approach lies in the identification of freedom as the main object of development (or democratic governance), the reach of the policy analysis lies in establishing the empirical linkages that make the concept and practice of ethics coherent and cogent as the guiding perspective of ethics in governance and delivery of services. The insufficient stress on the moral and ethical aspect in governance and delivery of services often curtails the very essence of democratic governance and in the process, also of the individual's freedom⁴¹. It is against the backdrop of such realities as these that any serious discussion on ethics in governance and delivery of services in North East India should proceed.

⁴⁰ Chomsky, Noam (1997). Market Democracy in a neo-liberal order: Doctrines and Reality. Davie Lecture, University of Cape Town.

⁴¹ Sen, Amartya (2000). Development as Freedom. Oxford University Press: New Delhi.

HUMAN RIGHTS AND DISASTER MANAGEMENT

Human Rights and Human Security Implications of
Disasters: Critical Perspectives on Law and Governance

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Abstract

Disasters are common occurrences today in different parts of the world. There is something about natural disasters, which are generally viewed with little analysis or reflection on issues relating to responsibility and culpability. The human rights framework provides for analysing disasters within the context of what steps the state and other actors ought to have taken or have not taken with a view to mitigating the consequences of disasters. Issues relating to disaster preparedness, response mechanisms, including relief operations, aid availability and rehabilitation of the victims are central to this analysis. The article will also discuss issues relating to the development of international disaster response law (IDRL) and in particular the role of International Federation of Red Cross (IFRC) and International Committee of the Red Cross (ICRC) in formulating legal principles and policy analysis. The article would critically analyse the human rights consequences of disasters and to what extent human rights approaches to disaster management can help in improving the governance mechanisms and better prepare countries to deal with disasters and to understand the issue of state responsibility and liability. The article will cover issues relating to corruption that is widely prevalent in the disbursement of aid for victims and in particular the challenges of implementing rehabilitation measures for the victims of disasters. Poverty, discrimination, social exclusion, and vulnerability will be examined in the context of disasters and how the need for legal empowerment of the poor will address the human rights violations of disaster victims.

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I. Introduction

The frequent occurrences of disasters pose serious challenges for the ability of governments to respond to them effectively. While disaster management is an important area of growing academic and policy interest, there is a need to understand disasters from the standpoint of human rights. In particular, the questions relating to responsibility and accountability of state and non-state actors in relation to disaster are of fundamental significance. The legal framework of disaster management including efforts that ought to be taken by state and non-state actors by way of disaster preparedness requires rigorous examination. The chapter will examine the human rights framework of disaster management. It is recognised that disasters pose critical challenges for human rights and it becomes essential to understand how to respond to these challenges. The chapter will critically examine the existing framework of international law relating to human rights concerning disasters. It will also analyse the human rights implications of few disasters to understand the connections between disasters and human rights.

It is almost over six years since the tsunami disaster struck parts of South and South East Asia. Later, the world witnessed disasters like the hurricanes Katrina and Rita in the United States and the earthquakes in Pakistan and India and more recently hurricane Sandy in the USA. All of these have underlined the need for ensuring human security in disaster management through the protection of human rights and promotion of good governance policies. Development of rights-based approaches to disaster management adds a new and important dimension to the existing studies relating to preparedness, response including relief and rehabilitation, and mitigation.

In a report in the aftermath of the tsunami, prepared by the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, it was noted that there was a lack of attention to human rights protection and that measures needed to be taken to address issues such as discrimination. The focus on rights-based approaches was to ensure that effective steps for disaster management no longer remained a discretionary initiative that may or may not be taken by countries. Rather, it would become the mandatory responsibility of governments.

The human rights framework creates empowerment through legal tools and institutional structures. Judicial and other forms of institutional intervention help formulate ways to protect the rights of people who could be affected by disasters as well as the victims of disasters. Thus, rights-based approaches can ensure that governments are constantly evaluated and made accountable to people and to the international community on disaster preparedness and mitigation. Accountability becomes a core component in the rights-based approach. There is a need for transferring this framework into policies relating to disaster management. Another important aspect of the rights-based approaches to development is to define human rights goals relating to disasters and disaster management policies. Specifically, by providing for timelines, indicators, and measurements to monitor the progress towards disaster preparedness, as well as dealing with potential violations of specific human rights.

Disasters create unique situations where the existing frameworks of institutional mechanisms that are in place to respond are significantly challenged. Contemporary disasters in the form of earthquakes, hurricanes, tsunamis, floods and even terrorist attacks pose new threats to human security. Countries affected by these disasters, regardless of being developed or developing, have struggled to respond to the disasters.

There is also a threshold issue that needs a careful examination regarding the question of how “natural” is the impact of natural disasters on humanity. This inevitably deserves examination at two levels. First, to what extent human intervention in relation to use or abuse of natural resources causes long term damage to the fragile environment leading to greater vulnerability and risk of disasters; second, how prepared are we as societies to respond to disasters effectively. Both these questions raise issues of state responsibility and accountability.

At the outset, I would like to draw your attention to a November 2007 report by the International Federation of the Red Cross and Red Crescent Societies titled: *Law and Legal Issues in International Disaster Response: A Desk Study*. The report is one of the pioneering works under the international disaster response law (IDRL) project. It draws from the findings of 27 countries and regional studies that have been prepared by or in coordination with the Federation and National Red Cross and Red Crescent Societies in the context of the International Disaster Response Laws, Rules and Principles (IDRL) programme since 2001.

The main recommendation of the study is the adoption and use of the draft Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance, which have been developed through consultations over the last 18 months with governments, National Red Cross and Red Crescent Societies and other humanitarian actors.

The need for disaster research is well demonstrated where the report has noted: “Recent experience indicates that national law and institutions are generally unprepared to handle the special issues incident to the receipt of international disaster relief and recovery assistance. While most states have disaster laws and/or plans of some sort, few have put sufficient advance thought into how to balance local control with the need for any international assistance that is required to be as speedy as possible. Instead, these dilemmas are commonly addressed for the first time in the charged and chaotic environment immediately following a disaster”.

Before the different aspects of disaster management that has direct and indirect implications for human rights and governance, are outlined, it is necessary to provide some perspectives on the need for research in the field of disaster management.

1. Legal and Normative Framework

Research relating to disaster management helps develop the legal and normative framework that is essential for developing policies and practices relating to disaster management. In a rule of law society, it is important that the laws, both domestic and international provide a proper framework for implementing policies in the field of disaster management. Given the complexity of disaster relief, it has become all the more important that institutions engaged in disaster research work towards developing inter-disciplinary and multidisciplinary approaches to dealing with disasters.

2. Institutional and Policy Framework

The institutional framework for dealing with disasters has to be closely linked to the policies that have to be evolved. It is in this area that the interaction between academic institutions and policy making bodies is helpful. The institutional framework ought to bear in mind the problems of enforcement that is endemic to many societies. Policies

cannot be formulated in vacuum without recognising the social realities under which these policies have to be implemented.

3. Dialogue between Lawyers, Human Rights Activists, Social Scientists and Public Policy Specialists

There would be little resistance to the notion of such a dialogue to be promoted. Discussions of the kind that took place today are indeed expected to promote greater inter-disciplinary dialogues. But clearly there are obstacles that need to be overcome for making this dialogue meaningful and helpful for creating change in the field of disaster management. For example, it is inevitable that for most lawyers, the question of legal culpability, state responsibility, legally enforceable remedies, including availability of compensation, damages, etc., are critical in the context of disaster management. On the other hand, human rights advocates would see the impact of disasters on peoples and communities as a larger issue of governance, state neglect and lack of accountability on the part of state and its instrumentalities. This lack of accountability would be expanded to include both domestic and international remedies and liability mechanisms under private and public law. It is suffice to mention that the human rights perspectives on disaster management focuses on the what is known as rights-based approaches to disaster management – all of which may not be recognised as enforceable legal remedies in a court of law. Unfortunately, there is a significant gap in terms of communication and interaction between the social scientists and, for example, lawyers. At its best, research in the field of disaster management uses statistics as a tool for demonstrating certain aspects of victimisation or for that matter vulnerability, but beyond that, there is very little effort for researchers and practitioners to be bold enough to cross disciplinary boundaries or, for that matter, to pursue rigorous inter-disciplinary research.

II. International Legal and Human Rights Framework

It is important to understand the international law and human rights framework in the context of disasters. The UN General Assembly, in its Resolution 45/100, declared that the abandonment of victims of natural disasters without humanitarian assistance constituted “a threat to human

life and an offence to human dignity”. This resolution asked all States that are in need of humanitarian assistance to “facilitate the work of ... organisations in implementing humanitarian assistance, in particular the supply of food, medicines and health care, for which access to victims is essential”.¹

The UN Guiding Principles on Internal Displacement² provide the normative framework for protecting the rights of internally displaced persons (IDPs) and sets out the responsibilities of States and other actors towards these people.³ The Hyogo Declaration⁴ recognises that States bear the primary responsibility for the protection of persons within their jurisdiction (Principle 3).⁵ Further, Principle 5 states that authorities and international actors are obligated to “respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, as to prevent and avoid conditions that might lead to displacement of persons”.⁶

In the context of the Asian tsunami and hurricanes Katrina and Rita, it is important to enquire whether the governments in the countries affected have taken adequate steps to deal with the plight of disaster victims, for example housing and other needs. There is also a need to develop domestic legal mechanisms that would empower the victims of disasters to seek compensation, particularly when public officials have not taken steps to

¹ United Nations, General Assembly Resolution “Humanitarian assistance to victims of natural disasters and similar emergency situations”, A/RES/45/100, 68th Plenary Meeting, 14 December 1990. See also United Nations, General Assembly Resolution “Strengthening of the coordination of humanitarian emergency assistance of the United Nations”, A/RES/46/182, 78th Plenary Meeting, 19 December 1991, which emphasises the importance of humanitarian assistance during natural disasters and emergencies, and United Nations, General Assembly Resolution “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, A/RES/63/139, 63rd Session, 5 March 2009, which reaffirms the Resolution A/RES/46/182 and highlights the importance of strengthening the coordination of humanitarian assistance and the need for the United Nations organisations working together in close coordination with national Governments.

² UN Doc. E/CN.4/1999/53/Add.2, available at <http://www.unhcr.ch/html/menu2/7/b/principles.htm>.

³ “Protection of Internally Displaced Persons in Situations of Natural Disaster”, A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kalin, 27 February to 5 March 2005.

⁴ Hyogo Declaration, World Conference on Disaster Reduction, UN Doc. A/CONF.20/L.3/Rev.1, para. 4 (2 February 2005).

⁵ *Supra* n.2, p.10.

⁶ *Supra* n.2.

prevent the effects of disasters and/or have not responded sufficiently. The question of compensation should also be related to the responsibility and accountability of multinational corporations and other business enterprises under the human rights regime.

As for responses to disasters, there are specific human rights challenges which relief and rehabilitation systems pose. The UN Special Representative on the Human Rights of Internally Displaced Persons observed that discrimination, especially in areas with pre-existing ethnic conflicts, might affect the relief and aid distribution.⁷ Although Principles 4(1) and 24(1) have recognised that response to natural disasters must be in accordance with the principle of impartiality and neutrality, without discrimination on the basis of race, ethnicity, religion or other characteristics (e.g., class or caste),⁸ discrimination continues to be an important human rights issue that affects the uniform implementation of policies relating to disaster management.

III. Rights-Based Approaches to Disaster Management

The legal and normative framework of international human rights law is well established. However, the implementation of international human rights treaties and their effectiveness to devise enforcement systems in states has been a significant challenge. The international community has come to accept that it is not enough to formulate human rights laws in the form of solemn declarations such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR); there should be an overarching commitment to developing rights-based approaches. But the question that comes up again is whether the development of rights-based approaches to disaster management adds new value to the existing studies relating to disaster prevention, response mechanism, including relief and rehabilitation and disaster mitigation. For this purpose, it is useful to examine the human rights implications of recent disasters.

⁷ *Supra* n.2, p.14.

⁸ *Supra* n.2.

In a report in the aftermath of tsunami prepared by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, it was noted that there was a lack of attention to human rights protection and measures needed to be taken to address issues such as discrimination.⁹ This was echoed in the tsunami aftermath reports of India and Indonesia by Human Rights Watch and Amnesty International, respectively.¹⁰ Even the response to hurricane Katrina has raised issues relating to racism and discrimination against the victims, the majority of whom were African-Americans. There are no specific findings on these allegations, but the fact that such levels of deep and pervasive impoverishment in New Orleans could prevail has raised certain serious governance issues.

The US-based independent think tank, the Brookings Institution, has developed a human rights framework for disaster preparedness, management and mitigation. It has outlined eight factors that have a bearing on the rights of disaster victims after tsunami that must be examined:¹¹

- a. The Guiding Principles on Internal Displacement to protect the rights of persons uprooted by natural disasters;
- b. the right of people to have access to humanitarian and development aid;

⁹ *Supra* n.2, p.8.

¹⁰ "India: End Caste Bias in Tsunami Relief", Human Rights Watch, 14 January 2005; "After the Deluge: India's Reconstruction Following the 2004 Tsunami", Human Rights Watch, May 2005 Vol. 17, No.3 (C), p. 41-42; "Indonesia: The Role of Human Rights in the Wake of the Earthquake and Tsunami: A Briefing for Members of the Consultative Group on Indonesia" 19-20 January 2005, Amnesty International 19 January 2005, AI Index: ASA 21/002.2005, p.1.

¹¹ "Warning Systems, Reconstruction and Stability: Durable Solutions in the Aftermath of the Tsunami Tragedy", Post-Tsunami Human Rights Concerns, the Brookings Institution, 21 March 2005. For further reading, see "Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster", Brookings-Bern Project on Internal Displacement, Pilot Version (March 2008), available at http://www.brookings.edu/~media/research/files/reports/2008/5/spring%20natural%20disasters/spring_natural_disasters (last visited 26 November 2012). The InterAgency Standing Committee (IASC) adopted Operational Guidelines on Protecting Persons in Natural Disasters in June 2006 to promote and facilitate a rights-based approach to disaster relief. Under the Brookings-Berne Project on Internal Displacement, this Pilot Manual was created. It intends to help people working on disaster management in the field understand the human rights dimensions of their work and gives them practical examples and operational guidance about how some of the concepts may be implemented. Following feedback from field-testing of the operational guidelines, a revised version was drafted in 2011, which expands the rights-based approach to include preparedness measures. "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", the Brookings-Bern Project on Internal Displacement, January 2011, available at <http://ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf> (last visited 26 November 2012).

- c. discrimination as a human rights issue in the tsunami affected countries;
- d. involuntary relocation to settlement and camps for victims of disasters and its consequence for human rights;
- e. the essentially civilian character of IDP camps and settlements need to be assured;
- f. protection of property rights of tsunami victims;
- g. consultation with the displaced people; and
- h. the need for the creation of security zones or exclusion zones with the right to freedom of movement, property, and the ability to make a living.

The need to focus on rights-based approaches to disaster management is to ensure that accountability becomes a core component. According to the United Nations Development Programme (UNDP), the rights-based approach underlines the importance of participation, equality, non-discrimination and access to opportunities in society by ensuring that the rule of law, transparency and accountability is protected and good public management practices are followed by institutions. The task that lies ahead for all the countries is transferring this framework into domestic policies relating to disaster management.

The fact of the matter is that the human rights of the victims of tsunami were not duly protected by the governments who are responsible for the safety and security of its people.¹² The situation of vulnerable people became much worse after the tsunami as allegations of discrimination and other forms of human rights violations came to the forefront even during relief efforts. In a report titled: *Tsunami Response – A Human Rights Assessment* (hereafter HR Report) released in January 2006, it was observed: "...that human rights have been undermined in the aftermath of the tsunami. A major effort is required to prevent further abuse of human rights and to correct the wrongs that characterize the first year of the tsunami

¹² See "Study Showing Governments Violate Human Rights of Tsunami Survivors Released at UN". Web: <http://www.un.org/apps/news/story.asp?NewsID=17364&Cr=tsunami&Cr1=> (last visited 4 February 2008).

response...”¹³ Human rights ought to become the central focus of disaster management. This means that governments take responsibilities to ensure that the human rights consequences of disasters are recognised and efforts taken to eliminate them. In this regard, Mr. Miloon Kothari, UN Special Rapporteur on Adequate Housing noted in the Foreword to the report that: “Inadequate response and a lack of consideration for the human rights of victims creates a human induced tragedy that exacerbates the plight of those already suffering the effects of a disaster brought on by natural causes. Therefore, individual states, international agencies including the UN and its programmes, civil society and the private sector, must redouble efforts towards the realisation of human rights worldwide, including rights to disaster-preparedness and disaster-response. Indeed this is essential if we are to reduce the loss of life, human suffering and homelessness resulting from disasters in the future...”¹⁴

IV. Corruption and Transparency in the Distribution of Aid

Corruption is a serious issue that undermines the governance process in the aftermath of disasters. Corruption violates human rights, undermines the rule of law, distorts the development process and disempowers the state.¹⁵ First, corruption violates the legal and regulatory framework that is prevailing in a society. Secondly, corruption violates human rights as it hinders the process of fulfilling civil, political, economic and social rights of the people of a society. Corruption affects the poor disproportionately as they cannot afford to pay bribes and thus are not able to receive what they are otherwise entitled to.

¹³ “Tsunami Response – A Human Rights Assessment”, January 2006, p.10, ActionAid International, PDHRE, People’s Movement for Human Rights Learning and South Asia Regional Programme Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN). Web: <http://www.actionaid.org/wps/content/documents/TSUNAMI%20REPORT%20-%20for%20screen%20viewing.pdf> (last visited 21 November 2012).

¹⁴ Miloon Kothari, Foreword to “Tsunami Response – A Human Rights Assessment”, January 2006, p.03. Web: <http://www.actionaid.org/wps/content/documents/TSUNAMI%20REPORT%20-%20for%20screen%20viewing.pdf> (last visited 21 November 2012).

¹⁵ For further reading on human rights based approaches to developing corruption-free governance, see C. Raj Kumar (2003) “Corruption and Human Rights—Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India”, *Columbia Journal of Asian Law* 17(1): 31-72; C. Raj Kumar (2004) “Human Rights Approaches of Corruption Control Mechanisms – Enhancing the Hong Kong Experience of Corruption Prevention Strategies”, *San Diego International Law Journal* 5: 323-351; C. Raj Kumar (2004) “Corruption in Japan: Institutionalising the Right to Information, Transparency and the Right to Corruption-Free Governance”, *New England Journal of International and Comparative Law* 10(1):1-30.

Transparency in governance and accountability in the distribution of aid in disaster-affected countries is very important for the protection of human rights of the victims. Transparency International has noted that “corruption in the delivery of aid undermines the very spirit of humanitarian action”.¹⁶ Corruption causes relief to be “diverted away from affected communities or distributed inequitably”, depriving those who require assistance.¹⁷

The right to a society free of corruption is an inherent human right because life, dignity, equality, and other important values significantly depend upon this right. Thus, the state would be in violation of the right to economic self-determination if it engages in the corrupt transfer of ownership of national wealth as well as international aid to selected people and power holders. It is here that the concept of transparency and accountability fits in well with an integral understanding of corruption-free governance and protection of human rights in the wake of disasters.

The anti-corruption discourse should recognise that the problem of corruption is one of the state losing its capacity to govern and to appropriately respond to disasters. Goals, measurements and indicators could be formulated to ensure that there is a constant effort to keep corruption under check. The expert meeting on corruption prevention and tsunami relief, jointly organised by ADB/OECD Anti-Corruption Initiatives for Asia and the Pacific and Transparency International, noted that cooperation amongst all sectors is required to “strengthen trust between stakeholders and lead to a more effective channeling of resources to affected communities”.¹⁸ This

¹⁶ “In the Wake of Disaster: Preventing Corruption in Tsunami Relief and Reconstruction”, Transparency International.

Web: http://www.transparency.org/in_focus_archive/tsunami/in_focus_tsunami.html (last visited 21 November 2012).

¹⁷ Ibid.

¹⁸ Meeting Conclusions and Framework for Action”, Expert Meeting on Corruption Prevention in Tsunami Relief, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International, 7-8 April 2005, Jakarta, Indonesia. See also “Curbing Corruption in Tsunami Relief Operations”, Proceedings of the Jakarta Expert Meeting Organized by ADB/OECD Anti-Corruption Initiative for Asia and the Pacific and Transparency International, and hosted by the Government of Indonesia, 7-8 April 2005, available at <http://www.adb.org/sites/default/files/pub/2005/curbing-corruption-tsunami-relief.pdf> (last visited 26 November 2012). For further reading, see Samir Elhawary and M.M.M Aheeyar, “Beneficiary perceptions of corruption in humanitarian assistance: A Sri Lanka case study”, HPG Working Paper, August 2008. This report, commissioned by Transparency International, explores the perceptions of corruption amongst beneficiary populations in tsunami-affected Sri Lanka, with the aim of informing strategies that seek to reduce corruption in humanitarian assistance.

becomes even more important in countries such as Indonesia, India, Pakistan, and Sri Lanka, which were affected by tsunami and the recent earthquakes – countries where there is a high degree of corruption.

V. Protection of Women's Rights in the Aftermath of Disasters

Disasters do not differentiate between men and women, but the consequences of disasters create different levels of victimisation among men and women. There have been a number of instances of victimisation of women in the aftermath of disasters. For example, the Asia Pacific Forum on Women, Law and Development, in its report in March 2005, noted several instances of human rights violations, such as rape and other forms of sexual abuse of women.¹⁹ The injustices perpetrated against women during and after disasters can be curtailed by recognising the human rights of women within the broader human rights-disaster management interface. Underlining the urgency for focusing on gender perspective in tsunami disaster, the APWLD Report noted that women's rights are especially prone to violation due to their socio-economic status and existing male-dominated structure of societies.²⁰ The Guiding Principles, especially Principle 4(2), recognise that displaced women face a range of risks.²¹ The UN report has observed that women suffer from exclusion, are exploited, and affected by high levels of trafficking.²²

¹⁹ "Women's Human Rights Concerns in Tsunami Affected Countries", Asia Pacific Forum on Women, Law and Development (APWLD), 22 March 2005. See also "Why are Women More vulnerable During disasters?: Violations of Women's Human Rights in the Tsunami Aftermath", Asia Pacific Forum on Women, Law and Development (APWLD), October 2005, available at http://www.apwld.org/pdf/tsunami_report_Oct2005.pdf (last visited 26 November 2012).

²⁰ *Ibid.* In 2006, APWLD published the Guidelines for Gender Sensitive Disaster Management. They are the result of the documentation project "Survey of Women's Human Rights Violations in the Aftermath of the Tsunami in India, Indonesia, Thailand and Sri Lanka and the October 8, 2005 Earthquake in Pakistan" coordinated by APWLD. The Guidelines are a set of practical steps to assist governments, the non-state sector and civil society to respond to women's concerns and needs in post disaster situations. "Guidelines for Gender Sensitive Disaster Management", APWLD, 2006, available at http://www.apwld.org/pdf/Gender_Sensitive.pdf (last visited 26 November 2012). The International Federation of Red Cross and Red Crescent Societies (IFRC) also published a Practical Guide to Gender-Sensitive Approaches for Disaster Management in 2010. These guidelines are intended to help Red Cross and Red Crescent National Societies and the International Federation of Red Cross and the IFRC to incorporate effective gender-sensitive and inclusive approaches into their disaster management strategies when assisting communities prepare for, respond to, and recover from disasters. "A Practical Guide to Gender-Sensitive Approaches for Disaster Management", Asia Pacific Zone and IFRC, 2010, available at www.ifrc.org/PageFiles/96532/A_Guide_for_Gender-sensitive_approach_to_DM.pdf (last visited 26 November 2012).

²¹ "Protection of Internally Displaced Persons in Situations of Natural Disaster", A Working Visit to Asia by the Representative of the United Nations Secretary General on the Human Rights of Internally Displaced Persons, Walter Kalin, 27 February to 5 March 2005, p.18.

²² *Ibid.*

In the HR Report, it was observed that the rehabilitation efforts that were taken in the aftermath of tsunami were largely insensitive to the issues relating to women, including the policies relating to rehabilitation. In particular, the report observed: “Women’s rights to equal participation in the decision-making processes have also been ignored. Women’s rights to own property have been largely undermined. Programmes undertaken to restore livelihoods by governments largely ignored women’s roles in income generation; most of the beneficiaries of these programmes have been men. All these inevitably meant a violation of women’s human rights.”²³ Obviously, this issue of neglecting women’s rights in the aftermath of tsunami reflects the more fundamental problem in formulating disaster management policies, which ought to take cognizance of human rights and make them integral to their disaster and risk reduction framework.

VI. Expanding the Role of NGOs and Civil Society during Disasters

Since disasters pose significant challenges to governance, it is not possible for the governments to take care of all the relief and responses during and in the aftermath of a disaster. NGOs and the wider civil society have to contribute to the uplifting of the disaster victims. The civil society will also have its own sense of priorities when it comes to formulating policies relating to disaster management. This can be done by including civil society in the discussions relating to developing response mechanisms. The NGOs that participated in the Asian Civil Society Consultation on Post-Tsunami Challenges in February 2005 identified the following as major areas of concern: “the transparency and accountability of funds raised and received; the need to place people before corporate interests; the required synergy and cooperation based on humanitarian principles of neutrality, impartiality, universality and non-discrimination; and the importance of empowering local communities and NGOs.”²⁴

²³ “Tsunami Response – A Human Rights Assessment”, January 2006, p.47, ActionAid International, PDHRE, People’s Movement for Human Rights Learning and South Asia Regional Programme Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN). Web: <http://www.actionaid.org/wps/content/documents/Tsunami%20REPORT%20-%20for%20screen%20viewing.pdf> (last visited 21 November 2012).

²⁴ United Nations General Assembly, “Protection of and assistance to internally displaced persons”, A/60/338, 60th Session, 7 September 2005, at p. 14.

Moreover, the concerns of NGOs may be quite different from the government, the international community as well as the aid agencies and it is important that they are included in formulating strategies related to responding to disasters, including planning the relief and rehabilitation work. The fundamental issue is placing the people who are affected by disasters at the centre of attention, and the human rights framework intends to do that by stressing upon the rights of disaster victims.

VII. The Way Forward: Emphasising Governance and Human Rights

It is unfortunate that a number of elaborate and useful recommendations that were already available have not been adequately considered or implemented by the international community. Among other things, the Report of the Independent Commission on International Humanitarian Issues recommended that the UN should formulate a code of conduct to regulate the management of disasters on a principle that humanitarian criteria ought to prevail over any political or sovereignty constraints during the period of emergency.²⁵

There is a need for strengthening national capacity to better manage disasters.²⁶ At the World Conference on Disaster Reduction held at Kobe, Japan in January 2005, the issue of governance was discussed in a panel co-organised by the UNDP. It was noted: “Governance occupies a very central space in the work of UNDP, which views the characteristics of good governance – participation, rule of law, transparency, responsiveness, equity, efficiency, accountability, and strategic division – as key for disaster risk reduction and more broadly sustainable development”.²⁷ This aspect has been significantly marginalised in discussions relating to disaster

²⁵ Keith Suter, “After the Tsunami: The Politics of International Relief”, *Contemporary Review*, pp.135-141.

²⁶ For further reading, see “What Does Governance Have To Do With It? Strengthening National Capacities to Manage Disaster Risks”, United Nations Development Programme (UNDP).

Web: <http://www.undp.org/bcpr/disred/documents/wcdr/undppr210105.pdf> (last visited 21 November 2012). See also “Issue Brief: Disaster Risk Governance: Crisis Prevention and Recovery”, UNDP, November 2012, available at http://www.undp.org/content/dam/undp/library/crisis%20prevention/20121311_Issue_brief_disaster_risk_reduction_governance.pdf (last visited 26 November 2012).

²⁷ See “What Does Governance Have To Do With It? Strengthening National Capacities to Manage Disaster Risks”, United Nations Development Programme (UNDP).

Web: <http://www.undp.org/bcpr/disred/documents/wcdr/undppr210105.pdf> (last visited 21 November 2012).

management. If the governance capacity of countries is increased, inevitably this would lead to better preparedness, including the abilities to respond to disaster. It is notable that some of the important findings of a UNDP study analyzing the experience of nineteen countries have underlined these dimensions. Some of the important findings of the UNDP study are: (a) Countries that have created institutional mandates for risk management have been more successful resulting in disaster risk management becoming a policy priority; (b) the manner in which policies are implemented is connected to the availability of effective decentralized governance structures, a well-informed citizenry, and the engagement of important local actors including public officials; (c) Lack of progress towards enforcing laws, rules and regulations relating to disaster risk reduction has been because of lack of capacity for implementation at the local level.²⁸

It is important to understand the damage caused by hurricane Katrina and tsunami as larger threats to human security. The Commission on Human Security defines human security as “a means protecting vital freedoms” through protection and empowerment. In this context, David Filder has underscored the need for re-examining the notion of security in the light of contemporary threats in the form of disasters like the tsunami and SARS. He has observed: “The international legal issues raised by the Indian Ocean tsunami echo concerns voiced in other contexts about the need to rethink concepts of “security” in the face of non-military threats to human well-being. Recently, the UN Secretary-General’s High Level Panel on Threats, Challenges, and Change made the case for “comprehensive collective security,” which the Panel defined as security not only from war but also from poverty, infectious disease, and environmental degradation...²⁹ As SARS did in the case of infectious diseases, the tsunami tragedy perhaps raises the need to think about natural disasters through the lens of comprehensive collective security and to focus more attention on governance regimes that will more effectively protect, alert, and provide relief to

²⁸ “What Does Governance Have To Do With It? Strengthening National Capacities to Manage Disaster Risks”, United Nations Development Programme (UNDP).

Web: <http://www.undp.org/bcpr/disred/documents/wcdr/undppr210105.pdf> (last visited 21 November 2102).

²⁹ UN Secretary-General’s High-Level Panel on Threats, Challenges, and Change, Report—A More Secure World, Our Shared Responsibility 1-2 (2004). Web: <http://www.un.org/secureworld/> (last visited 4 February 2008).

populations threatened by natural disasters.”³⁰ There are at least five issues that the international community needs to examine for ensuring human security in the light of evolving policies relating to disaster management and governance reform.

1. Need for Developing Institutional Mechanisms:

It is important to have a comprehensive domestic and international legal and institutional infrastructure that is able to quickly and efficiently respond to the crises that affects us. At the international level, the International Federation of Red Cross and Red Crescent Societies have taken an important step in initiating the International Disaster Response Laws, Rules and Regulations (IDRL) project.³¹ See International Disaster Response Laws (IDRL), Project Report 2002-2003, 28th. International Conference of the Red Cross and Red Crescent, 2-6 December 2003, document prepared by the International Federation of Red Cross and Red Crescent Societies.

³⁰ David P. Fidler, “The Indian Ocean Tsunami and International Law”, January 2005. Web: http://www.asil.org/insights/2005/01/insight050118.htm#_ednref14 (last visited 21 November 2012).

³¹ See International Disaster Response Laws (IDRL), Project Report 2002-2003, 28th International Conference of the Red Cross and Red Crescent, 2-6 December 2003, document prepared by the International Federation of Red Cross and Red Crescent Societies.

Web: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/\\$File/IDRL_Report_FINAL_ANG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/$File/IDRL_Report_FINAL_ANG.pdf) (last visited 21 November 2012). On 30 November 2007, the state parties to the Geneva Conventions and the International Red Cross Red Crescent Movement adopted the “Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance” (the “IDRL Guidelines”). The IDRL Guidelines are meant to assist governments to become better prepared and avoid needless delays in the dissemination of humanitarian relief and ensure better coordination and quality of the assistance provided. In 2008, the UN General Assembly adopted three resolutions (United Nations, General Assembly Resolution “Strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster”, A/RES/63/137, 63rd Session, 3 March 2009; United Nations, General Assembly Resolution “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, A/RES/63/139, 63rd Session, 5 March 2009; and United Nations, General Assembly Resolution “Strengthening of the coordination of emergency humanitarian assistance of the United Nations”, A/RES/63/141, 63rd Session, 10 March 2009) that encourage states to use the IDRL Guidelines. “IDRL Guidelines”, IFRC, <http://www.ifrc.org/en/what-we-do/idrl/idrl-guidelines/> (last visited 26 November 2012).

Further, IFRC, in cooperation with UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union (IPU), is working on A “Model Act for the Facilitation and Regulation of International Disaster Assistance” to assist states to integrate the recommendations of the IDRL Guidelines into their national laws. It issued a Pilot Version of the Model Act in November 2011, which is available at <http://www.ifrc.org/PageFiles/88609/Pilot%20Model%20Act%20on%20IDRL%20%28English%29.pdf> (last visited 26 November 2012). The IFRC will organize an Expert meeting on the Model Act for international disaster assistance, Geneva, 10-11 December 2012. This meeting will gather experts from governments, national societies, humanitarian organisations and academia. Following this meeting, a revised version of the Model Act will be published. IFRC, “Meetings and Events”, IFRC, <http://www.ifrc.org/en/what-we-do/idrl/meetings-and-events/> (last visited 26 November 2012).

Web: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/\\$File/IDRL_Report_FINAL_ANG.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/5XRDP7/$File/IDRL_Report_FINAL_ANG.pdf) (last visited 21 November 2012).

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The nature of disasters is such that a wide variety of domestic and international institutions may have to be responsible for both disaster preparedness as well as formulating proper responses to disasters.

2. International, Regional and Domestic Perspectives in relation to Management of Disasters:

It is necessary that coordination and efficient use of resources remain the objective of all disaster management initiatives. It will be helpful to learn from other experiences as to how the response mechanisms failed or did not exist in some cases, and how effectiveness was compromised for disaster management as in the case of the tsunami disaster. In the case of hurricane Katrina, the investigation may reveal the reasons for the failure of any disaster management or evacuation plans that were in place.

3. Role of NGOs in Providing Disaster Relief and Humanitarian Aid

The civil society response to disasters has come in different ways, including grassroots NGOs providing humanitarian relief in the form of physical support. This also includes the role of domestic and international NGOs providing financial aid. The situation of Katrina has raised a significant issue for the need to understand the prioritisation of financial aid relating to countries that are affected by disasters. Obviously, issues relating to transparency and accountability of the NGOs and their partners in dealing with effective management of resources are issues that need further attention.

4. Role of the Private Sector

Disasters affect the lives and livelihood of people in many ways. It has not been sufficiently recognised that the private sector has an important role in responding to disasters. It is important to note that more than US\$9 billion in public and private funds has been pledged to help countries affected by the Indian Ocean tsunami.³² It has been

³² See Margaret Arnold and Saroj Kumar Jha, "The Private Sector's Role in Disaster Recovery and Risk Mitigation", World Bank. Web: <http://rru.worldbank.org/Discussions/topics/topic67.aspx> (last visited 21 November 2012).

rightly observed that, “A much closer interaction between business and government is needed to ensure appropriate risk reduction strategies, adequate measures for implementation of protection and security measures, and a liability and insurance regime that take proper account of the needs of the community and business sector alike”.³³ The nature of disasters and the consequences of them on community are profound that there is need for non-state actors of all kinds, including the private sector to be involved in one way or the other. The private sector has the ability to provide technical manpower and help in capacity building, besides providing in-kind donations³⁴ and services in the aftermath of disasters.³⁵

5. The Law and Governance Challenge Posed by Disasters

The normative legal framework for determining the status of victims of disasters is well established under international law, although, doubts were expressed in the aftermath of hurricane Katrina with regard to the status of the victims and inaccurate reports characterized the status of these victims to be that of “refugees”.³⁶ The correct position under international law is that “persons who are forced to flee the hurricane and subsequent disasters on the Gulf coast are not refugees. Rather, the international community refers to such persons

³³ Hari Srinivas, “Disaster Management: A Role for the Private Sector”, Global Development Research Centre, Japan. Web: <http://www.gdrc.org/uem/disasters/dm-privatesector.html> (last visited 21 November 2012).

³⁴ It is widely recognized that US department store Wal-Mart had played an important positive role in the immediate aftermath of hurricane Katrina. Wal-Mart had immediately sent 1,900 truckloads of water and other emergency supplies to the persons affected by the hurricane. It had also contributed US\$ 17 million to the hurricane relief effort, and more than \$3 million in merchandise. See Liza Featherstone, “Wal-Mart to the Rescue!”, September 13 2005. Web: <http://www.thenation.com/doc/20050926/featherstone> (last visited 4 February 2008).

³⁵ Hari Srinivas, “Disaster Management: A Role for the Private Sector”, Global Development Research Centre, Japan. Web: <http://www.gdrc.org/uem/disasters/dm-privatesector.html> (last visited 21 November 2012). See also Iain Murray, “Hurricane Sandy, And The Invisible Hand Of Disaster Recovery”, 1 November 2012, available at <http://www.forbes.com/sites/realspin/2012/11/01/hurricane-sandy-and-the-invisible-hand-of-disaster-recovery/> (last visited 26 November 2012), highlighting the importance of the role of private sector in disaster management. For example, responses by private insurance companies and financial provide the liquidity to get households and communities up and running again.

³⁶ Frederic L. Kirgis, “Hurricane Katrina and Internally Displaced Persons”, ASIL Insight, The American Society of International Law, September 21, 2005. Web: <http://www.asil.org/insights/2005/09/insights050921.html> (last visited 21 November 2012).

as internally displaced”.³⁷ Frederic L. Kirgis, “Hurricane Katrina and Internally Displaced Persons”, ASIL Insight, The American Society of International Law, September 21, 2005. Web: <http://www.asil.org/insights/2005/09/insights050921.html> (last visited 21 November 2012).

A set of standards, as discussed earlier, is applicable to IDPs. While normative standards are there, but when it comes to their enforcement in the domestic context, even rich countries fall short. In a report submitted to the Commission on Human Rights by Dr. Arjun Sengupta after a mission to the US, he observed that: “...poverty in the United States is not an individual issue, but rather a systematic problem of inability to participate in economic and social activities in a meaningful way. The poor are insecure and vulnerable and nowhere is this insecurity more evident than in the cases of Hurricanes Katrina and Rita. People who had been left behind were largely groups that were extremely poor...and unable to cope with disasters and natural shocks”.³⁸

There is a need to develop comprehensive frameworks that include disaster mitigation and management systems within the wider governance framework of a society. Both tsunami and SARS revealed the fragility of disaster response systems and health care mechanisms respectively. This means that all key institutional actors within the government and civil society need to recognise that disaster management is not about reactive policies, but about proactive and long-term policies that involve reforming the governance system. For this purpose, laws, both domestic and international, play an important role in providing the necessary framework for disaster management.

³⁷ Frederic L. Kirgis, “Hurricane Katrina and Internally Displaced Persons”, ASIL Insight, The American Society of International Law, September 21, 2005. Web: <http://www.asil.org/insights/2005/09/insights050921.html> (last visited 21 November 2012).

³⁸ Report submitted by the independent expert on the question of human rights and extreme poverty, Addendum, Para 43, page 14, E/CN.4/2006/43/Add.1. Web: <http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.43.Add.1.pdf> (last visited 21 November 2012).

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RIGHTS OF CHILDREN

Children – The Voiceless Multitude and Human Rights*

Prof. Shantha Sinha**

In 1924, the League of Nations adopted the Geneva Declaration of the Rights of the Child and proclaimed that “mankind owes to the Child the best that it has to give.” A quarter century later, the UN signed the Universal Declaration of Human Rights, agreeing that “childhood (is) entitled to special care and assistance” (Article 25) and everyone has the right to education and that elementary education shall be compulsory.”

On this day the 63rd year of Universal Human Rights Day, we celebrate and reaffirm that all human beings the world over are to enjoy the rights to liberty, freedom and equality without any discrimination as an absolute right. Human rights and the human spirit are now inseparable and so integral to one another. And in 1989, the United Nations Convention on Rights of the Child (UNCRC) defining a child as a person below 18 years of age mandated that the best interests of children must be the primary concern in making decisions that may affect them. And that government has a responsibility to take all the available measures to make sure children's rights are respected, protected and fulfilled. It is a State obligation.

That children matter and their childhood has to be secure was seen as crucial for laying the foundations of India's democracy. Thus in Article 39 of the Directive Principles of State Policy of the Constitution of India it is stated that ‘children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.’”

* Based on a speech delivered at International Institute of Human Rights Society, on the occasion of the Human Right Day 10th December, 2011)

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It is also stated “that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

In Article 45 it is stated that “The State shall endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years “, and further in Article 46 it states that “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

A crystallization of such a view was possible in the charged atmosphere of Independence from colonial subjugation where liberation of each and every citizen in India, including children, was seen in the realm of possibility to be actualised.

It is in this grand milieu that voices of children are to be heard, empathized with and acted upon by both civil society and the State. Children’s rights as human rights have to capture the moral imagination of one and all in the country giving energy to the State and its functionaries to act in favour of children.

Yet there is a pervasive violence on children, both at the level of attitudes and values and also as a consequence of structures of power and economy. Several children have shown the courage to say no to such violence. We are here today to recognize children and the defenders of child rights who have created an enabling environment for several hundreds and thousands of children to exercise agency and emerge victorious in their battles for access to all their entitlements. Such assertions of children towards freedom and dignity cannot remain acts in isolation. Children require support of institutional responses and a legal framework that mandates the State to provide for entitlements to education, health and nutrition and against exploitation of any kind as a matter of right. The process of adjudication too has to be sensitive to children. When children enjoy their rights it would have a profound impact on each one of us and indeed the texture of India’s democracy.

Violence on Voiceless Children

Violation of rights of children is to be addressed at two levels. On the one hand there is a need for a change in social norms that tolerates violence on children. Societal consensus has to emerge where children are regarded as individuals in their own right to be given respect and seen as equal to adults. On the other hand children are victims of structural violence and the State has to build all its policies and legal instruments to protect children's rights in a rights-based perspective. This has to be a wholehearted endeavour without compromising on child rights.

Questioning adult domination over the child

Children are subjected to violence, punishment and insults and are not heard with empathy by adults. This happens as a normal practice in schools, hostels and other institutional settings. Even within a family, punishing a child is seen as a parental responsibility. Any defiance by the child is construed as being disrespectful. And so the child is further admonished by adults whether in a school or in the family. The child's body becomes the site for exercise of power and authority of the adult over the child.

The liberty to treat children with authority comes from the understanding that children are less than adults and that adults have a duty as well as a responsibility to control and discipline children. Therefore in the best interest of children and as a correctional tool they can use force and violence. Thus the act of violence and exercise of power of the adult over the child is repeatedly justified.

Just as infliction of violence whether physical or emotional of one adult over another is unacceptable and seen as a violation of human right similar acts of an adult over a child must also be regarded as gross violations of human rights. Children are as human and sensitive as adults, if not more. Indeed, violence on children has to be regarded as even more grave as children are more vulnerable due to their inherent powerlessness in an adult society.

What distinguishes children from adults is that they are entirely dependent on adults and thus in no position to charter any independent path without adult support. In this instance of domination of the child by the adults, the answer to violence on children is adult action and not

resistance of children. This is unlike women's movements or other social movements of the oppressed who fought valiantly for equality and social justice. Thus adults have a huge role in promoting the practice of non-violence and not subjecting children to hurt of any kind.

The world of adults must acquire the unique capabilities to pay special attention to have children's opinions heard. It is their responsibility to see that children's capacities which are constantly evolving are enhanced to becoming individuals in their own right. What is required therefore is to build skills of all, school teachers, care givers and adults at large, to engage with children as equals, listen to them and address their concerns in a manner that does not hurt or humiliate them. The challenge is really in protecting children and making them feel secure and at the same time enhancing the quality of relationship between the adult and the child.

In a way fostering equality and respect for children will develop adults as responsible adults who would in turn be vigilant and question those who are breaking the norms of respecting childhood. A normative framework of empathy and non-violence would govern the relationship between adults and children making for a cultured society.

Voiceless Children-Deficit Childhood

The other kind of violence on children is structural violence. Contemporary times have been extraordinarily harsh to many children in our country. More and more children are vulnerable and marginalised today. Having no food to eat, and little or no health support, they live precariously, experiencing hunger daily, their lives claimed tragically by infant and child mortality. Having no access to basic nutritional and health entitlements, they grow up stunted, wasted and malnourished and live a precarious life.

Millions of children are out of schools and are trapped in the labour force under sub-human conditions. Many of them are being trafficked as migrant child labour. On their way to work and even in the work places, it is an undisputed fact that children are subject to abuse, torture and gross exploitation. Even children who remain in their own communities and are at work are victims of cruel market forces and lack access to State services and protective schemes. For girls especially, child marriage, child trafficking and gender discrimination remain crucial challenges. Denied education,

their fate is sealed with no possibility of mobility or opportunities that can give them confidence, self-esteem and dignity.

There are a large number of children being affected and infected with HIV and AIDS, TB, diarrhea, malaria, viral fevers and chronic illness, incapacitating them as they have no access to health facilities. Children face a new generation of hazards with displacement due to natural disasters and civil unrest.

Children with disabilities are left uncared for as the services for their access to education, health, play, art, culture and recreation and other entitlements are negligible. They remain hidden and invisible.

Thus there are multitudes of voiceless children subject to hidden and explicit violence. It is in a sense absence or failure of the State, its institutions, structures and processes to deliver services. In some instances even Statelessness leads to deficit childhood.

Children's Agency

However there have been instances where many a child has exercised agency and fought lonely battles to get out of violence and abuse in one's own family, or escape while being trafficked or engaged as child labour. Such children have shown phenomenal courage but most often end up as street children or get caught again and again in situations of risk. Having no institutional support or mechanism of outreach they are condemned to a life of ignominy and loss of dignity.

There are at the same time situations when children exercised agency consequent to community mobilisation and a ground swell of support for protecting children. This is where some adults decide to stand by children and abhor all such exploitative and inhuman practices when specific instances of forced labour, bondage, child marriage and trafficking come to the fore. In such communities if the child is out of school, then, the discussion is on where the child is, is she working on the farm, or is she married or missing from the neighbourhood and for how long? Are they in safe zones under the protection of parents or guardians?

Such a discourse certainly questions existing norms and practices as well as power relations and taking sides become inevitable.

When children know that they have allies in the adults willing to vouch for them they pick up courage to defy authority. Anchoring on a ray of hope that they would be extricated from drudgery and exploitation they brave their way to freedom and liberty. It has been found that children refuse to go to work or even be married. They use the weapons they have—sulk, cry, slow down on domestic work—to win their battles for education. Boys and girls have taken courage to escape from employers and forced labour. Children stand firm and take the risk to walk out of their past. It is a defining moment for them. In a way while an enabling environment is created by adults, the success of a child being rescued depends largely on the child's innate strength. It is in their standing their ground and not relenting to any pressure that the adults too take a firm stand. These brave girls and boys as young as 8 year olds are the heroes of modern India paving the way for future generations of children in the country.

For children under 6 years of age, it is unfair to expect them to exercise agency. Yet it is known that during early childhood¹ widely recognised as a critical period for the realization of the rights of the child, babies and young children are acutely sensitive to their surroundings and able to communicate in numerous ways long before they are able to speak or write. The entire responsibility for their protection, survival and development is of the community and the public institutions.

Therefore understanding and respecting the distinctive evolving capacity of each child is crucial for the realization of their rights not only in the earliest phase of their life, but also for their future life.²

Children with disabilities too have shown capacities to exercise autonomy given enabling conditions. It is essential to respect their right to participate in and take responsibility for those decisions they are capable of and also provide appropriate protection to them.³

¹ Which the Committee on the Rights of the Child in General Comment No. 7, defines as the period below the age of 8 years (2006)

² www2.ohchr.org/english/bodies/crc/docs/20th/BackDocWG4.doc

³ See Article 3(h) of Convention on the Rights of Persons with Disabilities that stipulates “respect for the evolving capacities of children with disabilities”.

The challenge is in making the voices of children and the practices on the ground the voice of those in authority and establishment.

Listening to children— Legal Framework

Indeed children are waiting to be heard by those in authority. They have to be reached through policies based on sturdy institutions with continuity and not ad hoc schemes. They are to be mandated by law. Too often new legislations are not encouraged as the existing ones have remained only on paper and not executed. However a legal framework is important as it is an expression of political will indicating primacy to children and their well-being. It shows the intent of the government to transcend the status quo and bring about change in the lives of children.

A rights-based legal framework for protection of children is when the State's obligation is indispensable and there is no question of its abdication of responsibility. It becomes a right when there is a universal coverage in provisioning of public services as against a 'targeted', 'doable' and 'practical' approach; when allocation of funds for infrastructure and professional support is a wholehearted State commitment as against calculations of 'cost effectiveness' or 'sustainability'; when principles of equity, non-discrimination and social justice are being adhered to; and when there are special remedies /provisions of affirmative action to address specific vulnerabilities of children based on gender, community, caste, physical or mental disability, marginalization, displacement and so on.

The Child Labour (Prohibition and Regulation) Act 1986 (CLA) regarding abolishing child labour is a grim reminder that children have just not been heard. In fact it is the legal instruments regarding children's right to food and education that have in some measure met the standards of a rights-based perspective and have brought new hope for children in our country.

Limitations of Child Labour (Prohibition and Regulation) Act 1986 (CLA)

The CLA has not adhered to the rights-based approach at all. It has a targeted approach of prohibiting child labour only in certain identified processes and occupations keeping other children waiting for their turn.

Thus for example child labour in agriculture is not prohibited enabling large numbers of them being exploited legally as wage earners trafficked to faraway, unfamiliar workplaces. Several hundreds and thousands of boys and girls work 12 to 13 hours in farms, inhaling pesticides and other chemicals in the production of vegetables, paddy, sunflower, pulses, and hybrid cottonseeds. Many such girls are subject to hazards of physical and sexual abuse even at a young age of 10 to 12 years at the place of work.

Child labour in household units is also permitted by law and so several carpet production units that engaged children have shifted the looms to the households making child labor invisible and hidden. Given the increase in informal sector using sub-contract modality, work is being given to workers at home and there is a growing trend of process of 'child labourisation' of the workforce. Since the work is rendered under the guise of household units all such work remains out of the purview of CLA. Most such children belong to SC, BC and minority communities.

It is well established that girl children are largely engaged in running the household from a very early age, even before they are capable of wage-earning activities. Walking mile after mile to collect fuel wood, tend to cattle, fetch water, carry head loads, sow, weed and harvest, day after day, year after year, generation after generation has only helped to create a vast reserve army of cheap child labour in rural India which contributes to the child labour force in all other sectors. They become available for those sectors that have been prohibited by law.

Thus legal exploitation of millions of children continues unabated due to the definition of child labour being non-universal.

CLA is based on the premise that it is impractical to address all children at one go and thus makes a distinction between labour that is prohibited and other forms of work which could be allowed. From a child's perspective it is impractical to suffer hunger, ill-health, lack of education or loss of dignity. Children cannot be asked to wait endlessly for their turn as the system is not yet ready for them. A rights-based perspective is inherently universal and there ought not to be any discrimination between one child and another.

A distinction between short-term requiring immediate action *vis-a-vis* long-term goals is also not to be drawn as far as children are concerned, fully realizing that rights are to be enjoyed every day of their lives. Missing

out on access to basic entitlements even for one day can cause damage to children in the long run.

It is only when there is a strong legal framework in a rights-based perspective that human rights of voiceless children would be protected. The fundamental principles of jurisprudence of respecting children, sensitivity to their privations, speedy trial, protection and rehabilitation are to be integral to the process of adjudication in cases of violence on children, child abuse, corporal punishment, child labour, child trafficking and child marriage even as the adult offender is tried and punished. The process of adjudication has thus to be a process of healing for children and not further victimisation.

More importantly, the CLA has to resonate with the voices of multitudes of child labourers who wish to escape drudgery and aspire for education. In fact with education now a fundamental right, the CLA has to be in harmony with RTE Act and in support of children winning their battle for schools. Thus all forms of child labour are to be prohibited enabling their liberation to join schools.

Right to Education

Contrary to CLA ‘The Right of Children to Free and Compulsory Education Act 2009’ (RTE Act) is historic as it makes it a State obligation to provide for free and compulsory education to every child of the age of 6-14 years in a neighbourhood.

In making it mandatory for the State to ‘ensure compulsory admission, attendance, and completion of elementary education by every child of 6-14 years’, by implication, the State is violating the law if any child is out of school, or is a school ‘dropout’. According to the Act free education means that no financial constraints can ‘prevent’ a child from completing elementary education. In other words if a child lives in a remote area, providing free transportation (or residential facility or some other facility) will be part of the child’s entitlement to education. This includes special aid for children with disabilities.

The Act seeks to remedy the structural deficiencies such as infrastructure and availability of school teachers which have pushed children out of schools. Compounding the lack of infrastructure are issues of corporal

punishment and consequent insults and humiliation. Children are often punished for non-payment of school fees and other charges, not wearing school uniforms, and inability to buy text books, notebooks and other stationery. They are subject to discrimination on the basis of caste, gender, disability, ill-health and so on. The Act provides that “no child shall be subjected to physical punishment or mental harassment”. It also spells out a child-friendly pedagogy.

The RTE Act also appreciates the difficulties faced by the first generation learners, in coping with the school system. Families that have been denied literacy for centuries would not know how to transact in the world of school and education while they are able to deal with the world of work, labour and employer-employee relation. The act of going to school necessitates an inculcation of culture and habit of packing the school bag and lunch box, knowing the process of admission, getting a birth certificate, attendance in schools, and obtaining a transfer certificate to move from one level i.e. primary school to elementary or high school. The RTE Act is sensitive to all the above challenges faced by first generation learners, actually listens to their voices and makes it mandatory that no child is denied admission or driven out of school for want of birth certificates and transfer certificates. Nor can they be held back in any class till the completion of elementary school education.

Under the RTE Act, no child out of school is to be tolerated and in order that older children and school dropouts catch up with their peers, children will be enrolled in the class that corresponds to their age. It is the obligation of the State to admit a child to an age appropriate class and receive special training to be on par with others. This means that the RTE Act addresses the huge backlog of children who have been left out of the formal schools.

As a first step towards equity and bridging the gaps in the social and cultural hierarchies, the Right to Education Act makes it mandatory that all private schools provide for 25% of its admission to poor students. Encouraging private schools as commercial enterprises compromises the principle of universality as it offers services only to those who can pay for it. Thus those who are deprived and marginalised are automatically out of its net. If left unregulated, the higher end suppliers would foster further exclusion, and thus reinforce class differentiation. The rich and the poor

would never meet and there is every possibility of widening the gap. It would operate inadvertently as a system of hidden apartheid. This is contrary to the very tenor of schools that have always been institutions based on universalistic principles, nurturing equity and social justice and fostering inclusive democracy.

The very act of studying along with their peers in the neighbourhood and transcending class differentiation integrates children into a web of interaction, encouraging them to utilize creative modes of thinking and pursuit of knowledge. They enable children to transcend their immediate environs and locate themselves in the context of a reality which is informed by a sense of larger society and its complex milieu. It is in this context that a move towards a non-differentiated school system becomes imperative because schools have always played the role of bridging inequalities, indispensable for creating conditions for an inclusive democracy.

Right to Food

The longest ever continuing mandamus— the Supreme Court case of PUCL vs Union of India (CWP 196/2001) has demonstrated the manner in which the State could be directed to provide food as a matter of right. Significant orders were passed by the Court beginning with the order related to ICDS in 2001 directing universalisation – coverage of all ‘settlements’ and all eligible beneficiaries for provisioning of anganwadi centres to the current orders for universal coverage of all pregnant and lactating mothers and all adolescent girls. Over 100 interim orders were passed during the decade with tremendous impact.

There is an increase in budgetary allocations on food security for women, marginalised communities, persons with disabilities, homeless, SC and ST habitations, urban slums and children. It established the principle of universalisation in a context where there is increasing pressure to have targeted programmes. When the case started there were only 6 lakh anganwadi centres (AWCs) in the country. Consequent to the December 2006 order for universal coverage and provisioning of 14 lakh AWCs in our country, 13 lakh AWCs have been sanctioned and more than 11 lakh are operational. By issuing orders for establishing AWCs on demand it recognised the fact of urgency in provisioning of services for children, cutting red tape and ensuring that there is universal coverage. Considering that the

programmes resulted in the contractors making profits without children and the local communities benefitting, an order not to use contractors for supplies of nutritious food has enabled the involvement of women, local self help groups and community ownership of the programme. The rate for SNP was also increased from Rs. 1 to Rs. 2 and now at Rs. 4 per child and this has accorded a shift to hot cooked meals in most States.

Most importantly, the benefits of the scheme of ICDS have been converted into legal entitlements for children under six. It is especially significant as there is no law that covers the rights of children under six.

Further, the mid-day meal program for children in government schools is now a right and has a coverage of over 138 million children and in some States it extends to children beyond class 8.

Due to this sustained adjudication that radicalized provisioning of food to the poor there is no more a debate on food as a universal right. It is hoped that the ensuing legislation on 'National Food Security Act' captures the gains made so far for protecting children's right to food through this litigation.

A rights based perspective-impact

In sum, a rights-based perspective is a universal human right and applicable to all children; in a sense all children everywhere in the world must possess their rights equally and only because of their status as children and as human beings. These rights are to be guaranteed by the State and are political expressions. Under a rights-based framework it becomes imperative that there is a wholehearted commitment in provisioning of resources, services and institutions mandated by an appropriate legal framework.

Embedded in a value system of equity and justice for protecting children's rights, such a framework has a profound impact on children, offering a new set of traditions, cultures and values that would eventually bring transformation in all our lives as well.

The unequal relationship as it exists between the adult and the child is questioned and gets rectified. Children become individuals in their own right and social norms are so constructed as to enable the child to evolve fully and realize her fullest potential. A secure childhood is guaranteed and security of the child becomes the best defence of a country.

The secure child has a lasting impact on the aspirations of its citizens to be productive. With the right kind of mobility, gaps and disparities are bridged. A bounce in social classes has an overall impact on economic development and growth. Every right attained brings changes in the existing socio-economic formation towards greater participation and confidence of citizens of the nation.

Every right attained builds State capacities for democratisation of all public institutions, giving access to one and all without discrimination and thereby such institutions no longer are sites for contestation of power. Every right attained indeed radicalizes democracy and makes for a proud and cultured nation.

Justice to Juveniles in Conflict with Law : Miles to Go

Dr. K. P. Singh*

Introduction

Children are the most valuable living beings on earth. At a particular given time they can also be the most vulnerable group in any population. It is because of their physical and mental immaturity and dependence on others for various needs that they are susceptible to exploitation, physical abuse and ill treatment. They can be misled easily by anti-social elements and directed into undesirable channels of crime and criminal world. The National Policy for Welfare of Children (1974) very rightly declares that children are an important but critical asset requiring protection from the state. Their nurture and solicitude is our responsibility. In *Sheela Barse V UOI*¹, the Supreme Court reiterated the same spirit and observed;

If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality.

Similarly, the preamble of the United Nation's Convention on The Rights of The Child² States;

The child, by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before as well as after birth.

Therefore, it is recognized both nationally and internationally that children need state protection.

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¹ AIR 1986 SC 1773

² United Nation's General Assembly Resolution No. 44/25 of 20th November, 1989

Articles 15(3), 21, 21A, 22(1), 22(2), 23, 24, 39(c), 39(f), 45, 47 and 51A(k) of the Constitution of India impose a primary responsibility on the State of ensuring that all the needs of children are met and their Basic Human Rights are fully protected. Keeping in view the Constitutional mandate, several beneficial legislations were enacted by both the Central and State Governments, to guarantee welfare of children.

Juvenile justice is an important dimension in the scheme of protecting basic human rights of children who have come in conflict with the law of the land. The Children Act 1960³ was enacted by the Central Government for providing justice to the juveniles found in conflict with the law. Several other states also legislated on the theme of Juvenile Justice. The Supreme Court in the *Sheela Barse*⁴ case emphasised the need to bring uniformity in various legislations relating Juvenile Justice and observed that Central Government should enact a law on the subject, covering all aspects of Juvenile Justice, including their rehabilitation and re-integration in the society.

The Juvenile Justice Act 1986⁵ was enacted to fulfill the above said aims and objective. Subsequent to the Act coming into force on 2nd October 1987, India adopted the U.N. General Assembly's Convention on The Rights of the Child, 1989 and ratified it on 11th of December, 1992. Therefore, owing to international obligations, it became expedient to review the existing law relating to juveniles bearing in mind the international standards prescribed in the Convention on the Right of The Child and Administration of Juvenile Justice, 1985 (The Beijing Rules)⁶, and all other relevant international instruments. The Juvenile Justice (Care and Protection of Children) Act 2000⁷ (JJ Act 2000) was, thus, enacted in this background. The Rules⁸ under the Act (JJ Rules, 2007) were notified by the Central Government. Rule 96 under the Act prescribes that until the new rules are framed by the State Governments concerned under section 68 of the Juvenile

³ Act No. 60 of 1960.

⁴ 1986 Cr.LJ 1736

⁵ Act No. 53 of 1986

⁶ U.N. General Assembly Resolution No. 40/33 of 29 November, 1985.

⁷ Act No. 56 of 2000.

⁸ Central Model Juvenile Justice (Care and Protection of Children) Rules 2007, notified vide GSR 679(E) of 26 October, 2007.

Justice Act 2000, the Central Model Rules shall apply *mutatis mutandis*. State Governments were given the liberty to frame their own rules under the Act.⁹

The Juvenile Justice Act, 2000 came into force on 1 April 2001 and the JJ Rules, 2007 made under the Act became operational w.e.f. 26 October 2007. The Act and the Rules made thereunder prescribe and explain a complete scheme of Juvenile Justice. It would be worthwhile and timely to critically examine the enforcement of the scheme, especially in the background of newspaper reports appearing almost regularly suggesting large scale violations of the basic human rights of children.

Canons of Juvenile Jurisprudence

Maharishi Valmiki summarised the principles of juvenile jurisprudence in the famous Luv-Kush episode in the great epic of the *Ramayana*. The Maharishi told Lord Rama that “children, elderly persons and women are the responsibility of the State. They do not deserve punishment from the State even though they might have committed some crime’s.” The Maharishi exhorted Lord Rama that the strong arm of the State should not be used to correct juveniles, rather, it should give care and protection to the juveniles. The same spirit is reflected in the Fundamental Principles of Juvenile Justice contained in the JJ Act, 2000 and the Rules made thereunder. Rule 3¹⁰ contains the principles for guidance and implementation of the provisions of the JJ Act 2000.

Presumption of Innocence is the basic principle in juvenile Justice. A juvenile in conflict with law is presumed to be innocent of any *mala fide* or criminal intent upto the age of 18 years because of physical and mental immaturity. In the absence of full mental development, *mens rea* is deficient in all the acts of a juvenile. Misdeeds of juvenile, therefore, cannot be equated crime with all its implications. This presumption applies on any unlawful conduct of a juvenile which is done for survival, or is due to environmental or situational factors or is done under the control of adults or peer groups.¹¹

⁹ Section 68 of the Juvenile Justice (Care and Protection of Children) Act No. 56 of 2000.

¹⁰ *Ibid.* as 8.

¹¹ Rule 3, *ibid.*

Another principle is that the juvenile's right to dignity and worth has to be respected. Further, every child's right to express his views freely in all matters affecting his interest shall be fully protected.¹² Then comes the most important principle, the '*Principle of Best Interest*' of the Juvenile which means that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of Juvenile Justice.¹³

The Fundamental Principles of Juvenile Justice enshrined in Rule 3 of the JJ Rules 2007, declare that the primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. However, in exceptional situations, this responsibility may be bestowed on willing adoptive or foster parents. At all stages, the juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails. Provisions must be made to enable more positive measures that involve the full mobilization of all possible resources to provide for avenues for health, education, relationship, livelihood, leisure, creativity and play. In *Bachpan Bachao Andolan vs UOI*¹⁴ the Supreme Court directed that each State must issue a circular within four weeks positively indicating how the recommendations (paras 60 and 61) would be implemented. The Supreme Court also issued detailed guidelines on Children's Right, especially on abuse of human rights of children in circuses in this case.

Use of adversarial or accusatory words, such as arrest, remand, accused, chargesheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail, etc. is prohibited in the investigation and court proceedings against a juvenile in conflict with law.¹⁵ Alternative words have been given for these words under the Act. It is unfortunate that the accusatory words are still in use in proceedings against Juveniles due to ignorance on the part of the agents of the Criminal Justice System. No waiver of rights of the juvenile is either permissible or valid.¹⁶ The "Principle of Equality and Non-discrimination" shall be respected in dealing with juveniles. The juvenile's right to privacy and confidentiality shall be protected

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ (2011) 5 SCC 1.

¹⁵ Rule 3, JJ Rules, 2007.

¹⁶ *Ibid.*

by all means. Disclosure of identity of a juvenile is a non-cognizable offence punishable with a fine of Rs. 25,000/- under the Act.¹⁷ Institutionalisation of a juvenile in conflict with law shall be a step of the last resort after reasonable enquiry and that too for the minimum possible duration.¹⁸ This is the reason mainly non-custodial measures have been prescribed as punishment under Section 15 of the JJ Act 2000. The maximum institutionalized detention prescribed for a juvenile is only 3 years in the most heinous of crimes. Every juvenile has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile enjoyed before coming in conflict with law. The “Principle of Fresh Start” promotes new beginning for the juvenile in conflict with law by ensuring erasure of his past record. Section 19 of the JJ Act, 2000 provides for removal of disqualification attached with conviction of a juvenile in a conflict with law. A convicted juvenile is eligible for all Government jobs and is not disqualified even from contesting election. All record of police and court proceedings relating to a juvenile in conflict with law can be kept only for such a period till the appeal is pending or maximum up to seven years. After that the record shall be destroyed.¹⁹

The principles of juvenile justice have been amply elaborated in the JJ Act 2000 and the JJ Rules, 2007 unambiguously. However, it is unfortunate that these principles are not finding adequate reflection in the working of the various agencies involved in the enforcement and adjudication. Hardly a day passes when newspapers do not carry disturbing news relating to maltreatment and inappropriate handling of juveniles in conflict with law. It would be imperative to examine and bring out the reasons as to why the state instrumentalities are not able to implement the laws relating to juvenile justice in letter and spirit.

Illegal First Information Reports (FIRs)

Every misconduct (crime) committed by a juvenile shall be reported to the police for taking action as per the law. However, in dealing with cases of juveniles in conflict with law, the police shall not register First Information Report (FIR) in every cognizable offence, except where the offence alleged

¹⁷ Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁸ Rule 3, Juvenile Justice (Care and Protection of Children) Rules 2007.

¹⁹ Section 19(2) of the Juvenile Justice (Care and Protection of Children) Act, 2000, read with Rule 99 of the Central Model Juvenile Justice Rules, 2007.

to have been committed by the juvenile is serious in nature.²⁰ Instead, the police shall record information regarding the alleged offence in the General Daily Diary followed by a Social Background Report to be forwarded to the Board before the first hearing.²¹

Serious offence means, offence entailing more than seven years of imprisonment as punishment.²² The police is free to register FIR against juveniles in case of serious offence. FIR can also be registered against a juvenile in any type of offence if the alleged offence has been committed by the juvenile jointly with some adults.²³ For juveniles, the phrase “Registration of Enquiry” is used in place of FIR. The crime figures given in Table I below suggest that these provisions are not being followed completely by the police while recording crimes committed by juveniles. As per the details given in Table 1 below, a total of 22,740 FIRs under the provisions of the Indian Penal Code, 1861 were registered against juveniles in the year 2010 as per Crime in India 2010.²⁴

Table I- Offences committed by Juveniles.

Sr. No.	Offence	Number of FIRs
1	Murder	677
2	Attempt to murder	515
3	Rape	712
4	Dacoity	135
5	Robbery	388
6	Burglary	2526
7	Theft	5327
8	Hurt	3655
9	Unclassified crime	5861
Total		22740

Source : Crime in India 2010.

²⁰ Rule 11(11), Juvenile Justice (Care and Protection of Children) Rules, 2007.

²¹ *Ibid.*

²² Rule 11(7), *ibid.*

²³ Rule 11(11), *ibid.*

²⁴ National Crime Record Bureau, Government of India Publication 2010 at 501.

Out of the total 22740 FIRs registered against juveniles in conflict with law, only 2427 (for offences of murder, attempt to murder, rape, dacoity and robbery) are legally tenable. Rest of the FIRs (approximately more than 80% of the total) are illegal and reflect lack of knowledge on part of the police because these offences are punishable with up to seven years of imprisonment. Police should have recorded Daily Diary Entry in all these cases. This illegal action of police is nothing but abuse of the process of law and amounts to mental torture to the juveniles. It needs to be taken cognizance of by the police supervisory officers and law courts adjudicating upon police investigations. The police, the prosecutors, the magistrates and the advocates, all should appreciate the provisions of the JJ Act, 2000 and rules made thereunder.

Misuse of the Power of Arrest (Apprehension)

As per Crime in India 2010,²⁵ 30,303 juveniles were arrested by the police in the year 2010, throughout the country. Rule 11(7) of the Juvenile Justice (Care and Protection of Children) Rules 2007, prescribes that apprehension of juveniles involved in serious offences (entailing of punishment of more than 7 years' imprisonment) shall be resorted to. There is only one exception where apprehension is necessary in the interest of the juvenile for protection and such apprehended juvenile shall be treated at par with the child in need of care and not as a juvenile in conflict with law.²⁶ Applying the logic that more than 80% of the FIRs were illegal, it can safely be presumed that the same%age of arrest (apprehensions) is also illegal. It is gross violation of the basic human rights of the juveniles in conflict with law. Since most of these juveniles are neglected children, there is nobody to raise voice for them against their illegal apprehension at such a large scale. The police is misusing the power of arrest with impunity. It appears that the police and their supervisory officers are blissfully ignorant about the Rule²⁷ prescribing removal from service, besides prosecution for the offence, of the police officer found guilty, after enquiry, of torturing the child mentally or physically.

²⁵ *Ibid* at 512.

²⁶ Rule 11(8), the JJ Rules 2007.

²⁷ Rule 84(11), *ibid*.

Saga of refused bails

The bail provisions for juveniles are governed by the fundamental principle of juvenile justice that institutionalisation of juvenile shall be a step of last resort. To be released on bail is the legal right of every juvenile accused of all bailable or non-bailable offences unless such a release-

- (i) Likely to bring him in association with any known criminal;
- (ii) would expose him to moral, physical or psychological danger, or
- (iii) would defeat the ends of justice.²⁸

Despite clear provisions regarding bail, both the police and the judicial officers appear to be conservative in granting the concession of bail to juveniles. As a sample survey, figures collected from the State of Haryana reveals that 85 undertrial prisoners were lodged in borstal jail, hisar and the three other observation homes at faridabad, ambala and hisar as on 6th June 2012.²⁹ The details are as given in Table - 2 :-

Table II- Period of detention of under-trial juveniles in Haryana

Sr. No.	Offences	Under Section	Number of Juveniles
1	Murder	302 IPC	35
2	Attempt to murder	307 IPC	8
3	Culpable Homicide	304 IPC	1
4	Rape	376 IPC	10
5	Dacoity	395/398/399/ 401/402 IPC	7
6	Robbery	392/394 IPC	2
7	Theft	379/457/380 IPC	10
8	Hurt	323/324/325 IPC	3
9	Dowry Death	304B IPC	1
10	Kidnapping	366A IPC	1

²⁸ Section 12, the Juvenile Justice (Care and Protection of Children) Act No. 56 of 2000.

²⁹ The Writer of this article is Addl. DGP, Prisons Department, Haryana and the figures quoted here were officially obtained from the respective institutions.

11	Electricity theft	136/137 Electricity Act	1
12	Unnatural offence	377 IPC	1
13	Illegal confinement	341/342 IP	1
14	Abetment of suicide	306 IPC	1
15	Rioting	147/148/149 IPC	1
16	Assault on public Servants	332/353 IPC	1
17	Drugs & Cosmetics Act	17 CDE, 18A(2), 18A(6) Drugs & Cosmetic Act	1
Total			85

Analysis further reveals that out of the total juveniles who were refused bail and lodged in various institutions (as mentioned above) two were in custody for more than two year, twelve for more than one year, five for more than six months, ten for more than three months and forty eight for more than one month. This fact is enough testimony to suggest that the law relating to bail to juveniles is not being applied by the police and the judiciary in the same spirit as it was envisaged by the legislature. Cases of refused bails are coming in appeal before the appellate courts almost regularly.

The courts have interpreted the bail provisions again and again in no uncertain terms. In *Mohd. Firoz @ Bhola vs State*³⁰ it was held that the only grounds to decline release of a juvenile on bail are those mentioned in Section 12 of the JJ Act 2000. Possibility of repetition of crime is no ground to reject bail³¹. Further the observations in the Social Investigation Report (SIR) are a material consideration for grant of bail³². It is however true that in many cases, SIR is not drawn up by the Probation Officers and not insisted upon by the JJ Board. In *Master Abhishek vs State*³³ the court refused to accept the plea that absence of the protective hand of the father over him, because the father being in jail, is covered by the expression 'defeat the end of justice'. Similar observations are made by the courts in several other

³⁰ 2005(4)RCR(Crl.) 2005.

³¹ *Navin Pawar V State*, 1994 (3) RCR (Crl.) 577.

³² 2005 (4) RCR (Cri.) 913.

³³ 2005(2)RCR (Crl.) 790.

cases including *Manoj @ Kali vs State*,³⁴ *Nand Kishore vs State*,³⁵ *Master Niku Chaubey vs State*³⁶ and *Sandeep vs State*³⁷. All these landmark judgements prescribe that while deciding the issue of grant of bail to a juvenile the seriousness of allegations or the gravity of alleged offence by themselves are not a relevant consideration unless the case falls within any of the three exceptions mentioned in section 12 of the JJ Act 2000. Endeavours must be made to find ways and means to reduce the number of illegal arrests.

Claims of Juvenility

The claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case.³⁸ The claim of juvenility shall be decided by the court within a period of one month from the date of application as per procedure laid down in Rule 12 of the JJ Rules, 2007. In *Hari Ram vs State of Rajasthan*³⁹, the Supreme Court held that determination of age is an important responsibility cast upon the juvenile justice board. As per Section 2(l) of the JJ Act 2000, “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence⁴⁰. The validity of Section 2(l) of the Act was upheld by the Supreme Court in *Mohan Mali vs State of M.P.*⁴¹ and *Lakhan Lal vs State of Bihar*.⁴² Delay in making claim for juvenility is not fatal for the case. Claim of juvenility in *Jitender Singh @ Babloo Singh vs State of U.P.*⁴³ was raised for the first time before the Supreme Court.

³⁴ 2006(4) RCR (CrI.) 584.

³⁵ 2006 (4) RCR (CrI.) 754.

³⁶ 2006 (3) RCR (CrI.) 372.

³⁷ 2008 (4) RCR (CrI.) 146.

³⁸ Section 7A, of the JJ Act 2000.

³⁹ (2009) 13 SCC 211.

⁴⁰ Section 2(l) as amended by Act No. 33 of 2006.

⁴¹ AIR 2010 SC 1790.

⁴² 2011(1) RCR (CrI.) 494 SC.

⁴³ 2011(1) RCR (CrI.) 917.

Reading of Sections 2(k), 2(l), 7A, 20 and 49 of the JJ Act, 2000 read along with Rules 12 and 98 of the JJ Rules, 2007 makes it clear that all persons who are below the age of 18 years on the date of commission of the offence, even prior to 1 April 2001, would be treated as a juvenile, though the claim of juvenility is raised after they had attained the age of 18 years on or before the date of commencement of the JJ Act 2000 and undergoing sentence upon being convicted.

Sometimes, the courts don't decide the claim of juvenility within the prescribed time limit. Several claims of juvenility remain pending enquiry over one month. Policemen, quite often than not, write the age above 18 years even though, apparently, the arrestee might give the look of a juvenile. The Magistrate, *suo motu*, can also conduct an enquiry if it appears to him that the arrestee is a juvenile. Pending such enquiry, the arrestee should be treated as a juvenile, keeping in view the fundamental principles of "Best Interest and Positive Measures". As per Rule 12 of the JJ Rules, 2007, juvenility can be determined by seeking evidence in the following order of preference.

- (i) Matriculation or equivalent certificate,
- (ii) Date of birth certificate from the school first attended,
- (iii) Birth certificate given by a corporation of a municipal authority or a panchayat, or
- (iv) Medical opinion in absence of (i), (ii) and (iii) above.

In *Ram Suresh Singh vs Prabhat Singh*,⁴⁴ the Supreme Court held that the date of birth certificate granted by the school headmaster was sufficient for determination of age. The order of priority has been given to the certificate of birth issued by the school in preference to the opinion of the duly constituted medical board.

Inapt Custody arrangement

Every juvenile has the right to be united with his family as soon as possible. Detention of juveniles in State custody should be resorted to as a last measure. That is why all offences committed by juveniles are bailable, and mainly non-custodial punishments are prescribed under Section 15 of

⁴⁴ AIR 2009 SC 2805.

the JJ Act, 2000. Despite that, a large number of juveniles are detained in state custody, both as undertrials and convicts. In no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in Jail.⁴⁵ In *Antaryami Patra vs State of Orissa*,⁴⁶ the Supreme Court observed that atmosphere of the jail has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him in jail. A three-tier custody arrangement, therefore, has been provided in the JJ Act 2000. State Government is under obligation to establish and maintain, by itself or under an agreement with a voluntary organisations observation homes, separate for boys and girls and separate arrangements according to age groups, for temporary reception of juvenile who are under enquiry⁴⁷. State is also required to establish Special Homes to detain convicted juveniles in order to ensure their rehabilitation.⁴⁸

In order to prevent abuse of tender aged juveniles by juveniles above 16 years of age, a third type of custody home namely "Place of Safety" has been provided for under the provisions of the JJ Act, 2000. Juveniles under enquiry, who are refused bail, should be sent to Place of Safety for temporary reception.⁴⁹ Similarly, convicted juveniles above 16 years of age are to be housed separately at a Place of Safety for rehabilitation.⁵⁰ The Place of Safety is to be established by the State or by the voluntary organizations entering into an agreement with the Government.

The Observation Homes, the Special Homes and the Places of Safety are to be established under the Women and Child Development Department of the respective State Government. None of these institutions should be placed under the Jail Department. Unfortunately, the borstal jails, established under the Punjab Borstal Jail Act⁵¹ (applicable to Punjab & Haryana) to house the juveniles in conflict with law prior to independence, are still in use in the absence of custody arrangement for juveniles prescribed under

⁴⁵ Section 10 of JJ Act 2000 read with Rule 11(2) and 11(3) of the JJ Rules, 2007.

⁴⁶ 1993 Cr.LJ 1208.

⁴⁷ Section 8 of the JJ Act 2000.

⁴⁸ *Ibid.*

⁴⁹ Section 12(3) of the JJ Act 2000.

⁵⁰ Rules (11) of the JJ Rules, 2007.

⁵¹ Act No. XI of 1926.

the JJ Act 2000. Juveniles are still placed under the custody of prisons department at several places, which is illegal.

In most of the states, separate Observation Homes, Special Homes and Places of Safety are not established. For example, there are only three Observation Homes at Faridabad, Ambala and Hissar to house both the undertrial and convicted juveniles together. No Place of Safety has been established in the State of Haryana.

Even the facilities available in the Observation Homes established under the Women and Child Development Department have very little focus on constructive activities for learning for the juveniles. The design of building of these Observation Homes is almost similar to that of prisons meant for adults. The provisions regarding construction and facilities to be provided in the Observation Homes, as provided in the JJ Rules, 2007, have not been complied with.

At several places, juveniles who become adults in custody during the pendency of their trial or serving sentence, are staying with juveniles of tender age. There is every possibility that such adults might abuse the juveniles. There are also instances when a person dealt under the provisions of the JJ Act, 2000 is transferred to jail meant for adults once he/she crosses the age of eighteen years. This reflects ignorance of law or lack of sensitization on part of the Juvenile Justice Board concerned. It is also true that adequate, appropriate and fully equipped custody homes for juveniles, as envisaged under the JJ Act 2000, are not established by the State Government, as per the Act and rules made there-under.

Inensitivity of Juvenile Justice Boards

As per law Juvenile Justice Boards (JJ Board) are to be constituted in every district for dealing with juvenile in conflict with law.⁵² The constitution of the JJ Board was to be completed within a period of one year from the date of commencement of the JJ Act 2000⁵³. State Governments are under legal obligation to provide short-term training to the JJ Board members in

⁵² Section 4 of the JJ Act, 2000.

⁵³ JJ Amendment Act No. 33 of 2006

child psychology and child welfare.⁵⁴ Qualification and procedure of appointment of the J.J. Board member is provided in Rules 7(1) and 91 of the JJ Rules, 2007. The Selection Committee for appointment of a JJ Board members is to be headed by a retired High Court judge.⁵⁵ Unfortunately, in most of the states, the constitution of the JJ Board is not being done as per the prescribed rules and procedure.

As per Rule 9 of the JJ Rules, 2007, in no circumstance, the JJ Board shall operate from within any court premises. The board shall meet on all working days of the week to ensure quick disposal of cases.⁵⁶ Cases of petty offences, if not disposed off by the Special Police Juvenile Unit in the Police Stations, may be disposed off by the JJ Board through Summary Proceedings. In heinous offences, the enquiry may be concluded by following the summons case trial procedure.⁵⁷ It is painful to know that the above provisions of law are not being followed by the JJ Boards at most of the places, resulting in delay in proceedings and injustice to the juvenile.

A juvenile is not supposed to run around JJ Board for enquiry for a long period. Every enquiry by the board shall be completed within a period of four months after the first summary inquiry. This period can be extended by two more months in exceptional cases. Delay in deciding petty cases beyond 4-6 months shall lead to termination of the proceedings.⁵⁸ It means judicial proceedings in petty offences beyond six months is an illegality. It is, however, a statement of fact that such proceedings are still pending at several places despite being time barred. In the State of Haryana alone, 85 under enquiry juveniles are detained in borstal jail hissar and other observation homes, some of them in petty offences and for more than two years as undertrials. It defeats the spirit behind the JJ Act, 2000.

The JJ Board enquiry in serious offences may continue beyond six months. The Board has to submit a report to the Chief Judicial Magistrate (CJM) explaining the reasons behind the delay beyond six months. The CJM may cause the constitution of additional board if the JJ Board appears

⁵⁴ Rule 5(5) of the JJ Rule, 2007.

⁵⁵ Rule 91, *ibid.*

⁵⁶ Rule 9(3), *ibid.*

⁵⁷ Rule 13(2)(d) and Rule 13(2)(g), *ibid.*

⁵⁸ Rules 13(6), 13(7) and 13(2)(e), *ibid.*

to be overworked.⁵⁹ If the provisions of the JJ Act 2000 and rules made thereunder are implemented, there is very little likelihood that any JJ Board proceeding may extend beyond six months. Figures collected from the State of Haryana, however, indicate that 19 cases were pending enquiry by the JJ Board beyond six months. This situation needs close monitoring and review by the respective Chief Judicial Magistrate.

Under Section 15 of the JJ Act, 2000, admonition, group counselling, community service, probation in care of fit institution and probation in care of parents, guardian, or fit person are some of the non-custodial punishments prescribed for juveniles in conflict with law in petty offences. It is, however, true that the states have not made appropriate arrangements like the identification of community service centres, counseling centres and fit institutions in order to facilitate the JJ Boards to award such like punishments. As per Crime in India 2010⁶⁰, out of the 30303 juveniles arrested in 2010, 14% were sent home after admonition, 19% were released on probation, 3.4% were placed under care of fit institutions, 19.1% were sent to Special Homes, 3.6% were dealt with fines, 5.6% were acquitted and 5.6% were pending disposal. Hardly any case was disposed off by the police at their level without initiating report proceedings. This issue needs to be looked into by the Chief Judicial Magistrates who have been given the responsibility to supervise the working of the JJ Boards under the Act.

No Review of Pending Proceedings

A large number of juveniles are approaching the appellate courts, including the Supreme Court, for review of their cases as per the provisions of the JJ Act 2000. In fact, such unnecessary litigation was avoidable if the States and the JJ Boards would have performed their legal obligation as per the law. It is provided under Section 64 of the JJ Act, 2000, read with Rule 98 of the JJ Rules, 2007, that the state government or the JJ Board either *suo-motu* or on application might review the cases in light of the provisions of the JJ Act, 2000 of those juveniles undergoing sentence on the date of the Act coming into force, i.e. 1st April 2001. Explanation to section 64

⁵⁹ Section 14(2) of the JJ Act, 2000, as amended by Act No. 33 of 2006.

⁶⁰ National Crime Record Bureau, Government of India Publication 2011, at 522.

makes it clear beyond all shadow of doubt.⁶¹ The Supreme Court has upheld the validity of these provisions in a number of cases including in Dharambir vs State of NCT of Delhi⁶², Lakhan Lal vs State of Bihar⁶³ and Dayanand vs State of Haryana⁶⁴. The respective JJ Boards can easily undertake the review exercise even now without further delay. The Supreme Court in Amit Singh vs State of Maharashtra⁶⁵ has already issued directions to this effect.

Non-Responsive Police

The Police is mainly responsible for injustice to the juveniles in conflict with law. Several positive steps, which the police are required to take under the Act in order to implement the Act have not been taken. Some of them are enumerated below for sensitisation of the police officers :-

- (i) Child Welfare Officers are to be designated in all police stations.⁶⁶
- (ii) Special Juvenile Police Units are to be established at police stations, district and state level⁶⁷
- (iii) Police officials found guilty of torturing a child mentally or physically are to be dismissed from service⁶⁸
- (iv) Police officer handling juveniles should wear plain clothes⁶⁹
- (v) No handcuffing of juveniles⁷⁰
- (vi) Bail can be granted by police in all offences⁷¹

⁶¹ Explanation to Section 64:- In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage after the date of commencement of this Act, his case including the issue of juvenility shall be deemed to be decided in terms of clause(l) of section 2 and other provisions contained in this Act and rules made there-under, irrespective of the fact that he ceases to be a juvenile on such date.

⁶² AIR 2010 SC 1801.

⁶³ 2011(1) RCR (Cri) 494 (SC).

⁶⁴ 2011(1) RCR (Cri) 420 (SC).

⁶⁵ (2011)13 SCC 744.

⁶⁶ Rule 11 (2) of the JJ Rules, 2007.

⁶⁷ Rule 84, *ibid.*

⁶⁸ *Ibid.*

⁶⁹ Rule 75, *ibid.*

⁷⁰ Rule 76, *ibid.*

⁷¹ Section 12 of the JJ Act, 2000.

- (vii) Information about the apprehension of the juvenile is to be given to the parents, the guardian or the probation officer⁷²
- (viii) No preventive action can be taken against a juvenile under chapter VIII of the Cr.PC⁷³
- (ix) No disqualification is attached to conviction of a juvenile⁷⁴
- (x) Identity of a juvenile is to be protected. Disclosure of identity is punishable with fine up to Rs. 25,000/-⁷⁵
- (xi) Police record relating to juvenile is to be destroyed after 7 years of its existence or on disposal of appeal, whichever is earlier⁷⁶
- (xii) No case is to be registered against the juvenile who escapes from custody⁷⁷
- (xiii) Sections 23-26 of Juvenile Justice (Care and Protection of Children) Act, 2000 are defined as Crime Against Juvenility. All these offences are cognizable.

There are several other mandatory provisions provided in the Act which the police are required to implement. Unfortunately, either due to lack of knowledge or negligence or apathy, police are not taking adequate steps to implement the Act in the same spirit as it was envisaged. Policemen of all ranks need sensitization on this issue.

Conclusions

Juveniles are suffering illegalities and injustice due to lack of awareness and sensitivity on parts of all the organs of the criminal justice system. The Central Government and the Supreme Court have issued directions almost regularly to the states to implement the JJ Act, 2000 by ensuring availability of infrastructure and proper monitoring. The Ministry of Home Affairs

⁷² Section 13, *ibid.*

⁷³ Section 17, *ibid.*

⁷⁴ Section 19, *ibid.*

⁷⁵ Section 21 of the JJ Act, 2000.

⁷⁶ Section 19(2) *ibid.*

⁷⁷ Section 22, *ibid.*

issued advisory⁷⁸ to all the states to enforce the laws relating to Juvenile. The Supreme Court has issued directions for ensuring justice to juvenile in *Bachpan Bachao Andolan vs UOI*⁷⁹ and the *Childline India Foundation vs Allan John Waters*.⁸⁰ The Supreme Court is actively monitoring the implementation of the JJ Act, 2000 law by the States in Writ Petition (Civil) No(s) 473 of 2005 in *Sampurna Behrua vs UOI*. It is painful that the law enforcers, the law adjudicators and the state governments have failed to fulfill their legal obligations in a responsible manner. As a result, incidence of juvenile delinquency has doubled in the last decade. As per Crime in India 2010, share of juvenile crimes to total IPC crimes is increasing slowly but steadily. As per Crime in India 2010, share of juvenile crimes to total IPC crimes has increased from 0.93% in 2001 to 1.02% in the year 2010. Total of 22740 IPC cases were registered against children in the country in 2010 under the IPC as against 16509 in the year 2001. What is disturbing is the fact that 63.5% of the juveniles arrested by police in the year 2011 were in the age group of 16-18 years. This%age has increased on regular basis from 51.2% in the year 2002 to 63.5% in 2010. It calls for immediate remedial and corrective measures.

Children are a national asset and they deserve to be treated as such. Despite the best of intention of the lawmakers, juveniles are not getting the care and attention they are entitled. Justice to Juveniles is like a mirage in the desert. It keeps on going farther and farther and never appears to be within reach. The journey of ensuring justice to juveniles is very long and still there are miles to go. The journey can be shortened by creating a proper monitoring system. All wings of the Criminal Justice System need proper sensitization and training. Coordination among various agencies involved in the process is equally important. We owe it to the children of our nation a life of safety, protection, participation and development opportunities.

⁷⁸ F.No. 15011/48/2006-SC/ST-W dated 14 July, 2010.

⁷⁹ (2011) 5 SCC 1.

⁸⁰ (2011) 6 SCC 261.

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Child Rights Protection through Strengthening of Families

Jaideep Singh Kochher*

The UN Convention on the Rights of the Child¹ was adopted and opened for signature, ratification and accession by the General Assembly on 20 November, 1989. It was ratified by India in 1992. This Convention, itself gives us an indication of the importance it places on the family for child survival and development. In its Preamble, the Convention recognises that the family is the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly, children. Hence, it should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. It also recognises that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

Article 18 of the Convention requires that for the purpose of guaranteeing and promoting the rights set forth in the Convention, State parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. Article 27 provides for State parties to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Parents have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. It further provides that State parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child

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¹ UN Convention on the Rights of Child, for full text see <http://www2.ohchr.org/english/law/crc.htm>

to implement these rights and shall in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Soon after ratifying the Convention in 1992, it was felt that the domestic legislation for children in India should be enacted with provisions in accordance with the UN Convention. Accordingly, the Juvenile Justice (Care & Protection of Children) Act, 2000² was brought into effect on 1st April, 2000. The Act deals with issues relating to children in need of care and protection as well as those in conflict with law. Apart from other useful features, the new Act placed important emphasis on family environment in which the child should necessarily be brought up. For the children separated from their family or otherwise devoid of family, it has an entire Chapter IV devoted to rehabilitation and social reintegration of children through methods like adoption, foster care and sponsorship. In Section 33, it states that 'as the family is the best option to provide care and protection for children, adoption shall be the first alternative for rehabilitation and social reintegration of children who are orphaned, abandoned, neglected and abused'.

In fact, the whole philosophy behind the Juvenile Justice (Care & Protection of Children) Act, 2000 is based upon the importance of the family environment for the child. This is indicative from the fact that the enquiry process to be undertaken by the Child Welfare Committee for the children in need of care and protection with the ultimate intention to rehabilitate the concerned child with his/her family. Even the enquiry process and subsequent disposal of cases pertaining to child in conflict with law is also with the objective to ensure that the concerned child should reform and stay within his/her original family and not in institutions. All possible efforts are required to be undertaken for restoring the child to his/her family and only if all these efforts fail, the child is to be sent to the institution.

The logic of this strategy may not be difficult to comprehend. While family gives the necessary feeling of care, comfort and sense of security for a child which is so very important for his/her all round development, there are certain negative aspects associated with long-term institutionalization of a child, which is the other possible means of rehabilitation. These include, emotional deprivation and lack of parental attention, low self esteem apart

²The Juvenile Justice(Care and Protection of Children) Act, 2000, for full text, see wcd.nic.in/childprot/jjact2000.pdf

from resulting in difficulties in mainstreaming /adjusting in society resulting in segregation /isolation from society. Thus, the logic of institutionalisation being resorted for a child only as a last resort.

In such a scenario and considering that the best interests of a child are served if the child is brought up in a family environment, it would be an important strategy to prevent families from disintegrating due to adverse circumstances. Such circumstances in which families find themselves are not very rare to come across in India. There are a large number of children who run away from their homes and reach metro cities to become street children. The reasons for their running free, in a large number of cases include family discord which in turn, could be traced to insufficient incomes to provide for basic necessities of life like food, clothing and shelter. Families in which male members are prone to liquor consumption leading to financial drain on the already meagre resources are especially prone to such problems. Other cases where families break up are when the breadwinner falls prey to terminal diseases like cancer or HIV/AIDS especially when the family is economically weak. Calamities like tsunami, earthquakes, cyclones or manmade disasters like riots etc. also lead to disintegration of families.

In some of the North Eastern States of India where use of intravenous drugs by those addicted is common, infected syringes have led to spread of HIV/AIDS and there have been large number cases of families losing their bread-winners to the scourge. All such possibilities point towards the need for inherent, selfactivating and self sustaining system family strengthening strategies to be in place.

Even in the absence of any unforeseen adversity striking a family, under normal circumstances also, there is a case for strengthening the families. The common reason for the failure of Government schemes in weaning away child labour and improper implementation of the Child Labour (Prohibition and Regulation) Act, 1986 is the lack of sufficient income of the families in question. Parents send their children for work in order to supplement the meagre incomes of fledgling families so as to meet both ends. If it is to be ensured that all the children between 6 and 14 years of age attend school as per the requirements of Right to Education Act, there is again need to strengthen the families in the first place.

International experience also justifies the strategy of strengthening the families. The organisation, Hope and Homes for Children has been

implementing Active Support Programme in Bosnia and Herzegovina³ which focuses on prevention of separation of children from their parents apart from reintegration of separated children from institutions back into their biological families. The impact report on the programme covering the period from 2003-04 to 2010-11 indicates that 878 individuals (499 children and 379 adults) from 255 families were supported. The significant outcomes included prevention of separation of children from their families in 98% of cases. Besides, during the period, the total cost of Active Family Support was 4,41,560 euros which represented average total cost of 921 euros per child. 32 per cent of the children would have been placed in an institution if they had not accessed the programme. The total institutional placement cost would have been 4,123,250 euros. Hence, nearly 4 million euros in institutional cost were saved by preventing children from being separated from their families.

In the face of increased delinquency and violence among adolescents, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in the United States, during the late nineties, adopted a prevention strategy based upon strengthening the family⁴ and providing resources to families and communities. It was also realised that programmes must also recognise that focussing on the child alone ignores the entire support system already in place. For these reasons, strengthening the ability of families to raise children to be law abiding and protective citizens was considered a critical public policy issue in the United States. The effective strategies mentioned are behavioural parent training, family therapy interventions and family skills training.

There has been a disturbing rise in the number of juveniles caught for different crimes in India too⁵. Psychologists blame the rise in child crime on poor parenting and broken homes. There is a strong sense of victimisation in these children. They feel that life has been unfair to them. They feel their parents have not done enough for them. All this makes them commit crimes. Many of the social problems are intimately connected to the weakening of

³ See <http://www.hopeandhomes.org/news/news-2012/new-report-reveals-the-impact-of-our-work-in-Bosnia>.

⁴ See "Effective Family Strengthening Interventions" in Juvenile Justice Bulletin, November, 1998, Office of the Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of State. (<http://www.ncjrs.gov/pdffiles/171121.pdf>).

⁵ See news item titled "Delhi criminals are getting younger and more violent." In Hindustan Times, New Delhi edition, p.1 dated 11.4.11

the family's care for children. Because more children are being raised in stressed families, child abuse and neglect are increasing drastically. The family has the primary responsibility to instil moral values and provide guidance and support for children.

In fact, in India, as in the U.S., family strengthening through strategies like behavioural parent training, family therapy interventions and family skills training are important for the changing societal conditions. However, there is an another equally or rather more important dimension in India, which pertains to strengthening the families in economic terms so that they do not fall apart due to poverty, unemployment and burden of unforeseeable healthcare needs.

Hence, there is greater need for adopting family strengthening strategies relevant to Indian conditions. The programmes under these strategies should be self-activating and self-sustaining and which are more rooted within the communities to which families belong. When the family is not able to fulfil this responsibility, communities must take responsibility for ensuring that the family is supported in ways that improve its care of children. The community based programmes will increase their acceptability. The communities in turn, may be supported with resources from the State.

In a way, some programmes initiated during the Eleventh Plan period in the form of programmes like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and Rashtriya Swasthya Bima Yojana (RSBY) improves the economic well-being and helps in strengthening of families. The former programme helps families by providing them employment and source of income while the latter helps in addressing unforeseen healthcare expenditures. Some studies have tried to analyse the positive effects of these programmes on child well being. These studies⁶ have concluded that the impact of NREGA has been mixed on child well being. The positive impacts on household incomes, empowerment and well being of women have helped in improving in nutrition, health and education of children and reduction in child labour. However, there are significant regional variations in the successful working of the programme. Moreover, these programmes, especially the RSBY, do not cover large sections of

⁶ See Dev.S. Mahendra (2011) "NREGA and Child Well-being" working paper 10, Institute for Human Development – UNICEF working paper series – Children of India : Rights and opportunities, 2011. Also see www.kcci.org.in/Document%20Repository/mahendradev_new.pdf

population. The urban/migrant population does not have work guarantee as provided under MGNREGA. These existing shortcomings also point towards the need for focussed programmes for family strengthening to supplement the efforts already in place.

Some useful experiments have been adopted in India like the SOS village method of providing a family environment for children through sponsorship. In Maharashtra, the Central Social Welfare Board initiated the foster care programme in 1964 with the involvement of Family Service Centre. The scheme was taken over by Government of Maharashtra in 1994 under the name of Bal Sangopan Yojana (BSY)⁷. The scheme recognizes that best rehabilitation for children is in a family rather than in an institution. It is a programme whereby substitute family care is provided for a temporary period to children whose parents are unable to care for them because of illness, death, separation or desertion of one parent, or any other crisis. The State Government provides a monthly allowance on per child basis to the foster parents. In Karnataka, Mathruchhaya and Canara Bank Relief Welfare Society are also supporting foster homes for children in need of care and protection⁸.

Government has taken several steps to encourage adoption in the country with the objective to ensure family conditions for bringing up of children who are without a family. These include setting up of Central Adoption Resource Agency (CARA) and setting up of other adoption related infrastructure, ratification of the Hague Convention on Inter-country adoption, etc. However, other methods of family strengthening and alternative care provided for in the Juvenile Justice Act like foster care and sponsorship have not been given due attention and need to be more adequately explored across the country. The Ministry of Women and Child Development had formulated a scheme namely, Integrated Child Protection Scheme which also includes these components. The Rules under the Juvenile Justice Amendment Act after its amendments in 2006 also provide for these options. However, the implementation of these modes of rehabilitation of children in need of care and protection need to be geared up. There is need for adoption of good practices being implemented in States like Maharashtra and Karnataka countrywide. This is also for reasons of possible savings due to lower costs involved relative to cost of institutional care.

⁷ See [http://www.fscmumbai.org/bal_\(BSY\).html](http://www.fscmumbai.org/bal_(BSY).html) and <http://womenchild.maharashtra.gov.in> for more details.

⁸ See <http://mathruchhaya.net/fostercare.php> for details

GENDER EQUALITY AND HUMAN RIGHTS

Gender Equality and Human Rights

Dr. Vibhuti Patel*

Introduction

Gender equality between women and men refers to the equal rights, responsibilities and opportunities for both women and men and as well girls and boys. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration recognising the diversity of different groups of women and men. Gender equity that provides a level playing field for both men and women so that they have a fair chance to realize that equal outcomes are a pre-condition for ensuring gender equality and human rights. The ultimate goal in gender equality is to ensure that women and men have equitable access to, and benefit from society's resources, opportunities and rewards. As part of this, women need to have equal participation in defining what is valued and how this can be achieved. Equity is a means. Equality is the result.

Gender equity denotes an element of interpretation of social justice, usually based on tradition, custom, religion or culture, which is most often to the detriment of women. The Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women's Bill of Rights, declares that countries should:

- Act to eliminate violations of women's rights, whether by private persons, groups or organisations,
- Endeavour to modify social and cultural patterns of conduct that stereotype either gender or put women in an inferior position,
- Ensure that women have equal rights in education and equal access to information,

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- Eliminate discrimination against women in their access to health care,
- End discrimination against women in all matters relating to marriage and family relations.

The constitutional guarantees for Gender Equality and Human rights in India

For Indian citizens, the following articles in the India Constitutional guarantees for empowerment of women :

Article 14- equal rights and opportunities for men and women in the political, economic and social sphere

Article 15- prohibition of discrimination on the grounds of sex, religion, caste etc

Article 15(3)- empowers the State to take affirmative measures for women

Article 16- provides for equality of opportunities in the matter of public appointments

The Directive Principles ensure empowerment of women through'

Article 39- enjoins the state to provide an

- adequate means of livelihood to men and women and
- Equal pay for equal work

Article 42- State to ensure the provision for just and humane condition of work and maternity relief.

Article 51v
(A)(e)- Fundamental duty of every citizen to renounce practices derogatory to the dignity of women.

Articulation of the demands and alternatives suggested by women's movements constantly refer to the Fundamental Rights in the Constitution of India.

Women's Movement and Legal Reforms

When the Government of India signed the UN charter on Equality,

Development and Peace in 1975, the process of gender audit in the governance got an official stamp (Patel 2002). In 1976, the Equal Remuneration Act was enacted to provide equal opportunities, equal treatment and equal wages for work of similar nature. Women's groups have been consistently doing public scrutiny of Maternity Benefit Act, 1961 and specific provisions for women in general labour laws, the Factories Act, 1948 (Section 34 of which provides that the State Government can lay down rules prescribing weights that may be carried by men and women), the Contract Labour (Abolition and Regulation) Act and Rules- which has provides for separate utilities for women and fixed working hours.

Though these laws have proper implementation mechanisms, there is no provision for monitoring the effect of these laws on women. Allowance for special provisions for women has often proven to be detrimental to their employment opportunities. Participation of working women in the decision-making processes in the industrial and agrarian relations is abysmally low. Women's access to legal service largely remains inadequate in spite of the Legal Service Act, 1987.¹

The Labour Laws for Empowerment of Women

The labour laws for empowerment of women are based on the principle of gender justice. They are as follows:

- Equal Remuneration Act, 1976 ensures equal opportunity, equal treatment and equal wages.
- Maternity Benefit Act, 1961 provides 90 days' paid leave for working women
- The Factories Act, 1948 – Section 34 provides that the State government can lay down rules prescribing weights that may be carried by men and women.
- The Contract Labour (Abolition and Regulation) Act and Rules- provides for separate provision of utilities for women and fixed working hours.

¹ Women Networking (2004), *Invisible Hands*, Documentation, Research and Training Centre, Mumbai 2004.

- Women in the unorganized sector don't get benefits of the labour laws in spite unorganised workers' social security. Act, 2008. No. 33 of 2008.

In the formal or organized sector, there are industrial legislations and other protective legislations for workers. Most of these legislative provisions, unfortunately, seem to be working against the interests of workers, lack implementation and need reform. Government regulated minimum wages ensure only the bare essentials of survival but even that basic level is denied to workers in the informal sector. Factory inspectors usually avoid reporting as employers complain of low profitability, threaten closure and bribe them to keep quiet. At present crèches are provided in industries that employ more than 30 women employees and there too, ways and means are used to avoid this facility by the employers. There is no provision for providing crèches in the service sector and for both men and women working in shifts.²

In India, the Equal Remuneration Act, 1976, enacted pursuant to Article 39(d) of the Constitution of India, provides for the payment of equal remuneration to men and women workers, for providing equal opportunities to women and men and for the prevention of discrimination on the grounds of sex against women in matters of employment. The task of ensuring that there is no discrimination is very difficult, as there is no effective way of implementing the limited findings of the advisory committee. Secondly the definition and evaluation of the same work or work of similar nature leave much to be desired. Even the courts have used different expressions relating to evaluation of identical work. This is one of the least invoked legislations.

Maternity Benefit Act, 1961 provides for maternity benefit in case of childbirth, miscarriages, abortions, medical termination of pregnancies and tubectomy. Establishments employing less than ten persons are left out from the purview of the Maternity Benefit Act or the Employees State Insurance Act. Under the present Maternity Benefit Act, 1961 the eligibility for maternity leave is that the woman before availing the leave must have worked minimum for eighty days in that establishment or organisation. These eighty days include paid holidays and weekly holidays and the period for which she was laid off. In many organisations they are never allowed to complete the required number of days on record.

² Bajpai Asha, *Rights of Women at Workplace, Emerging Challenges and Legal Interventions*, TISS, 1996.

Women's activists are demanding an umbrella legislation to cover all women (From formal/organised as well as informal/unorganised sectors of the economy) under the maternity protection and ratification of ILO Convention No. 183.

Violation of basic Human Rights in Informal Sector

The informal sector as opposed to the formal sector is often loosely defined as one in which workers do not have recognition as workers and work without any social protection. In the informal sector, women workers are forced to work without contracts, without social security, with low wages under bad working conditions. In the absence of health insurance and income security, it is difficult for women workers in the informal sector to place importance on their health. The lack of income security often has direct consequence on the access to education for the children of women workers in the informal sector. They are not able to education and alleviate their poverty. Often children get absorbed into the informal sector themselves as adults due to lack of education or as children to help adults earn more (e.g. home based workers, vendors, self-employed)³, Unorganised labour is usually perceived as 'poor' and as a beneficiary, consequently there are provisions in the national budget to help them out of their poverty and vulnerability. They are treated as beneficiaries of anti-poverty programmes. The main concern of informal sector workers is irregular employment (Patel & Karne 2006).

Rag pickers—Poorest of the Poor

A Case Study of Women Rag Pickers in Mumbai⁴ has revealed that urbanisation and the use of land for large-scale agriculture have led to mass migration to the cities, where the displaced rural poor eke out a living on the margins of India's over-crowded cities. Unable to find work in the formal sector, many turn to street trading and rubbish collection in order to survive. Rag picking is a caste and gender based activity. Rag pickers comprise the poorest of the poor – an estimated 25,000 of them in Mumbai, dwelling in

³ Social Security for the Informal Sector, Edited by Wouter van Ginneken, Asian Women Workers Newsletter, Vol. 23, No. 1, January 2004.

⁴ *Recommendations of the Tribunal at Jan Sunwai organized by National Commission for Women and Stree Mukti Sanghatana* (Public Hearing on the issues of rag picker women) in May 18, 2004 at the State Secretariat in Mumbai.

shanties, mainly women and children who collect garbage-plastic, paper, metal, etc., usually from municipal dustbins, landfills and garbage dumps for recycling. They work seven days a week, earning on average of less than Rs. 60/70 a day. They help maintain the environment of Mumbai by keeping the streets clean and recycling and re-using waste. Mumbai produces 6000 metric tons (600 truckloads) of garbage every day, of which around 7 to 8% is collected by rag pickers. Rag pickers are highly vulnerable because they have few assets and few alternative livelihood options. Because of their hazardous working conditions the rag pickers suffer many more illnesses and injuries than the general population. Rag pickers live in constant fear of displacement, while others simply sleep on the pavements. Illiteracy among rag pickers and their children is high, and access to formal training or employment is non-existent. Many rag pickers have limited knowledge of their rights as citizens, including basic rights like access to free primary education.

Skills Training for Women

Women are not taught specific skills and are themselves diffident to take up skill training. The government's existing ITI network has a low number of women students. There is a need for improvement of courses and optimal use of space and teachers.

Abuse in Special Economic Zones

Adoption of an export-oriented model and competition for foreign investment has led to the opening of more and more Special Economic Zones (also Free Trade Zones and Export Processing Zones, etc.). In these zones labour laws are generally not applicable. Women are being used as 'cheap labour' force. They work under harsh working conditions. There is the abuse of labour and human rights and several instances of sexual harassment at workplace. Governments have had tendency to turn a blind eye to the abuse by capitalists to keep foreign investment.

Night Work—the Issue and the Debate

Business process outsourcing has resulted in mushrooming of thousands of call centers employing young, computer savvy, English-knowing women for night work.

Global tourism industry has given rise to also mushrooming of bars and night clubs throughout Asia. In Mumbai, bar girls campaigned to work at night, as their work is possible only during that time and also more remunerative. Due to pressure of elected women representatives of local self. government bodies, bar dancing is now banned in Maharashtra.

According to ILO, 'night signifies a time period of 'at least 11 consecutive hours, including an interval between 10 p.m. and 7 a.m.⁵ But many women workers face a lot of problems due to work at night including sexual harassment, molestation and rape. It is unfair to put a blanket prohibition on night work is discrimination against women to prevent access to jobs and contravening the principle of equality. The questions regarding sexual harassment and assault on them needs to be addressed. The state and employers must be forced to provide safe work environment and safe transport to women employees.

Sexual harassment at Workplace

As defined in the Supreme Court guidelines (Vishakha vs. the State of Rajasthan, August 1997), sexual harassment includes such unwelcome sexually determined behaviour as:

- Physical contact
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, e.g. leering, dirty jokes, sexual remark about a person's body etc.

Pursuant to this, the Government of India requested the National Commission of Women (NCW) to draft the legislation. A number of issues were raised regarding the NCW draft produced, and ultimately a Drafting Committee was set up to make a fresh draft. A number of women's organisations are part of this Committee, including majlis from Mumbai

⁵ Article 2 of Convention No. 89 of ILO

Majlis was asked to make the draft. Some women's organisations and women lawyers associated with Trade Unions in Mumbai have collectively worked on the draft with Majlis. Particular concerns while drafting have been to include the unorganized sector and to incorporate provisions of labour law. The bill to be introduced in the Parliament is the Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004. The Bill provides for the prevention and redressal of sexual harassment of women at workplaces or those arising during and out of the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India and as upheld by the Supreme Court in the *Vishakha vs. State of Rajasthan* [1997(7) SCC.323] case and as reflected in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ratified by the Government of India.

Scenario in the post-Vishakha Guidelines Period

Several organisations have conducted survey researches on sexual harassment of women (SHW) that were widely disseminated. The survey by Sakshi (Delhi) throws up some worrying data where 80 % of respondents revealed that SHW exists, 49% had encountered SHW, 41% had experienced SHW, 53% women and men did not have equal opportunities, 53% were treated unfairly by supervisors, employers and coworkers, 58% had not heard of the Supreme Court's directive of 1997 and only 20 % of organisations had implemented the Vishakha Guidelines. Controversy over SHW by the senior manager of Infosys, by the chairman and managing director of NALCO, Medha Kotwal—petition on SHW of a Ph. D student by her guide in M.S. University, Vadodara and complaint against a senior professor of Lucknow University, complaint of SHW by film star Sushmita Sen against CEO of Coca Cola, etc. have made employers alert about the economic burden and efficiency loss due to SHW. Now, even the corporate world has started instituting formation of committees for prevention of sexual harassment at workplace (Patel, 2007).⁶

⁶ Patel, Vibhuti (2007) "Sexual Harassment at the Workplace" in Ghadially, Rehana, *Urban Women in Contemporary India-A Reader*, Delhi: Sage Publications.

Sophia Centre for Women's Studies and Development study shows that awareness and implementation of the Supreme Court's guidelines is very low and there is need to spread awareness on the same. Study of *Sambita* (Kolkata) throwing light on the processual dimensions of the Bhanvari Devi Case has alarmed the state and civil society of the enormity and gravity of the menace called SHW. The Times Foundation organised a workshop for the corporate world on SHW. Testimonies of several participants of the workshop revealed that SHW is prevalent even in the companies where the victims are highly educated and have considerable economic leverage. Similar views have been expressed in the business journals. (*Business Today*, 1-9-2002). On 20th October, 2004, students thrashed a professor from Versova, Andheri for alleged sexual misconduct. (*The Indian Express*, Mumbai Newslines, 21-10-2004).

The Supreme Court directive has provided a legitimate space for surfacing of hidden realities of SHW in which earlier only victimblaming, witch-hunting and black-mailing flourished. Now women are fighting back tooth and nail. Electronic and print media have become extremely responsive to the issue of SHW. This first hand experience of providing support to women survivors of SHW has convinced can that we need to counter the myths about SHW with concrete facts, case studies and data base.

Accusations of sexual harassment are much more common today, reflecting the new consciousness and a new sense of power of people to end inappropriate behaviour directed towards them. The existence of an effective, informal conflict resolution process is immensely important.

To address sexual harassment in the informal and small-scale industries, free trade zones, special economic zones the labour departments may be directed to set up complaint committees and give them publicity or it could be made mandatory for every industrial estate and export zone to have its governing body set up a grievance cell for complaints (Sujatha 2007).

This will require co-operation between women's groups, official bodies, trade unions and employers. Women's groups can play an active role in disseminating information about sexual harassment and redressal procedures in industrial zones and estates. They can also raise the issue of the definition of skills and equal pay for comparable work so as to tackle gender inequality at workplace. The Sexual Harassment at Workplace (Prevention) Act must be enacted by the nation states to provide a remedy

within the criminal justice system. This is to provide for prevention of sexual harassment of women and women an employee (Ghadially 2007).

Need for a Policy for Women's Employment

A policy for women's employment has to include strategies for challenging the sexual division of labour and gender ideology inside as well as outside the workplace.

Policies for access include access to employment, education, training, credit, etc.

- Policies to improve the quality of employment, including her position in the household.
- Policies to preserve employment and to protect material and human resources and assets.

Proper Implementation of Laws and Schemes for Working Women

1. The existing labour legislation, i.e. the Industrial Disputes Act, the Factories Act, the E.S.I.S. Act and the Minimum Wages Act, should not be withdrawn but strengthened to cover all workers.
2. Some mechanism is required to evaluate the value of work under ERA.
3. Minimum wages need to be strictly implemented with ward level committees of workers.
4. Employment Guarantee Scheme: The central and state government has to ensure macro policies that will absorb workers in labour-intensive units and occupations. The Employment Guarantee Scheme needs to be expanded and improved for urban workers. The focus of such employment schemes can be on building infrastructure, slum development and housing. The National Renewal Fund should be extended to cover the unorganised sector and a substantial part should go into the retraining of workers.

Law Reform

Crèches should be provided for children of all workers and not merely women workers irrespective of the number of employees. There could be a common fund for each industry.

Family Leave: The minimum paid maternity leave period to be applicable to ALL working mothers irrespective of the necessary length of continuous service or the number of employees, irrespective whether married or unmarried and whether the child is natural born or adopted. Birth or adoptive fathers of a new child entitled to be given paternity leave on the birth or adoption of a child, employees to have a right to take time off to care for children, disabled or sick dependents. The options available include: unpaid leave with automatic re-entry to an equivalent post in terms of grade, type of work etc., part time working, temporary re-arrangement of working pattern, flexi-time request right available to working parents with young children (below 5 years of age or employees who have to care for disabled or sick dependents. The request can cover: the employee will have a right to return to work following availing of any of the above leave. The staff member must undertake in writing to return to work. No employee will suffer a detriment, be unfairly dismissed or be discriminated against for a reason connected, with pregnancy, childbirth, maternity, paternity, adoption, dependent care leave or the right to request flexible working, or time off to take care for a dependant. There shall be no loss of seniority, sick leave entitlements and incremental progression

Legal Protection for Informal Sector

Legal protection has to be given to the informal sector worker in the form of regular employment, notice period, compensatory pay or some form of unemployment insurance. It has been a long-standing demand of the representatives of the informal sector workers, trade unions and NGOs (Non-governmental organisations) that workers should be registered as daily or piece rated workers with an identity card. This single act would provide information on the number of irregular workers and access to them for welfare measures. Social welfare for the informal sector workers can be implemented by levying a cess on employers in industrial estates. Social services can be dispensed to the workers through existing government infrastructure and tripartite boards.

Rag-pickers' need

Recognition as workers, supplementary development programs, vocational training for skill upgradation, provision for maternity benefit and post-natal medical facilities, protection against domestic violence and sexual harassment, family benefits, medical reimbursements, retirement benefits (old age pension), insurance schemes and policies, compulsory savings schemes, micro finance schemes and interest-free loans, legal guidance and awareness (Patel and Karne, 2006).

Problems in Implementation of Mahatma Gandhi National Rural Employment Guarantee Scheme under MGNAREGA:

The Mahatma Gandhi National Rural Employment Guarantee Act aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage-employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work. Poor women from all over the country are seeking and getting employment under this scheme.

1. Though wages are apparently equal between men and women what happens is the allocation of work is different—men do trench digging which carries more wages. Women have been saying they can also do this work without trouble. Secondly wages are often paid to the group of a few from the same village on the basis of equal pay for men and women but the group leader determines how much a woman gets. This should be remedied.
2. The most serious complaint is lack of facilities—shelter; and schooling for the children of women who are the major reporters for EGS work.
3. The most serious lacunae are the stopping of registration of applicants. This has made it difficult to know how many need work. The work site merely records how many turn up. The absence of registering how many want (not just turn up) with details of who the applicants are again loses data regarding the status of the worker—small farmer, marginal farmer, landless worker, etc. details of land holding etc. Plans will be better done if one knows the status of the worker also with regard to improving agriculture.

4. The timing of EGS work is another problem. It clashes with seasonal migration.
5. The most important demand of women workers on EGS sites is skill upgradation. They are tired of unskilled manual labour and building a roads. The objective of employment under EGS is building a good infrastructure. But it is done so poorly that the asset does not last even one year. This rectification to be rectified. More choices and better technologies should be introduced in EGS work. Labour processes and labour relations in EGS work should be humanised and gender-sensitive. Women employees working for the scheme should not be targeted for population control programmes.

Emphasis on Education and Skills

A clear emphasis needs to be given to education, type of education of poor and especially of women. Women's access to employment is limited (amongst other reasons) because of lack of education and skills. The central and state government has a free education policy for girls but there is no follow-up on the number of dropouts. Most girls usually drop out from high school. Special attention and incentives should be given to girls and their parents for them to return to school.

Capacity Building and Training

Extra allocation of funds will be necessary for tying up training institutes with job placement organisations or industries. Trainings for jobs have to be combined with additional inputs around building other life skills towards critical awareness about women's status, improvement in negotiating skills and programmes around building and maintaining women's assets including savings.

Social Audits

International consumer and workers groups have attempted social audits at the firm level to ensure workers' rights. They have to be made mandatory not only for export firms but for all production units.

Self-Help Group (SHG) Movement

Self help groups are women's organisations from the downtrodden section of society that empower the women to be self-reliant through capacity and confidence building and by making micro-credit available and accessible to them. The SHG movement has taught women the value of saving and the strength of working as a group.

Recommendations for strengthening SHGs

- Groups should be only formed by NGOs or Women Development Corporations with the requisite knowledge and ethos of SHG development and micro-credit movement.
- Once an NGO is selected, the nurturing grants should be released every quarter after reviewing training milestones, group savings and internal lending data and not on the basis of bank gradation. NGOs should receive nurturing grants for at least five years, during which they should support the group.
- A state level agency should be appointed to train NGOs and also be permitted to appoint their own NGOs to implement the programme in addition to implementation through its field workers.
- SHG groups are not broken up by the banks' insistence to drop the member who is a defaulter or whose family member is a defaulter of the bank.
- Along with initiatives improving the programme delivery mechanism, bankers need to be trained and sensitised every three months, because of the high turnover of bankers in rural areas and the ignorance of bankers coming from urban postings to the needs of rural areas.
- NGO releases should not be made contingent to the group taking up economic activities. NGOs should be evaluated in the basis of group capacity building and training.
- This SHG movement is now poised for expansion and the problems need to be addressed immediately.

Property and Land Rights

There is a lot of gender biases in our property laws. Everything appears equal on paper and that is where it ends (Patel, 2009).

Recommendations

- Testamentary powers that deny the daughters their property rights should be restricted
- Daughters Should be allowed full right of residence in the parental dwelling houses.
- Women must be given 'the right to residence' hence putting private household property in the joint names of partners. Care however has to be taken to that see wherever women have property in their name, men do did not appropriate it under the pretext of property being in joint name.

A woman being abused in her matrimonial home has little choice but to continue to endure it. Her natal household is usually unwilling to have her back for fear of the social stigma attached to single women. These and other considerations restrict a women's reliance on her parents' households in times of potentially dangerous marital relations. Bill on Matrimonial property has been drafted that needs to be passed. The matrimonial property bill will give her rights

The 73rd and 74th Amendments of the Constitution

The 73rd and 74th Amendments of the Constitution provides for 33% reservation of seats for women in Panchayats and Municipalities. As of now we have 1.2 million women elected representatives in gram *panchayat*, *taluka panchayat*, *zilla panchayat*, municipal councils and municipal corporations (Patel, 2002). The recent amendments in Bihar and Maharashtra have ensured 50% reservation for women in local self-government bodies. UNDP Report, 2001 reported, "The evidence on gender and decentralisation in India suggests that while women have played a positive role in addressing, or attempting to address, a range of practical gender needs are identified keeping into consideration, gender based division of labour or women's subordinate position in the economy. They are a response to immediate perceived necessity, identified within a specific context. They are practical in nature and often are concerned with inadequacies in living conditions such as provision of fuel, water, healthcare and employment. Their impact on strategic gender needs (Strategic gender

needs are different in different economic contexts and are determined by statutory provisions, affirmative action by the state, pro-active role of the employers to enhance women's position in the economy and social movements) is not remarkable." (UNDP 2001).

Following the introduction of economic liberalization policies in 1991, India has registered steady gains in terms of conventional economic indices such as external trade, investment inflows, and foreign exchange reserves. However, globalisation has also caused the feminisation of poverty.

To counter this trend of marginalisation of women, it is necessary to address the gender imbalance in decision-making positions. A Constitutional Amendment Bill seeking 33% reservation for women in Parliament and state legislatures has, however, been scuttled by three successive governments since 1996, even while each party swears by its commitment to gender equity.

The reasons for this curious schism showcase a classic example of gender-class-caste alignments and divisions, under political compulsions. This paper examines this ongoing gender-caste-class imbroglio, in the context of Indian affirmative action policies (economic, social, political), which have generated "backlash" reactions.

Countering Violence against Women

Violence against women (VAW) is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women. VAW is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. VAW constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. VAW is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women in 1985, in which a set of measures to combat violence against women was recommended.

Definition of gender-based violence: VAW prevents the full implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a landmark international

agreement that affirms principles of fundamental human rights and equality for women and girls initiated by the UN and adopted by the member countries. VAW is understood as

- I. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, widow burning, female infanticide, pre-birth elimination of girls, crimes against women and girls in the name of honour, female genital mutilation and other traditional practices harmful to women non-spousal violence and violence related to exploitation
- II. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- III. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

The PCPNDT Act, 2002

Adverse child sex ratio due to pre-birth elimination of girls has posed a major threat to survival of girls and women in India (Patel, 2010). In this context strict implementation of Pre-conception and Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (2002) is mandatory.

The Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted in 1994 by the Centre followed by similar Acts by several State governments and Union Territories of India during 1988 (after Maharashtra legislation to regulate pre-natal sex determination tests), as a result of pressure created by the Forum Against Sex-determination and Sex-preselection. But there was a gross violation of this central legislation.

In response to the public interest petition filed by Dr. Sabu George, Centre for Inquiry into Health and Allied Themes Mumbai) and MASUM fought on their behalf by the Lawyers Collective (Delhi)⁷; the Supreme Court of India gave a directive on 4-5-2001 to all state governments to make an effective and prompt implementation of the Pre-natal Diagnostics Techniques (Regulation and Prevention of Misuse) Act (enacted in 1994

and brought into operation from 1-1-1996). Now, it stands renamed as “The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act”.

Recently enacted Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003 tightens the screws on sex selection at the pre-conception stage and puts in place a string of checks and balance to ensure that the act is effective.⁸ The Pre-natal Diagnostics Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 received the assent of the President of India on 17-1-2003. The Act provides “for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto”.

Under the Act, the person who seeks help for sex selection can face, at first conviction, imprisonment for a 3-year period and be required to pay a fine of Rs. 50000. The State Medical Council can suspend the registration of the doctor involved in such malpractice and, at the stage of conviction, can remove his/her name from the register of the council.

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Rules, 2003 have activated the implementation machinery to curb nefarious practices contributing for missing girls. According to the rules this all bodies under PNDT Act namely Genetic Counseling Centre, Genetic Laboratories or Genetic Clinic cannot function unless registered.⁹ The Bombay Municipal Corporation has initiated a drive against the unauthorised determination of gender of the foetus as per the directive of the Ministry of Law and Justice. All sonography centres are required to register themselves with the appropriate authority- the medical officer of the particular ward. The registration certificate and the message that under no circumstances, sex of foetus will be disclosed are mandatory to be displayed.¹⁰

⁷ Basu, Asmita: “Sex Selective Abortions”, Lawyers Collective, Vol.18, No. 11, Nov. 2003, pp.20-23.

⁸ Kamdar, Seema “Sex Selection Law Tightened”, Times of India, 6-6-2003.

⁹ Handbook on PNDT Act, 1994, Department of Family Welfare, Government of India, for use by Appropriate Authorities in States/ Union Territories, New Delhi, 2002.

The shortcomings of the PNDT Act (2003) lie in the criteria set for establishing a genetic counseling centre, genetic laboratory and genetic clinic/ultrasound clinic/imaging centre and person qualified to perform the tests.

- The terms genetic clinic/ultrasound clinic/imaging centre can not be used interchangeably. But the Act does.
- Moreover, the amended Act should have categorically defined persons, laboratories, hospitals, institutions involved in pre-conception sex-selective techniques such as artificial reproductive techniques and pre-implantation genetic diagnosis.
- Who is a qualified medical geneticist? As per the Act, “a person who possesses a degree or diploma or certificate in medical genetics in the field of PNDT or has minimum 2 years experience after obtaining any medical qualification under the MCI Act 1956 or a P.G. in biological sciences”. Many medical experts feel that a degree or diploma or 2 years experience in medical genetics can't be made synonymous.¹¹
- As per the Act, an ultrasound machine falls under the requirement of genetic clinic, while it is widely used also by the hospitals and nursing homes not conducting Pre-implantation Genetic Diagnosis (PGD) and PNDT.

Ban on advertisements regarding sex determination

Another important initiative that has been taken is against any institution or agency whose advertisement or displayed promotional poster or television serial is suggestive of any inviting gestures involving/supporting sex determination. MASUM, Pune made a complain to the Maharashtra State Women's Commission against Balaji Telefilms because its top rated television serial's episode telecast during February 2002 showed a young couple checking the sex of their unborn baby. The Commission approached Bombay Municipal Corporation (BMC) and a First Investigation Report (FIR) was lodged at the police station. After an uproar created by the

¹⁰ Patel, Vibhuti (2003) “Sons Are Rising- Daughters Are Setting”, Mumbai: Humanscape, September.

¹¹ Pradhan, Mandakini, Renu Singh, Manisha, Sarita Agrawal (2004) “The Shortcoming of Prenatal Diagnostic Techniques Act”, Department of Medical Genetics, Sanjay Gandhi Post Graduate Institute of Medical Science, Lucknow, India.

Commission, the Balaji tele-film came forward to salvage the damage by preparing an ad based on the Commission's script that conveyed that sex determination tests for selective abortion of female foetus is a criminal offence. Now there is another battle brewing.

As per the new guidelines declared by the Ministry of Health and Family Welfare, Government of India (2012) regarding IEC and publicity activities, all citizens are requested to organize rallies and signature campaigns for 'Save the Girl Child'. Communication media such as community radio, mass electronic and print media and internet for information dissemination must proactively educate the public about PCPNDT Act as well as rights of girls and through their channels give publicity to awareness programmes with the help of NGOs/ MNGOs etc. like public Melas (Fairs), public meetings, *Jan Samvads* (Public Dialogue), *Jan Sunwa is* (Public Hearings). youth campaigns against sex selection and local awareness activities such as *nukkad natak* (Street Theatre), dramas, folk art, etc. are highlighted in the guidelines. Under Corporate Social Responsibility publicity and information material on "Save the Girl Child" must be developed in regional language and public messages on 'Empowerment of girls' in public places like bus stands, railway stations, airports, metro stations, etc. should be displayed. Involvement of print and electronic media to give wider publicity to the issue such as advertisement on television relating to PNDT Act and promotional girl child schemes in the State, is an important aspect of the directive.¹²

Protection of Women from Domestic Violence, 2005

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The bill on domestic violence circulated in 2002 had generated heated debate around the issue, whether casual/ occasional beating should be considered as "domestic violence".¹³ After massive signature

¹² <http://www.pndt.gov.in/index1.asp?linkid=12>

campaign and lobbying, the Indian women managed to get the protection of women from domestic violence act, 2005 to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence-physical (beating, slapping, hitting, kicking, pushing), sexual (forced intercourse, forcing her to look at pornography or any other obscene pictures or material and child sexual abuse), verbal (name-calling and insults), psychological- and economic (preventing one's wife from taking up a job or forcing her to leave job) and emotional abuse of any kind occurring within the family. Domestic violence under the act includes harassment by way of unlawful dowry demands to the women or her relatives. It empowers the women victim to stay in the matrimonial, shared household and/or parental home whether or not she has any title in the household. Recently formulated rules of the Act also empower the protection officer, police, public hospital and the community to take proactive steps to stop the violence and provide services to the victim.

The scope of this legislation has been widened to include persons who have “shared households and are related by consanguinity, marriage or a relationship in the nature of marriage or adoption to relationship with family members—Even those women who are sisters, widows, mothers, single women or living with the abuser are entitled to get protection.”

As a result of the pressure of women's groups, health activists and judicial activism, new legal provisions such as recognition of the right to residence of a woman in the parental or matrimonial homes, provision for the appointment of protection officers and the recognition of service providers, gender sensitisation trainings for Protection Officers and Judges with regard to criminal legal system, substantive laws, procedural laws, rules and infrastructure and budgetary allocations for strengthening the structures and mechanisms for implementation of laws have been provided (Jesani, 2011).

Need for Legal Education

There is a need to provide public education through electronic media, community radio, seminars and public meetings on the following laws having direct bearing on women.

¹³ Lawyers Collective (2006) *Domestic Violence*, Delhi.

Conclusion

There is a need for an affirmative action to protect girls, young and elderly women from discrimination and violence, at the same time to establish their human rights. It must address the following areas of intervention.

1. **Improve Women's Economic Capacities:** Improve women's access to and control of income and assets, recognise her shared right to the family home, and incorporate the principle of division of community property in divorce laws. Productive assets and property are critical to strengthening the economic and social status of women, providing income opportunities and improved respect for women outside marriage and family.
2. **Strengthen and expand Training and sensitization Programmes:** Programme designed to train, sensitize and inter-link those working at critical entry points to identify and treat abused women should be a priority, with the single aim being increased accountability across institutions. Such programmes should be tailored for medical personnel, the judiciary, counseling and other support service providers.
3. **Dilaasa model of one stop crisis centre** housed in the public hospital to facilitate collective intervention of medical staff, police and NGO must be replicated throughout the country.
4. **Effective use of the Media to build Public Awareness:** Mobilisation of communities around campaigns such as that for "Zero Tolerance of Violence" requires improved skills and capacity among NGOs to enter new forms of dialogue with journalists and media personnel to heighten awareness of human rights and their significance for addressing domestic violence.
5. **Programmes designed for batterers** must be introduced in both the state and voluntary sectors. In order to promote a holistic approach to prevention as well as intervention, the deficiency in programmes designed for men needs to be addressed.
6. **Addressing VAW through Education:** Prevention of domestic violence ultimately depends upon changing the norms of society regarding

violence as a means of conflict resolution and traditional attitudes about gender. To achieve this, there must be introduction of gender and human rights in the curricula of schools, universities, professional colleges, and other training colleges. Along with this, there must be recognition and commitment to the principle of free compulsory primary and secondary education for girls.

The Indian state has been pro-active so far as legal safeguards for women are concerned. The provision of protection of women is key intervention in the Twelfth Five Year Plan. Ministry of Women and Child Development has launched public education on laws concerning women. It has set out proactive, affirmative approaches and actions necessary for realising the rights of women and providing equality of opportunity. Involvement of civil society groups, women's groups, educational institutions and judicial activism can strengthen these efforts.

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OTHER TOPICS

In Memoriam

Sankar Sen*

Justice Ranganath Misra's death after a prolonged illness has deeply saddened many who knew, admired and respected him. He was a legal luminary and a great champion of human rights. Handsome, fair-complexioned with sharp aquiline features he looked every inch a judge. He spoke in a slow voice and measured every word. He was clear and crisp in his articulation and had the gift of going into the heart of a matter quickly.

I had the privilege of coming in close contact with him when I was posted in the National Human Rights Commission. Earlier, I occasionally met him in Orissa when he was the Chief Justice of Orissa High Court. He was always kind and gracious - an epitome of unfailing courtesy and dignity. In the National Human Rights Commission as the Director General in-charge of investigation, I had the opportunity to work directly under this supervision. He was the first Chairman of the Commission and in many ways instrumental in making the Commission an effective and vibrant organisation. Because of his dynamism and unremitting endeavor the Commission had a flying start and it could within a short time establish its credibility in public mind.

The NHRC, as expected, faced initial teething troubles. But whenever there was a problem or road-block we could go to him at any time and seek his intervention. He was a charismatic leader and had the sterling quality of carrying a heterogeneous team with him. In the Commission there were members with massive egos and in the Commission meetings there were sharp differences of opinion. Sparks used to fly. Justice Misra would apply the healing balm as and when necessary and soothe feathers.

In its early days NHRC had to encounter criticisms from may Cassandras that it was a "*Sarkari Commission*" meant to whitewash the

*Former Director General (I), NHRC

omissions and commissions of the government. But very soon by its bold decisions like demanding repeal of TADA, highlighting the urgency of police reforms and pulling up the Home Ministry over disproportionate use of force by the BSF at Bijbhara, the Commission could establish its credibility and silence the critics. As the Chairman of the Commission, he never behaved as the former Chief Justice of India functioning in majestic isolation, but a sympathetic and responsive champion of human rights of the common people. As a judge he was known for delivering speedy judgments. In the NHRC also he used to take quick decisions in favour of the victims without being weighed down by rules and procedures. He was indeed a man in a hurry and would go out of his way to reach out to the disadvantaged people in distress and extend a helping hand. At the same time he was down-to-earth and practical. He used to understand the difficulties of the investigating officers in the field and guide us with useful and practical suggestions. For getting sanction from the government of the staff of the investigation wing, I was facing numerous hurdles and at last turned to Justice Misra for his intervention. He, as was his wont, intervened decisively and perhaps spoke to the Prime Minister. The effect was instantaneous. Bureaucratic hurdles collapsed like nine pins and the proposed staff with minor modifications were sanctioned. In my long career in law enforcement I have come in touch with many judges, bureaucrats and police officers but I have seen very few displaying the qualities of leadership and man management as Justice Misra. He knew the art of empowering the subordinates and win their undying loyalty.

Personal misfortunes battered him but never dimmed his unconquered spirit. He remained a quintessential humanist till the end. In his death the country lost not only a legal luminary but an indefatigable champion of human rights.

SECOND UNIVERSAL PERIODIC REVIEW OF INDIA AT THE
UN HUMAN RIGHTS COUNCIL, 2012

NHRC India Report for UPR-2

Introduction

Any assessment of India's human rights record must begin with the acknowledgment that no other country as large and populous or as diverse, ethnically and economically, has had to tackle the challenges of development using only democratic methods. The Indian experiment is so unique that it must be judged by its own benchmarks, which are set by a powerful and activist judiciary, a free media and a vigilant civil society, which are guardians of human rights in an open society run by the rule of law. However, while there have been many successes, much remains to be done, including on the eighteen recommendations made at the first UPR to the Government of India. Since the same government remains in power, these lapses are its responsibility.

The NHRC has continued to monitor the full range of human rights on the basis of complaints received and on suo motu cognizance. The issues it monitors and the recommendations it makes go well beyond those of the first UPR, which addressed a narrow band of problems. However, since the second UPR will assess the government's performance on those, this paper focuses on them, though placed in the wider perspective, which the UN should not ignore.

To prepare for this report, the NHRC has held five regional consultations and a national consultation with NGOs, academics, officials and State Human Rights Commissions (SHRCs), even though its mandate and work involve a continuing dialogue with the Central and State Governments, whose performance on human rights it evaluates, and with civil society, from which the more serious complaints are received. It did so for two reasons: given the diversity of India, to ensure that regional priorities were captured, and to focus on the points on which the UPR will concentrate.

Around 350 people took part in these consultations, where the local or specialized knowledge that civil society shared was invaluable. Governmental participation was patchy, nor has the NHRC received from most Ministries the action-taken report on the recommendations of the first UPR which it sought in 2010. The SHRCs contributed almost nothing, confirming that most are still inchoate, and must be strengthened. Civil and political rights

India has a comprehensive framework of laws and the Government remained willing to draft new laws to respond to domestic demands or to meet international obligations. However, the implementation of laws, the weakness of new Bills and the law's delay were areas of concern, among which the NHRC will highlight some: - An anodyne Prevention of Torture Bill was passed by the Lower House of Parliament. It has been greatly strengthened by a Select Committee of the Upper House, and it would be a travesty if the original Bill is adopted.

The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights. This, despite the fact that India's 2011 report on the Optional Protocol to the CRC states that "India does not face either international or noninternational armed conflict situations".

35% of the complaints to the NHRC annually are against the police. In 2006 the Supreme Court issued seven binding directives to start reform, but little has been done, though the need is urgent.

9% of the complaints to the NHRC in 2010-11 were on inaction by officials or their abuse of power, confirming that laws are often not implemented or ignored.

Custodial justice remained a problem. Jails are overcrowded and unhygienic, disease rampant and treatment poor. 67% of prisoners are under trial, either unable to raise bail or confined far longer than they should be because of the huge backlog of cases.

There are inordinate delays in the provision of justice. 56,383 cases were pending in the Supreme Court at the end of October 2011. At the end of 2010, 4.2 million cases were pending in High Courts, and almost 28 million in subordinate courts.

The scheduled castes and scheduled tribes remain particularly vulnerable despite laws to protect them, because of the indifference of public servants.

The practice of bonded labour continues despite laws that ban it, and is taking new forms. The NHRC has received reports of bonded labour being used to execute defence projects in difficult areas.

The degrading practice of manual scavenging festers on. Some States are in denial over this. The Indian Railways are the largest users of manual scavengers.

The focal point set up in the NHRC for the protection of human rights defenders received complaints that several, including those working on minority rights and the rights of the scheduled castes and tribes, faced harassment in several States, including arbitrary detention.

Economic, Social and Cultural Rights

Though, as the Government had reported at UPR 1, it has set up ambitious “flagship programmes” to provide these rights, they remain precarious:

A massive public distribution system has not assured the right to food because malnutrition is endemic. The National Advisory Council has recommended that legal entitlements to subsidized foodgrains be extended to at least 75% of the population. This is not acceptable to the Government, which sets arbitrary ceilings on the numbers who can be declared as being below the poverty line.

The official estimate that 27.5% of the population was below poverty line in 2004-05 grossly understates the incidence of poverty. The expert committee set up by the Planning Commission put the figure at 37.2%. Other committees set up by Ministries peg it even higher.

Over 90% of the workforce is in the unorganised sector, has no access to social security, is particularly vulnerable in the cities, and is therefore driven into permanent debt, often leading to conditions of bonded labour.

The National Rural Employment Guarantee Scheme guaranteed 100 days of work a year to any rural household that needed it. Government data showed that 56 million households applied, 55 million were given work but on average received half the wages guaranteed. The Scheme has not therefore made enough of an impact, very large sums of money have been siphoned off, and it does not provide long-term employment or build permanent assets.

Public spending on health continues to be abysmally low, at about 1% of GDP, despite Government's commitment to raise it to 2-3%. The public health system is riddled with problems; vast numbers in the villages get little or no medical care. A performance audit by the Auditor General and an evaluation done for the Planning Commission have both found serious deficiencies in the National Rural Health Mission.

The current National Family Health Survey reports that "the%age of children under age five years who are underweight is almost 20 times as high in India as would be expected in a healthy, well-nourished population and is almost twice as high as the average%age of underweight children in sub-Saharan African countries." A huge programme called the Integrated Child Development Services was set up in 1975, but an evaluation done in 2011 for the Planning Commission found that 60% of the annual budget for supplementary nutrition was being diverted. (A study done for the NHRC confirms this.)

The quality of education, particularly in the villages, is dismal; the infrastructure is appalling, teachers are absent, para-teachers are poorly trained. Learning levels and literacy are both very low.

The Indira Awas Yojana, set up to provide rural housing, requires that an applicant has a plot of land. Millions of landless are excluded. The scheme does not give enough to build a house, and there is some evidence that those who take the money end up in debt. An evaluation done for the Planning Commission found that there was no quality control, including in seismic zones. Neither is there an insistence that toilets be built. The safety of residents and sanitation remain serious concerns.

The NHRC, which monitors human rights in 28 representative districts across India, finds in its field visits that none of the flagship programmes function well.

Rapid growth, the development of infrastructure and the expansion of mining industries, have all led to massive displacements of populations, often without their informed consent. The NHRC's monitoring finds that usually those displaced are given neither adequate relief nor the means of rehabilitation.

The denial or the abuse of, or the inability to access, their rights hit the most vulnerable the hardest – women, children, the scheduled castes and tribes, and the minorities.

Implementation of Recommendations in UPR 1

The NHRC's assessment of how far the Government has responded to the recommendations made in UPR 1, which follows, should be read in the context of these larger failures.

On Recommendation 1, the Prevention of Torture Bill, 2010 was weak. If the Act eventually adopted dilutes the revisions made by the Select Committee, it will call into question the Government's commitment to the Convention against Torture.

On Recommendation 2, the Government has not involved civil society in the followup to UPR 1, but some Ministries do consult it in the formulation and implementation of their programmes.

On Recommendation 3, to energise "existing mechanisms to enhance the addressing of human rights challenges", the record is uneven because:

The Central Government has continued to let the National Commissions function independently, but given them no added powers or greater resources;

the State Human Rights Commissions are mostly moribund;

very few Human Rights courts have been set up.

On Recommendation 4, the Government has taken a belated step to "encourage enhanced cooperation with human rights bodies" by issuing a standing invitation to Special Procedures mandate-holders, in response to

Recommendation 14, so it should not be difficult for it to act on Recommendation 15, which asked it to receive the Special Rapporteur on the question of torture.

The Government's decision is welcome, but it still sends delayed reports or none to treaty bodies, and its apathy on Recommendations 2 and 3 (both of which it accepted) reflects a reluctance to engage "relevant stakeholders".

On Recommendation 5, the Human Development Report 2011 of the Planning Commission has some disaggregated data, but not on caste and related discrimination, though from its experience the NHRC believes this is essential, not least in key areas such as :

- crimes committed against women and children from the Scheduled Castes and Scheduled Tribes;
- violence against women other than rape;
- bonded labour, child labour and manual scavenging;
- custodial violence, illegal detention and torture.

On Recommendation 6, ignoring a request from the NHRC, the Government has taken no steps to sign and ratify the Optional Protocol to CEDAW.

On Recommendation 7, which asked the Government to consider signing and ratifying ILO Conventions 138 and 182, it claims that, though it accepts the spirit of the Conventions, it cannot ratify them because socio-economic conditions make it difficult to prohibit the employment of children. This is an argument now even less tenable after the passage of the Right to Education Act in 2009. India now has a law that makes it compulsory for children to be at school till they are 14, and another that lets them work.

Despite this absurdity, the Government has not acted on Recommendation 9, which asked it to review its reservation to Article 32 of the CRC. The NHRC has seconded this recommendation but received no response. Child labour therefore flourishes, the right to education will languish.

On Recommendation 8, while the NHRC shares with other NHRIs its experience in the promotion and protection of human rights, it is not

aware if the Government has any programmes to do so, though it accepted this recommendation.

On Recommendation 10, the Government accepts the need for inclusive development, but the implementation of the flagship programmes through which it addresses “economic and social inequities” has not been encouraging. These programmes, which take the poor as targets rather than as agents of change, are wellmeant but not well-conceived, have been lavishly funded but have also been looted by the corrupt. The intended beneficiaries get a small proportion of their supposed entitlements.

On Recommendation 11, accepted by the Government, there is still no national action plan for human rights. Since the Government has ignored its requests, the NHRC has started to draft a plan, on which it will consult civil society and other stake-holders.

On Recommendation 12, there is no evidence that the Government intends to ratify the Convention on Enforced Disappearance. Enforced disappearance is not codified as a criminal offence in domestic law, nor are extant provisions of law used to deter the practice. The NHRC received 341 complaints of disappearance in 2010, 338 so far in 2011; these are by no means comprehensive but still significant numbers, which underline the need for the Government to act.

On Recommendation 13, there has been little progress on strengthening human rights education (HRE). Education is primarily the responsibility of the States in India, and almost none has given this priority. The NHRC works with schools, colleges, universities and NGOs to promote HRE, and has made recommendations to the Second Phase of the World Programme for HRE on the possible target groups and thematic issues for India.

On Recommendation 16, which the Government accepted, the NHRC is not aware that it has had a formal follow-up process to the UPR; the question of integrating a gender perspective in it does not therefore arise. This should be corrected after UPR 2. Gender budgeting is, however, now an integral part of the budgetary process.

On Recommendation 17, to amend the Special Marriage Act and give equal rights to property accumulated during marriage, there have been no developments.

Recommendation 18 asked the Government to continue its efforts “to guarantee a society... well fed, well housed, well cared for and well educated”. The NHRC’s overview of the state of human rights in India will show that these efforts have met with very limited success.

The Naxal movement

The spread of this violent left-wing extremist movement is a cautionary tale. It claims to speak for, and recruits from, the adivasis, forest-dwelling tribals who have suffered years of such neglect and exploitation that some of them have been alienated enough to join a movement that calls for the violent overthrow of democracy. Estimates are that 200 out of the 600 districts in India are affected, though the Government puts the figure at around 60 districts; even so this means that perhaps 120 million people are affected. Belatedly, the Government is trying to bring the fruits of development to these areas, but the violent opposition of the Naxals, who destroy even schools and attack officials, means that in the areas they control, human rights have become even more parlous: governance and the rule of law rarely function. The villagers are the victims of Naxal violence, and collateral damage in the counter-insurgency operations. It will be an immense challenge for a democracy to defeat a movement that respects no human rights, through means that safeguard and do not violate the rights of the citizens it must protect.

Oral Statement Made by NHRC, India at the Plenary Session

Thank you, Madam President

As our Commission had noted in its submission for this review, the challenges of protecting and promoting human rights in a country of India's size and diversity are unique. It is not easy for others to grasp them or to make relevant recommendations, but many members of this Council have made the effort.

The Commission has studied the recommendations they have made, and it has just heard which of these the Government of India is prepared to accept. As the Council expects it to, the Commission will now help to disseminate the outcome of this review in India, directly and through the State Human Rights Commissions and civil society.

It will also monitor the implementation by government of the recommendations it has accepted. Its record on the first cycle was not particularly good. The Commission trusts there will be an improvement this time around and will work with the government and with civil society towards this end.

The Commission will also examine the recommendations which the government has not accepted. On those which the Commission considers important, it will try to see if, through its own work and through discussions with government, progress can be made.

Several sets of recommendations are specific to the problems faced by children, women and disadvantaged sections of society. Since there are National Commissions for the protection of the rights of children, of women, of the scheduled castes and of the scheduled tribes, whose Chairs are deemed members of the National Human Rights Commission, we will bring these sectoral recommendations to their attention.

Laws and budgets are not the problem in India; implementation is. The excellent laws to which the government has drawn attention are

routinely flouted, often terra incognita to officials expected to uphold them. Huge percentages of the billions of dollars budgeted for social welfare programmes for the most vulnerable do not reach the beneficiaries. The Commission will work with all stake-holders to try for marked improvements before the third review.

Thank you, Madam President

Recommendations of Members of the UN Human Rights Council to the Government of India

1. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court (Spain);
2. Intensify the efforts working towards the MDG5, including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination against Women, and by ensuring access to information and counselling on SRHR as set out in its National Population Policy(Sweden);
3. Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect (United Kingdom of Great Britain and Northern Ireland);
4. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations (United States of America);
5. Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189 (Iraq);
6. Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament (Republic of Korea);

7. Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Italy);¹
8. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment as soon as possible (Maldives);
9. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of its Committee, in accordance with articles 31 and 32 (Uruguay);
10. Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers (Uruguay);
11. Consider the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Argentina);
12. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention (Australia);
13. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court (Austria);
14. Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities (Slovakia);
15. Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Botswana);
16. Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol (Brazil);

17. Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (Czech Republic);
18. Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Portugal);
19. Ratification of the Optional Protocol to the Convention on the Elimination of Discrimination against Women (Brazil);
20. Evaluate the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Chile);
21. Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Czech Republic);
22. Remove reservations to the Article 16(1) of the Convention on Elimination of All Forms of Discrimination against Women (Finland);
23. Withdraw its reservations to Convention on the Elimination of All Forms of Discrimination against Women and consider signing and ratifying its Optional Protocol (Republic of Korea);
24. Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation (France);
25. Consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons (Ghana);
26. Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and

Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work (Ghana);

27. Continue to take legislative as well as policy measures to combat child labour and to ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments (Portugal);
28. Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour (Sweden);
29. Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Indonesia);
30. Consider an early ratification of the third Optional Protocol to the Convention on the Rights of the Child, on a communication procedure (Slovakia);
31. Amend the Special Marriage Act before its next review (Slovenia);
32. Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture (Switzerland);
33. Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area (Costa Rica);
34. Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Maldives);
35. Review the law on the special powers of the armed forces to align it with its obligations under the International Convention on Civil and Political Rights (Switzerland);

36. Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Timor-Leste);
37. Consider expediting the process to pass the 108th Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women (Timor-Leste);
38. Consider signing and ratifying the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women (Costa Rica);
23. 138.39. Strengthen legislations to combat sexual offences against minors (Algeria);
40. Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking (Canada);
41. Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures adopted for rape cases (Canada);
42. Enact those pending bills that are aimed at empowering women, including the women's Reservation Bill and the amendments to Panchayati Raj Act (Netherlands);
43. Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic);

44. Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards (Slovakia);
45. Carry out an annual review of the 1958 Armed Forces Special Powers Act aiming to gradually reduce its geographic scope (France);
46. Effectively implement existing legislation on child labour in line with India's international obligations and strengthen the judicial powers of the National Commission for Protection of Child Rights (Germany);
47. Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons (Germany);
48. Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities (Germany);
49. Reconsider laws and bills on religious conversion in several Indian states in the light of freedom of religion or belief in order to avoid the use of vague or broad terminology and discriminatory provisions (Germany);
50. Reconsider current local legislation on freedom of religion, that uses vague or broad terminology and discriminatory provisions, and impedes the possibility for conversion of faith for those who wish to do so (Netherlands);
51. Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (Greece);
52. Enhance the coordination of both the central and state governments in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act (Indonesia);

53. Enact comprehensive anti-discrimination legislation and ensure that there are adequate means of redress (Ireland);
54. Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive and health, as well as, concrete measures to eliminate violence against women (Spain);
55. Continue with action to include human rights education in the school curricula (Sri Lanka);
56. Implement the 2011 recommendations of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to ensure the high standards and independence of India's National Human Rights Institutions (United Kingdom of Great Britain and Northern Ireland);
57. Intensify its efforts and measures to consolidate the state of law and its national mechanisms on human rights (Viet Nam);
58. Further coordination among relevant national authorities and human rights institutions (Egypt);
59. Intensify efforts in providing capacity building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas (Malaysia);
60. Improve training on human rights by addressing law enforcement, especially police officers (Iraq);
61. Set up State and District Commissioners for the Protection of Child Rights in all States and Districts (Ireland);
62. Strengthen the process for ensuring independent and timely investigation mechanisms to address and eliminate corruption; and provide for and facilitate increased accountability and transparency in this process (United States of America);
63. Continue including civil society participation in the UPR process (Nicaragua);
64. A fully integrated gender perspective in the follow up of this UPR (Norway);

65. Implement Treaty Body recommendations and develop a National Action Plan to eliminate all forms of discrimination (Slovenia);
66. Continue cooperating with Special Procedures and accept in particular requests for visits from Special Rapporteurs (Belgium);
67. Adopt the recommendations of the Special Rapporteur on the situation of human rights defenders and the necessary measures to its
40. recognition and protection, guaranteeing that the human rights violations are timely, effectively and independently investigated (Spain);
68. Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including Dalits and Adavasi, and right to information activists (Norway);
Allow the visit of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, whose request had been pending for 18 years, in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC (Hungary);
69. Continue cooperating with the United Nations and other international organisations and share good experience and practices with other countries in order to overcome the remaining challenges (Lao People's Democratic Republic);
70. Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training (Thailand);
71. Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled

castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens (United States of America);

72. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan);
73. Address the inequities based on rural-urban divide and gender imbalance (Botswana);
74. Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled tribes and minorities are well achieved (Ghana);
75. Continue working on the welfare of children and women (Nepal);
76. Continue the procedures and measures taken to enable women to be equal partners and participants in development (Qatar);
77. Continue to promote the right to equal opportunity for, and at, work (Holy See);
79. Continue its legal efforts in the protection of women and children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities (Iran);
80. Improve women empowerment and emancipation, and provide them with a bigger role to play in the society (Kuwait);
81. Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination (Bahrain);
82. Review the budgets and social laws taking into account gender issues (Morocco);
83. Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's' rights (Venezuela (Bolivarian Republic of));

84. Continue to promote its many initiatives for the eradication of all forms of discrimination against women (Trinidad and Tobago);
85. Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings (Chile);
86. Continue following-up on steps taken to eliminate discrimination against women, including through awareness raising and continuous strengthening of the relevant legal and institutional frameworks (Egypt);
87. Continue to promote the rights of women in their choice of marriage and their equality of treatment independently of caste and tribe or other considerations (Holy See);
88. Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls (Liechtenstein);
89. Study the possibility of eliminating any criminalisation of same sex relations (Argentina);
90. Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment (Canada);
91. Establish a moratorium on executions with a view to abolishing the death penalty (Ireland);
92. Abolish capital punishment and commute existing death sentences to life imprisonments terms (Slovakia);
93. Respect the *de facto* moratorium on the death penalty which had been in place since 2004 (Spain);
94. Consider abolishing the death penalty or establishing a moratorium (Chile);

95. Maintain *de facto* moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to definitive abolishment of the death penalty (France);
96. Introduce as quickly as possible a *de jure* moratorium on executions (Belgium);
97. Adopt a *de jure* moratorium on capital punishment with a view to abolishing the death penalty (Italy);
98. Establish an official moratorium against the death penalty and take the necessary measures in view of its abolition (Switzerland);
99. Study the possibility of repealing the death penalty from its legal regime (Argentina);
100. Make the *de facto* moratorium into a permanent one with a view to abolishing the death penalty (Norway);
101. Consider adhering to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (Portugal);
102. Take effective measures to dissuade child marriage and to protect the fundamental rights of the children (Switzerland);
103. Take more efforts to prevent children from sexual exploitation and separation from families, and give them the opportunity and assistance to grow up in an environment of freedom and dignity (Bahrain);
104. Introduce legislation to prohibit corporal punishment of children in all settings (Liechtenstein);
105. Adopt comprehensive legislation on fighting all forms of sexual harassment in relation to women and children (Kyrgyzstan);
106. Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse (Mexico);
107. Accelerate its efforts on combatting human trafficking (Iran);
108. Reinforce efforts to protect and rehabilitate the victims of trafficking (Ukraine);

109. Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country (Belarus);
110. Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge (Paraguay);
111. Implement monitoring mechanisms to stop people trafficking (Holy See);
112. Ban all forms of child labour for children from ages 6 to 14 (Ireland) and ratify ILO Conventions No. 138 and no. 182 (Ireland);
113. Amend the Child Labour Act to ban child labour, and to sign and ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments (Norway);
114. Continue the implementation of the national child labour project aiming at the rehabilitation of child labourers (Angola);
115. Extend the minimum age to 18 years for any form of labour that prevents children from accessing a full education (Ireland);
116. Implement the recommendations included in the OHCHR report on street children (A/HRC/19/35) (Hungary);
117. Continue to carry out policies aimed at improving its judicial system, reforming the law enforcement bodies and reducing the level of crime and corruption (Russian Federation);
118. Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other casts (Holy See);
119. Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture (Spain);
120. Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations (France);

121. Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders (Iraq);
122. Further promote equal access to justice for all , including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized, as well as increasing the use of alternative measures to pre-trial detention (Thailand);
123. Take legislative action to ensure every person's right to freely choose one's religion in line with the Indian Constitution and effectively and swiftly prosecute acts of violence against religious minorities (Austria);
124. Abolish anti-conversion laws in relation to religion and grant access to justice to victims of religious violence and discrimination (Italy);
125. Strengthen the Federal Government's effort to guarantee freedom of religion to everyone in this world largest democracy (Holy See);
126. Ensure that measures limiting freedom of expression on the internet is based on clearly defined criteria in accordance with international human rights standard (Sweden);
127. Ensure a safe working environment for journalists and take proactive measures to address the issue of impunity, such as swift and independent investigations (Austria);
128. Align its national regulations with the ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments (Hungary);
129. Continue its efforts and actions in promoting social security and labour policy (Iran);
130. Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities (Viet Nam);

131. Take the necessary measures to ensure birth registration on a universal basis, particularly for persons living in extreme poverty, belonging to religious minorities or in remote areas (Mexico);
132. Ensure timely registration of all births (Holy See);
133. Continue its measures in order to increase opportunities for consultations on child rights issues with relevant stakeholders (Iran);
134. Make efforts to eliminate the large gap that exists between the rich and the poor (Chad);
135. Allocate more resources in sectors that provide basic services such as health, education and employment opportunities (Malaysia);
136. Introduce a strategy to promote food security (Saudi Arabia);
137. Continue to implement plans adopted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums (Algeria);
138. Ensure that every household enjoys the right to safe drinking water and sanitation (Slovenia);
139. Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas (Myanmar);
140. Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children (South Africa);
141. Continue consolidating its programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost wellbeing of its people (Venezuela (Bolivarian Republic of));
142. Continue efforts to eradicate poverty and to better living conditions as well as increase job opportunities (Kuwait);
143. Further strengthen the efforts in poverty eradication, paying special attention to the rural population (Myanmar);
144. Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of its people, especially women and children (Singapore);

145. Continue encouraging socio economic development and poverty eradication (Cuba);
146. Continue its efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health (Saudi Arabia);
147. Establish measures at the national and state level to remove obstacles in terms of access by the population to pain palliative medicines (Uruguay);
148. Provide every possible support and assistance to the national project for rural health to increase the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene; (United Arab Emirates);
149. Meet the stated commitment from the Common Minimum Program of 2004 to dedicate 3 percent of India's GDP to health and 6 percent to education (Slovenia);
150. Take further practical steps to reduce the high level of maternal and child mortality, inter alia, through better access to maternal health services (Austria);
151. Further efforts towards addressing the challenge of maternal and child mortality (Egypt);
152. Strengthen its efforts to improve maternal health and acts to effectively balance the skewed sex-ratio among children, including by combating female foeticide (Norway);
153. Take further measures to ensure all women without any discrimination access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services (Finland);
154. Contribute to further reduction of maternal mortality through the establishment of an independent organ to accelerate programmes and projects in this area (Honduras);
155. Intensify its efforts to sensitize and train medical professionals on the criminal nature of prenatal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice (Liechtenstein);

56. Take effective measures to fully implement National Rural Health Missions (Honduras);
157. Continue to strengthen its programmes and initiatives geared towards guaranteeing the rights to health and education (Cuba);
158. Redouble its efforts in the field of education and health (Senegal);
159. Increase the budget allocated to health from 1 percent of the GDP to 2 percent (Luxembourg);
160. Further promote children's right to education (Greece);
161. Reinforce its efforts in provision of free and compulsory primary education (Slovakia);
162. Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all the girls and boys in its country (Ecuador);
163. Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far (Japan);
164. Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities (Mexico);
165. Continue its efforts to promote the right to children's education and ensure the importance of the principles of children's education in the country (Qatar);
166. Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children (Australia);
167. Ensure better protection for persons with disabilities and the elderly (Senegal);
168. Carry on its efforts in environmental and health policies, and continue to enforce its legislative measures on food security (Iran);
169. Continue its efforts to achieve balance between its counterterrorism strategies and the need to forestall the spread of xenophobia (Trinidad and Tobago).

Recommendations Accepted by the Government of India

Recommendations

Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.

(South Africa)

Continue with action to include human rights education in the school curricula.

(Sri Lanka)

Take effective measures to dissuade child marriage to protect the fundamental rights of the children.

(Switzerland)

Further promote equal access to justice for all , including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized.

(Thailand)

Continue to promote its many initiatives for the eradication of all forms of discrimination against women.

(Trinidad and Tobago)

Reinforce efforts to protect and rehabilitate the victims of trafficking.

(Ukraine)

Implement monitoring mechanisms to stop people trafficking.

(Holy See)

Accelerate efforts on combating human trafficking.

(Iran)

Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.

(United Arab Emirates)

Continue consolidating programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost well-being of its people.

(Venezuela)

Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.

(Venezuela)

Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities. (Viet Nam)

Continue the implementation of the National Child Labour Project (NCLP) aiming at the rehabilitation of child labourers. (Angola)

Study the possibility of eliminating any criminalisation of same sex relations. (Argentina)

Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children. (Australia)

Take further practical steps to reduce the high level of maternal and child mortality, *inter alia*, through better access to maternal health services. (Austria)

Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination. (Bahrain)

Take more efforts to prevent children from sexual exploitation and separation from families and give them the opportunity and assistance to grow up in an environment of freedom and dignity. (Bahrain)

Continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs. (Belgium)

Address the inequities based on rural-urban divide and gender imbalance. (Botswana)

Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)

Make efforts to eliminate the large gap that exists between the rich and the poor. (Chad)

Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education. (Cuba)

Continue encouraging socio-economic development and poverty eradication. (Cuba)

Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country. *(Ecuador)*

Further efforts towards addressing the challenge of maternal and child mortality. *(Egypt)*

Further coordination among relevant national authorities and human rights institutions. *(Egypt)*

Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks. *(Egypt)*

Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved. *(Ghana)*

Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). *(Greece)*

Further promote children's right to education. *(Greece)*

Strengthen the Federal Government's efforts to guarantee freedom of religion to everyone in this world's largest democracy. *(Holy See)*

Take effective measures to fully implement National Rural Health Mission (NRHM). *(Honduras)*

Enhance the coordination of both [the central and state governments] in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act. *(Indonesia)*

Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities. *(Iran)*

Carry on efforts with respect to environmental and health policies, and continue efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS). *(Iran)*

Continue measures to increase opportunities for consultations on child rights issues with relevant stakeholders. *(Iran)*

Continue efforts and actions in the promotion of social security and labour policy. *(Iran)*

Improve training on human rights on addressing law enforcement especially by police officers. *(Iraq)*

Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas. *(Malaysia)*

Continue efforts to eradicate poverty and better living conditions as well as increase job opportunities. *(Kuwait)*

Improve women empowerment and emancipation, and provide them with a bigger role to play in the society. *(Kuwait)*

Continue cooperating with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges. *(Lao PDR)*

Introduce legislation to prohibit corporal punishment of children. *(Liechtenstein)*

Allocate more resources in sectors that provide basic services such as health, education and employment opportunities. *(Malaysia)*

Re-examine the budgets and social laws taking into account gender issues. *(Morocco)*

Further strengthen the efforts in poverty eradication, paying special attention to the rural population. *(Myanmar)*

Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas. *(Myanmar)*

Continue working on the welfare of children and women. *(Nepal)*

Continue including civil society participation in the UPR process. *(Nicaragua)*

A fully integrated gender perspective in the follow up of this UPR. *(Norway)*

Continue its efforts with regard to education for children and take the necessary measures to allow women to participate on an equal footing with men in all developmental efforts. *(Qatar)*

Introduce a strategy to promote food security. *(Saudi Arabia)*

Redouble its efforts in the field of education and health. (Senegal)

Ensure better protection for persons with disabilities and the elderly.
(Senegal)

Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children. (Singapore)

Reinforce efforts in provision of free and compulsory primary education.
(Slovakia)

Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse. (Mexico)

Continue to promote the right to equal opportunity for work and at work.
(Holy See)

Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations. (Holy See)

Ensure a safe working environment for journalists. (Austria)

Continue efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health. (Saudi Arabia)

Strengthen its efforts to improve maternal health and act to effectively balance the skewed sex-ratio among children, including by combating female foeticide. (Norway)

Take further measures to ensure that all women without any discrimination have access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services. (Finland)

Intensify its efforts to sensitize and train medical professionals on the criminal nature of pre-natal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice. (Liechtenstein)

Strengthen legislations to combat sexual offences against minors. (Algeria)

Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy.
(Sweden)

NHRC recommendations emanating out of a meeting of the Health Secretaries of all States/UTs on Illegal Medical Practice and Health Care Facilities in the Tribal Areas held on 29 January 2010

- (i) There is a need to adopt a uniform, humane and non-discriminatory approach in the existing public health care system so that the tribal, rural and disadvantaged sections of the society are not deprived of basic medical facilities and health care in the country. An approach of this kind would remove inequalities in health care and ensure that health care is available and accessible to one and all.
- (ii) State Governments/Union Territories should gear-up their machinery to take action against illegal medical practitioners and quacks by prosecuting them under the prevalent laws, rules and regulations. Wherever absent, the States/UTs to put in place legal framework for effective action against illegal medical practitioners/quacks.
- (iii) All the States/UTs should put in place a monitoring system for anti-quackery actions. In addition, they should have a system of periodic review of the actions taken on this issue from time to time.
- (iv) In order to check the menace of illegal medical practitioners and quacks, the Central Government should bring out the Anti-Quackery Bill providing provisions for stringent punishment for the people indulging in such medical malpractices.
- (v) The role of professionals in health care, especially in tribal and rural areas should not be underestimated. The current trend followed in many States/UTs of providing training to illegal practitioners/quacks to upgrade their skills and having doctors with different qualifications to substitute doctors in rural and tribal areas should not be promoted as it is a discriminatory action.

- (vi) Lack of qualified medical and para-medical staff in rural areas provides an opportunity to the quacks to exploit people. Therefore, qualified medical and para-medical staff should be provided in rural areas and special incentives may be provided to encourage them to work in rural areas.
- (vii) There should be a review of the existing Acts, Rules and Regulations by the Central Government and the same should be suitably amended to provide for a strong legal framework for an effective and speedy action against malpractices in health care system.
- (viii) Inaccessibility to health care is not the only problem in tribal areas as different tribals living in different geographical regions have peculiar and specific problems related to their environment. These problems of different tribals spread over different geographical regions need to be addressed with region specific approach while providing basic health care facilities to them. The health care system should be tailor-made to suit local area situations.
- (ix) In order to improve the existing health care facilities in tribal areas in the country, there is a need to provide a multi-pronged approach by various Ministries/Departments of all States/UTs.
- (x) There is a need for convergence of efforts by all the related agencies to promote health care system in the tribal regions of the country like supply of potable drinking water, adequate sanitation and hygiene, healthy food, etc.
- (xi) There is a need to replicate some of the good/best practices in standardized health care facilities, available in tribal areas of some of the States/UTs, in other tribal regions. The concerned Ministries in the Central Government should facilitate this process.
- (xii) State/UT Government should put in place an incentive system to encourage medical and para-medical staff to work in tribal areas. This may include both financial and career progression incentives.
- (xiii) There is need to create awareness among the public and healthcare providers on regular basis.

- (xiv) There is need to strengthen the surveillance and monitoring system to curb the manufacturing and supply of spurious/fake drugs in the country.
- (xv) The drug inspection system also needs to be strengthened and streamlined in the country. The appointment of Drug Inspectors in States / UTs should be in proportion to number of pharmacies which are increasing day by day.
- (xvi) It was recommended that facilities for drug testing laboratories should be augmented with setting up of new labs with latest technologies and wherewithal. This would facilitate testing of samples in a time-bound manner.
- (xvii) A system of seeking feedback from consultants/medical practitioners needs to be evolved for assessing the quality and efficacy of drugs and result of such assessment may be placed in public domain for general awareness of masses.
- (xviii) It is important to spread awareness about the supply of spurious/fake drugs among the public at large. The States/UTs should therefore conduct necessary programmes to create awareness among the masses.
- (xix) There is a need to examine the existing public medicine purchase system. The system of purchasing medicines from reputed manufacturers needs to be encouraged by all States/UTs. The focus should be on the quality of medicines rather than the cost of it.
- (xx) There is an urgent need to monitor the overall functioning of the pharmacies in the country by the concerned authorities.

NHRC Recommendations on Preventive, Remedial, Rehabilitative and Compensation Aspect of Silicosis

Preventive Measures:

1. The occupational health survey and dust survey on half yearly basis may be made mandatory in suspected hazardous industries. All the enrolled workers must be medically examined before entering into the employment. The workers should be clinically examined with Chest radiography and pulmonary function test to rule out any respiratory disorder.
2. State/UT governments should encourage development and promotion of various cost-effective engineering control measures to manage silica dust through surveillance of processes or operations where silica is involved.
3. Implementation of precautionary measures including the protective gears for the workers of silicosis-prone industries may be made mandatory by the concerned enforcement authorities.
4. Dust control devices should be installed to reduce the dust generation at the workplace. National Institute of Occupational Health (NIOH) has developed control devices for agate, grinding and quartz crushing industries based on the principle of local exhaust ventilation. The use of wet drilling and dust extractors may be enforced by respective regulatory authorities.
5. The workers vulnerable to silicosis need to be made aware of the disease through wide publicity campaigns with the use of electronic and print media. This will also improve self responding of cases and facilitate early detection.

6. Silicosis is a notified disease under Mines Act 1952 and the Factories Act 1948. Silicosis may also be made a notifiable disease under the Public Health Act. As such all district/primary health centres/hospitals in the country will have to report the cases/suspected cases of silicosis to the Government.
7. There is a necessity to develop Master Trainers to impart training to all public health doctors/paramedics for early diagnosis and detection of silicosis.
8. Less hazardous substitutes to silica should be found out for use in place of silica.
9. Industrial units which are silica-prone should have an Occupational Health and Safety Committees (OHSC) with the representation from workers and Health Care Providers.
10. Silicosis control programme should be integrated with already existing Revised National Tuberculosis Control Programme (RNTCP).
11. A mechanism to have intersectoral coordination among departments such as Ministry of Health & Family Welfare, Ministry of Labour & Employment, Directorate General of Factory Advice Services Labour Institute, national Institute of Occupational Health, Tuberculosis Association of India and civil society organizations to evolve an appropriate strategy to deal with the dual problems of silicosis and tuberculosis may be set up at the center and state level.

Remedial Measures:

1. In each of the district where silicosis-prone industry, quarrying or a big construction projects exit, there is a need to identify a facility for diagnosis of silicosis.
2. The District Tuberculosis Officer must collect and maintain accurate information and documentation on the number of workplaces and workers at risk from silica exposure.
3. The accountability for the implementation and control over the rules & regulation of laws must be reviewed time to time.

4. The National /State Social Security Board set up under The Unorganized Worker's Social Security Act, 2008 should recommend welfare schemes to be formulated for the welfare of the unorganized workers who are at the risk of contracting silicosis as well as those already affected and their families.
5. The Central Government may consider extending the Rashtriya Swasthya Bima Yojna, a health insurance scheme for BPL families and extended subsequently to some other vulnerable groups, to the workers at risk of contracting silicosis and their families.

Rehabilitative Measures:

1. The treatment cost of the silica affected person including permanent, temporary or contractual worker should be borne by the employer. The district administration should ensure its implementation and treatment.
2. The victims of silicosis should be rehabilitated by offering an alternative job or a sustenance pension if they are unable to work.
3. NGOs should be involved in monitoring and implementation of the programmes initiated for the benefit of silica exposed workers.
4. Appropriate counseling should be provided to the person affected by silicosis.

Compensation:

1. The silica affected person should be adequately compensated.
2. Silicosis is a compensable injury enlisted under the ESI Act and the Workmen's' Compensation Act. Therefore a separate Silicosis Board similar to the one set up by the Government of Orissa may be formed in every State. The guidelines and model calculation of compensation may be framed under the ESI Act and the Workmen's Compensation Act.
3. The Board can carry out surveillance of silicosis cases and assessment of disability/loss of earning capacity resulting from the diseases for the purpose of compensation and rehabilitation.
4. The compensation could be calculated based on Disability Adjusted Life Year (DALY) developed by World Health Organisation.

Decisions and suggestions emanating from the National Conference on Silicosis held on 1 March 2011 at New Delhi

- All State Government should complete a detailed survey of the industries within 6 months, unless specific period indicated by the Commission as in case of some States.
- The Commission to call review meetings of concerned officials of few a States in batches every two months.
- Silica detection equipment should be provided to factory inspectorate to identify industries producing silica.
- Survey should be divided into two parts. Apart from survey of workers, in silica producing factories, quarries etc, survey of ex-workers is needed.
- Silicosis Board of Mandasor pattern should be extended to affected districts of all States.
- Need to differentiate between relief and compensation
- In MP, the status of victims is very poor and ill and therefore, NHRC recommendation of granting sustenance pension should be implemented early.
- All affected persons should be treated as BPL.
- Separate programme specially targeting silicosis victims should be designed which should cover health education as well as livelihood / social security.
- Earlier recommendations made by CPCB and DGFASLI made on behest of NHRC should be implemented.

- When a victim suffering from Occupational Disease dies, ESIC is to be notified before the last rites are performed to ascertain the cause of death. They also want a post-mortem to be done. It is difficult for the people from poor strata of the society to follow the process involving police. Also, it is not in line with the culture to keep the body for a long time before funeral. This stipulation, therefore, requires change.
- Method of diagnosis should involve: 1st Step Screening of persons who worked in silica dust producing factories and have symptoms like cough and breathlessness. 3 simple questions - (a) Are you breathless? (b) Have you worked in a “high risk industry” - to be defined; (c) Did you have the symptoms before starting work? 2nd Step - Medical examination and chest X-rays by doctor at designated “X-ray” center. 3rd step - Sending of X-rays to expert readers for final opinions.
- Comprehensive strategy to check migration should be designed which can include modifications in the MGNREGA scheme to provide more number of wage days.
- Many hazardous factories are still working, they should be closed.
- State should initiate criminal proceedings against the factories under the provisions of IPC and Factories Act where the labourers have contracted silicosis.
- DGFASLI should give standard questionnaire to all States. This should include name, address etc, work history - worked/is working in identified industries, duration of work, hours of work each day, type of work done, level of dust exposure, wages received, symptoms related to chest, wasting, weight loss, record of employment etc.
- Silicosis is a public health issue and it should be taken up at national level.
 - ◆ Govt. of MP has done some relocation of industry from residential area to industrial area successfully. This may be replicated elsewhere.
 - ◆ Gujarat High Court has passed order to the effect that all cases of silicosis be given 100% disability. ESIC should resolve to make it a rule.

- All State Factory Inspectorate should have at least one industrial hygiene expert.
- ESI Act is applicable to units employing less than 10 in Mandsaur. This should be extended to the whole of India.
- All civil hospitals should have OPD for occupational diseases.
 - ◆ Moreover, a worker may not have required legal documents to support his employment like identity card or attendance card or pay slip as well as length of exposure, when he is out of employment. This stipulation, therefore, requires change.
 - ◆ Functioning of separate cell under NRHM/state health department should be started.
 - ◆ Introduction of special courses of “Environment & Occupational Health” for the Junior Doctors and interns which has to be initiated by the State Government
 - ◆ Immediate recruitment of certified surgeons, radiologists and chest specialists and their capacity building & training arrangement to be made on dust diseases as per WHO and ILO standard.
 - ◆ Setting up of the Occupational Disease Diagnosis Centre (ODDC) at district level ESI, Government hospitals and NRHM centers at different location.
 - ◆ Limiting exposure to harmful dusts can be achieved further by suppressing dust generation, filtering or capturing dust particles, diluting the concentration with fresh air, and using personal protective respiratory equipment as further possible means of the preventing silicosis.
 - ◆ All the workers migrating to one State to Other state could be given identity cards to make it easier for the treating doctors to get the history of the work place, their exposure to silica dust, working conditions and health conditions of the workers.

NHRC recommendations from the National Seminar on Prison Reforms held on 15 April, 2011

I PRISONERS' RIGHTS

Overcrowding

1. To reduce overcrowding, provisions in the statutes (in terms of parole, bail, furlough, short leave and appeal petitions, etc.) should be exercised liberally by the concerned officers in each of the jails.
2. A jail committee may be constituted, having representatives from the inmates, to assist the jail authorities in the cases of paroles, completion of bail documents, release of the inmates who have completed punishments and filing of the bail applications by the inmates in the court, etc.
3. Financial status of the prisoners should not go against them. Legal assistance to prisoners must be provided— particularly for those who are not in a position to bear the cost.
4. Availability of time for prisoners to discuss their cases with their lawyers must be ensured.
5. Repatriation of cross-border prisoners, especially in case of Bangladeshi prisoners, should be ensured as well.

Skill Enhancement/Capacity Building

6. The energies of the prisoners, who are behind bars for 24 hours, should be channelized into constructive work. The educational programmes could be upgraded for both male and female prisoners.

Student prisoners may be encouraged to continue their studies and to take examinations.

7. Vocational training should be enhanced by imparting computer skills, horticulture, agriculture, etc.
8. The model of skill training and campus placement of inmates, initiated by Tihar Jail Administration recently, may be replicated in other jails.

Health and Sanitation

9. The health care system of jails should be improved. There should be medical examination of the prisoners at the time of their entry to the jail in the prescribed format and thereafter, a regular check-up may be undertaken by the jail authorities. The records of the prisoners may be maintained properly.
10. Better sanitation facilities, hygiene and potable drinking water should be provided in all prisons.
11. The prison conditions should be made more humane for the women, the aged and the mentally ill prisoners. Regular medical check-ups should be ensured and provisions should be made that the mentally ill prisoners and high risk prisoners are kept separately.
12. The jails should be provided with mechanical cleaning, treatment and maintenance of sewage plants so that the septic tanks do not have to be manually cleaned by the prisoners.
13. Regular meditation and yoga may be conducted on a regular basis for the benefit of all prisoners. Assistance may be sought from NGOs in this regard.
14. Proper sanitation facilities and construction of new toilets may be taken up at the earliest.

Women Prisoners

15. Women prisoners should be escorted by women staff only.
16. Frequent opportunities may be provided for women prisoners to meet or unite with their families to address their concern.

17. The Guidelines of the Supreme Court for the children of women prisoners mentioned in the case of RP Upadhyay vs. State of AP and Ors should be followed strictly.

Prison Visits

18. Closing time for the prisoners may be advanced/increased, to allow them some time to spend in the open.
19. Timings in supply of meals should also be revised as these are mostly based on the Old Prisons Act, 1894.
20. The Mulakat time may be fixed on phone, so that people may not have to come personally and wait for longer hours.
21. The family members of the prisoners should be allowed to meet on Sunday so that they do not have to take an off, on working days.

II PRISON MANAGEMENT

22. Every jail must have an effective grievance redressal system.
23. Process of Modernisation of Prisons, as devised by BPR&D should be given the highest priority.
24. For an appropriate functioning of the prison administration and for the protection of the rights of the prisoners, it must be ensured that sanctioned posts (officers and medical staff) in the prisons are filled-up on priority.
25. Self-sustainability of prisons should be encouraged by strengthening the prison industries. The model of Tihar Jail may be followed in this regard.
26. State Jail Manuals should be reviewed on a periodical basis to confront the new challenges.
27. Public private partnership model (in many countries) in prisons may be encouraged and followed in jails across the country. However, the experiment should be exercised with caution in view of their profit making objective.

III PRISON SERVICE/OFFICERS

28. Creation of a National Cadre of jail service and training/refresher courses for the prison officers on priority.

IV NHRC SPECIFIC

29. NHRC may undertake review of the status of implementation of recommendations and guidelines issued by it on Prison Reforms, so far.
30. Micro studies may be conducted by organisations to unearth the ground reality and to procure evidences with an intention to bring about a substantial change in the conditions of prisons.
31. NHRC may re-initiate its interventions on prison - visits/Board of visitors'.

V MISCELLANEOUS

32. Arrests under NDPS, Section 498-A, and preventive detention should be exercised by the police with restraint and with right intent, to reduce further impact on already crowded prisons.
33. Scientific classification of prisoners may be done in terms of age, type of crime committed and health, for better handling of prisoners and improved prison management.
34. The nomenclature of prisons may be changed to Correctional Homes to emphasise that the focus is on reformation rather than punishment.
35. Sharing of best practices should be encouraged, to learn and follow from each other, in terms of computerisation of prison records, prison panchayats, mobility, infrastructure, education, connectivity, reorganization of jail industries, safety and security of prisoners, modernisation and mechanisation of kitchens and providing hygienic food, electronic surveillance, cultural programmes, fixing the mulakat time on phone, health care facilities etc.
36. Privatisation of some of the duties like catering and escorting of prisoners may be considered to reduce the burden on prison administration. This is followed in advanced countries.
37. Presence of prisoners in courts may be done through video-conferencing.
38. Wages to the prisoners for the work done by them in prison industries be paid in accordance with the Minimum Wages Act.

NHRC recommendations which emerged from the National Seminar on Bonded Labour held on 30 September 2011

1. Implement the existing laws on bonded labour and other related laws in letter and spirit. Rehabilitation funds to be disbursed in a timely manner with participation from worker, employer, State/UT governments, monitoring bodies such as NHRC, ILO and civil societies.
2. Provide training to the police and the judiciary at the State and district level to sensitize them on the issue of bonded labour.
3. Minimum Wage Act, the Workmen's Compensation Act, the Inter-State Migrant Workmen Act, Child Labour (Prohibition & Regulation) Act and the Bonded Labour System (Abolition) Act should be converged and enforced to protect victims.
4. State/UT Govt should/may adopt the Standing Operating Procedures (SOP) for developing mechanism through the labour department for registration of Brick Kilns and procedures for proper application by the enforcing agencies
5. Enforcement of the law on minimum wages and strengthening of Public Distribution System should be undertaken immediate to minimise the circumstances, which force the workers to get into that bondage. Minimum wages should be applied in all sectors including informal sector
6. DMs should have positive and proactive attitude and approach towards abolition of bonded labour system and should exercise their powers judiciously, diligently and with empathy and sensitivity as empowered under Section 10, 11 and 12 of the Bonded Labour System (Abolition) Act, 1976. Convergence should be affected

between Govt. Departments and also with NGOs. The Deputy Commissioners would be the Centre of Convergence efforts in regard to all actions relating to bonded labour.

7. Vigilance Committees at the District and Sub-Division level should be constituted wherever not in place. These Vigilance Committees should be reorganized and activated and their meetings should be more frequent. The minimum number of meetings and the format for the VCs to submit minutes and information on a periodic basis have to be specified by separate notifications and these must be strictly enforced
8. With the assistance of NGOs and Social Action groups, surveys in bonded labour prone areas to be undertaken by the Vigilance Committees. These Vigilance Committees must conduct field survey by adopting a non-formal, unorthodox and non-threatening approach.
9. All the pending cases filed under the Bonded Labour System (Abolition) Act, 1976, be disposed off immediately by taking recourse to summary trial and to issue release certificate in favour of those who are found to be having bondage. A release certificate to each of the bonded labourers so released must be issued forthwith by the concerned Collector/DM or the SDM or the Executive Magistrate vested with such powers. The certificate would be handed over to the persons so released simultaneously in a language known to him or her.
10. Panchayati Raj Institutions should play a vital role in the process of eliminating bonded labour system. Proper training for sensitization of Tehsildar, Gram Panchayat Secretaries, police officials and revenue officials may be given.
11. An adequate and timely release of the funds to State/UT Govts should be ensured by the Union Govt. The Union Govt may devise a new mechanism to ensure timely release of funds without any delay.

Recommendations/Suggestions from the National Conference on Leprosy held on 18 September 2012

- There is need to give wide circulation to the principles and guidelines prepared by the Human Rights Council and which emphasise that persons affected by leprosy and their family members should be treated as individuals with dignity.
- State Governments must take steps to eradicate discrimination being faced by persons affected by leprosy by developing appropriate IEC material and ensure its wider dissemination.
- There is need to generate awareness on the issue of leprosy by way of organising training programmes, workshops, lectures, nukkad nataks, TV spots, radio talks, puppetry, etc. for all sections of the society.
- The discriminatory provisions in central and state laws affecting Civil and Political Rights and Economical, Social and Cultural Rights may either be repealed or suitably amended. Research study would be carried out to suggest suitable changes.
- Leprosy affected persons should be given proper care treatment in all the hospitals without discrimination.
- In order to provide an enabling environment for leprosy affected persons and their families, there should not be separate colonies for leprosy affected person. Efforts must be made to settle them in the mainstream society by allocating lands and housing. They should live in a sporadic manner in the society.
- The State Governments must take steps to improve living conditions in the colonies where people affected by leprosy reside.
- Leprosy should be included in the school syllabus so that children are sensitive towards leprosy affected/cured persons and their families.

- The Central Government must ensure inclusion of persons affected by leprosy in the poverty alleviation schemes.
- There is a need to provide adequate and reasonable level of pension to persons affected by leprosy keeping the best practice followed by government of Delhi as a model.
- There is a need to review criteria of minimum requirement of 40% per cent disability under the PWD requirement Act, 1995 for persons affected by leprosy to obtain disability certificate. Most of the LAPs are having 30% disability and hence are not eligible for disability certificate.
- Employment in Government can be provided as is done in Karnataka where 130 Group D employees have been recruited. In Kerala, they are employed as hospital attendants. Such practices can be replicated.
- Steps must be taken to ensure easy availability of disability certificate to persons affected by leprosy by organizing special camps.
- The state must take steps to motivate the persons affected by leprosy in developing self-help groups for self-care like dressing of their ulcers.
- Leprosy affected and cured persons and their families should live a dignified life. For this, they need to be empowered with basic human rights like right to education, right to work, right to health, right to food, right to housing and other economic, social and cultural rights. They should have access to all these rights without facing any kind of discrimination.
- There are no leprosy specific schemes and these should be designed. There is no scheme for allotment of land to them. Further, reservation with in persons with disabilities is required as they are most vulnerable with little say.
- There is need for early detection and ASHAs may be provide incentive across the country as is being done in some States like Karnataka. This States also has Swarna Arogya Chatanya Programme for early detection which may be implemented elsewhere.

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BOOK REVIEW

World Development Report-2012-Gender Equality and Development

The International Bank for Reconstruction and Development/The World Bank, 1818, H Street NW, Washington DC 20433. Pp. xxiii + 426.

Professor (Dr.) Ranbir Singh *

A review of the WDR is no easy task. The massive resources available to the Bank are such that the apparent quality of the report is always very high. Literally hundreds of data gatherers, scholars, experts and consultative processes converge into the production of a World Development Report (henceforth referred to as WDR). The task of reviewing a WDR report gets even more complicated when the theme of the report is 'Gender Equality and Development'-because there is huge pressure to be 'politically correct' when it comes to gender issues.

It is against this background that the present reviewer makes bold to share a few thoughts which might stimulate some further reflection on a massive effort such as this WDR.

The main conclusion of this report is that women have gained immensely over the last quarter century in different ways across the globe. Yet there are persistent gender gaps that matter and these must be addressed by national governments with the help of the private sector, development agencies and civil society organisations.

None can quarrel with the main conclusions as mentioned above. But for readers who are engaged in the continuing discourse on 'Gender Justice' there is a natural temptation to look beyond the main conclusions and review some more details that agitate one's mind.

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The report has nine chapters spread over three parts—(1) Taking stock of gender equality. (2) what has driven progress? What impedes it? And (3) the role and potential for public action. (pages-50-51.)

I am thankful to Prof. Babu Mathew, Visiting Professor, NLUJ for his valuable inputs in preparing this book review.

Let us therefore begin this review by taking note of the gains identified by the WDR. Based on field research 19 countries and 500 focus group discussions the WDR takes note of gains pertain to ‘rights’, ‘education’, ‘health’ and ‘employment’. In addition the report takes distinct note of the key messages that emanate. These messages are the following:

1. *Productivity gains:* Women are already a substantial part of the global labour force and also constitute more than half of the world’s university students and therefore reducing the gender gap will itself increase productivity further.
2. *Improved outcomes for the next generation:* Greater control over household resources and improvements in education and health for women will translate into better outcomes for children as seen in four countries.
3. *Education enrollment:* Such that there are more girls than boys in secondary schools and even universities in a large number of countries.
4. *Life expectancy:* This has increased the life span of women by another 20 years than in 1960 in low income countries.
5. *Labour force participation:* Thanks to reduction in fertility over half a billion women have joined the world’s labour force over the last 30 years.

While taking stock the focus is on (a) endowments: education, health, land and other assets, (b) economic opportunities and (c) agency.

But the report is careful and so it also recognises many gender gaps. These are: more women than men die, fewer girls enrol in primary and secondary schools if they are from disadvantaged populations as in Sub-Saharan countries and parts of South Asia, women are discriminated when it comes to economic opportunities relating to land and labour and household resources. The way markets and institutions have functioned and the way growth has played out has a bearing on gender equality, poverty

and exclusion aggravates gender gaps and last but not the least it is globalisation that helps.

Even as we internalise these messages, the WDR report does not help us to understand deeper questions that affect the quality of life of citizens (including women) across the globe. There is a message that policies must target the root causes for gender gaps. By now we are familiar that the deepest root cause—relating to women's rights—is indeed patriarchy and its deep rooted practices that pervade the globe cutting across economic systems, religion, culture, caste, ethnicity etc. What we are not clear about is whether the gender gap is the only reason for poverty and whether it is enough to address this gap in order to overcome maternal mortality, child malnutrition, starvation, unemployment, disease and the whole range of vulnerabilities.

Is it possible or is it enough if we succeed in reducing gender equality within the enlarging universe of unprecedented human inequality. Can gender justice alone liberate human kind from the all round crisis in which even Western Europe is caught up? Is it not advisable to address multiple forms of exclusion alongside the question of gender justice? How come this WDR is so one-dimensional?

The Bank could perhaps respond by saying that the thrust of this WDR is about 'Gender Equality'. But that is not true. This WDR is about 'Gender Equality and Development'. The Achilles heal of this report lies in the fact that the report fails to go deeper into other relevant issues of development. Despite this being the leading tendency of the report—some issues do go beyond the dominant bias, e.g., the finding that less girls enrol from among disadvantaged populations than boys. Does this finding not require further investigation?

There is an attempt to analyse the correlation between gender equality and growth. The conclusion is that no definitive correlation can be established from cross country data and that what would be required is careful microeconomic work. (Box 0.1 at page 49)

It is stated that Part II (pages 98 to 143) constitutes the heart of the report. It contains the analysis and the effort to establish the correlation, if any between economic development and gender equality. For this it relies on three premises: the households, the market and institutions and society.

It is said that households make decisions about how many children to have, when to have them and how much to spend on education, health, etc. Here it would be interesting to note that in India it is the state of Kerala where we find the lowest birth rate, while growth, as popularly measured in neo-liberal terms is perhaps the least.

In seeking to understand the relationship between economic development and gender equality many implications are suggested. The suggestion that higher incomes can increase gender equality is one such. We must however note that higher growth in terms of GDP often results in much greater hardship and poverty at the level of the community whose terrain has contributed to the increased growth and higher income of those who benefit from such growth at the cost of many local communities.

Similarly in the context of markets and institutions, it would be interesting to look at local self-government institutions (Panchayati Raj). There are indications that in rural areas where land reforms are implemented, along with social movements that address the caste question, the ability of local self-government to function democratically and allow more space for women is substantially enhanced. These are examples where structural change in land relations of the non-market variety have yielded immense results and enhanced the potential for decentralised political institutions to play a much more constructive role in matters that have a bearing on the overall quality of life of the community including girls, and women through better education, better health care and higher mobility.

After adopting a strongly empirical approach with rigorous evidence based analysis the report comes to the conclusion that more careful work is needed, especially microeconomic study to establish a causal relationship between growth and gender equality. A global report like this one cannot attempt to provide in-depth analysis of specific country circumstances. Nor can it cover all relevant dimensions of gender equality.

Let us therefore reflect on a few India specific situation:-

(a) What about displacement?

The WDR says, "Against this background, globalisation has operated through markets and institutions to lift some of the constraints to gender equality and human capital, agency and access to economic opportunities. But the women most affected by existing constraints

risk being left behind in the absence of public action.” (at pg. 102 of WDR)

How about those situations where globalisation has created the opposite situation? Where the search for iron-ore or bauxite for the international market has led to the violation of national and state laws and where such violations were successful, led to unprecedented displacement. Is it not legitimate to ask what has happened to human rights and gender equality in such situations?

On the other hand women’s agency has been repeatedly manifested precisely in order to resist the onslaught of the market because of the experiential knowledge gained by local communities from their neighbouring communities over and over again. For them it is as clear as broad daylight that such displacement leads to utter ruination of all members of the community and perhaps adversely affect women and children more than their male counterparts for obvious social reasons.

- (b) What about the base of the pyramid?

Chapter three deals with Education and health. This chapter reminds Indian readers about what the Indian state does so often. Those in charge of ‘good governance’ themselves take the lead of elaborating on the drawbacks of the system often disarming the opposition with their diagnostic eloquence. Is not the WDR doing the same in respect of education and health?

There is no denial of the fact that better education and better health go a long way in empowering women. The question however is does the market and the ideology of globalisation help achieve these goals. It is quite clear that elitism is promoted best by the forces of globalisation. In India there are as many ‘classes’ of schools as there are strata of society. At the bottom of the pyramid are eleven lakh schools and this is where the excluded communities have a remote chance of sending their children for schooling. But these are schools where there are no toilets, especially for girl students, not enough class rooms and not enough teachers while the elite have access to schools that are comparable to the best in the world. Austerity measures which are so much a part of the current global agenda are

hardly the way towards universalisation of school education. Of course Public Private Participation was pushed as a panacea but so far they could hardly reach a few hundred schools despite open ended policy pronouncement by those in charge.

This is the same story for health. On the one hand there are enough 'Five Star Hospitals' for those who can afford and dysfunctional Primary Health Centres for the excluded. It is by now well known that even a family which is above the poverty line will fall below the poverty line, if there is one case in the family that requires hospitalisation. So whose economic policies are coming in the way of reducing gender inequality for the majority of Indians through education and health programmes? What prescriptions of globalisation are we talking about?

(c) What about 'Decent Work'?

In similar fashion the report highlights the increase in paid work for women. The labour force participation of young women (ages 20-24) increased almost two and a half times over 1995-2000—the expansion of employment opportunities for young women—linked to the growth of the garment industry, health services and social work—has increased girls school enrolment and increased female mobility—visible feminisation of public spaces. But in several situations this is not only accompanied with poor wages, often below the minimum wage level, lack of social security, nil respect for freedom of association, let alone collective bargaining and worst of all sexual harassment at the work place. In addition very often these new forms of employment are preceded by the destruction of earlier employments (of both sexes), especially in small scale enterprises, in which better conditions at work were already achieved. It is sad that this report makes no reference to either the 'Core Labour standards' or to 'Decent work' which the ILO seeks to promote while using gender as a cross cutting concern. This failure to refer to the gigantic efforts of the ILO during the era of neo liberalism is indeed a glaring drawback, if not a clearly manifest bias against genuine labour standards while the report focuses on gender gains on the labour front.

So also when we talk of Women's agency—indeed there are situations where such agencies have helped but there is also the opposite. Core

Labour Standards, which are binding even on countries that have not ratified the relevant conventions, are bound by the ILO declaration on the subject. Yet there are innumerable situations where the fundamental right of women to experience 'Freedom of Association' and thus exercise their agency is denied because of the new dogmatism related to 'flexible labour'.

(d) What about 'Inclusion vs. Exclusion'

The Report says that many changes have occurred because of the wave of global prosperity that has swept across much of the developing world. In what ways has this prosperity percolated to the vast majority of women to justify this analysis? In India yes—it has produced such results for the beneficiaries of neoliberal development,—i.e., for those women who belong to the middle class numbering about 300 million. But what about the women who belong to the remaining 900 million?

The report further says that unprecedented gains have been made for women in rights, human capital endowments and in access to economic opportunities. True and these are unprecedented not because of growth which has a long history in the developed world through the period of the golden age of capitalism—in other words these are not the gains of growth but the gains of the feminist movement.

Notwithstanding some troubling issues of the above nature, this WDR is no doubt a valuable report, especially, if it encourages each country to go beyond some of the sweeping global generalisations and undertake micro studies at the country level.

Globalisation, Democracy and Gender Justice

Editor M.R. Biju

Prof. J.S. Rajput*

Thomas Freidman presented in 2006 his treatise *The World is Flat* that included a chapter 'World is not Flat'. The book made an attempt to assess the impact of globalisation worldwide. Globalisation not only impacts but overwhelms the nations and the governments. Though the image of globalisation is still taking shape, none could remain outside the fold of the popular description that all of us are now part of a global village. Rightly so; everyone is now a neighbor of everyone else; distances and boundaries having vanished in more than one sense, thanks to ICT and its nearly all-pervading outreach. The glamour and glitter of globalisation, presented with ingenuity and foresight, attracts one and all: the likely victims and the known beneficiaries. Sitting in the office of the Infosys in Bangalore, Friedman looks around and finds huge high-rise structures and the billboards of the multinationals presenting scenario no different than that of a metropolis in US. Not only this, he observes that young persons in the office have adopted their short names from the country of their dream and they are making strenuous efforts to copy American slang in their articulation. Was it India or America, Friedman wonders. He leaves rest to Indians to ponder over without actually stating it explicitly. Over the last two decades India has experienced the impact and import of its policies of liberalisation, privatisation and of course, globalisation. It is the most appropriate stage to analyse these experiences in varied sectors and derive inferences that could become policy inputs, hopefully, to give the 'change' an orientation that distinguishes between the gainers and the losers. It could probably provide insight in strategies that would reduce the numbers of the deprived, displace and deficient. It is a tall order expectation. In this background, one finds the title of the volume under review very encouraging: "Globalisation,

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Democracy and Gender Justice”. Edited by an academic M.R. Biju it promises incisive insights in areas that are generally being deliberated upon frequently amongst various groups. The editor’s initial premise is: “The uneven and unequal nature of the present globalization is manifested in the fast growing gap between the rich and the poor people of the world and between developed and developing countries; and by the large differences among nations in the distribution of gains and losses.” His other premise is: “With the growing globalisation and liberalisation of the economy as well as increased privatisation of services, women as a whole have been left behind and not been able to partake the fruits of success”.

Before one enters the main body of the book; there is an element of surprise at least for the author of this review. The editor, immediately after listing his two above mentioned premise offers solutions: “Mainstreaming of women into the new and emerging areas is imperative. This will require training and skill upgradation in emerging trades, encouraging more women to take up vocational training and employment in the boom sectors. This will also require women to migrate to cities and metros for work. Provision of safe housing and other gender friendly facilities at work will need to be provided.” It requires some time out. Is urban migration the only solution for ameliorating the gender concerns? What happens to rural India? Shall it just get submerged on the peripheries of the knowledge parks and SEZ’s? Does such mindset really perceive analytically the solutions that are specific to India and are ‘rooted to culture and committed to progress’? Total urbanization is a western concept which, at least in foreseeable future, is just not pragmatically feasible in India. The pace of urbanization, no doubt, has increased but the problems and miseries that it is inflicting on the migrants as also on the rural economy and the traditional culture of India is to say the least just horrifying. Even in the West, thinkers and academics unequivocally accept that while change is all around and inevitable, not every change is coupled with progress. Further, there can be no single model of the ‘ideology of progress’ that may be universally applicable. Even in universalization of education which is globally accepted by all, strategies have to be region and country specific. Same applies to awareness generation and pursuing people on the need and necessity of educating their children. In India even community specific strategies became necessary. It is well known that all efforts to ensure teacher availability in schools of rural, far-flung, tribal, hilly and other difficult areas have greatly suffered because

even safe housing could not be provided to teachers; particularly to women teachers. It particularly impacted the presence of girls in schools and more so; after they attained the age of 10-11 years. Like every other country, India too is facing the crisis of the ideology of progress. To the globalization-allured, the only way out is to accept the Western model and remain in good books of those who are all out to control the economies globally. They have perfected their instruments of exercising influences by every possible means without much consideration for any values or ethics. The exploitative models have already created havoc and one could see it all around in India. Mining, exploitation of mineral resources and acquisition of farm lands in the name of development have ruined the life and livelihood of millions of families. A single visit to Noida/Greater Noida, projected and publicized as the most modern townships, would reveal the extent of sufferings inflicted on the displaced and deprived.

The need to have critical analysis of the impact of globalisation in the country specific context should indeed be a welcome addition and would certainly draw the attention of the academics and all others desirous of understanding a phenomenon that is impacting everyone. There is a serious need to alert the policy makers and implementers particularly in areas in which global crisis is causing considerable anxiety and apprehensions on the very future of the planet earth. Prominent areas of increasing global crisis already stand identified as economical, political, cultural, ecological and cultural. Market has assumed enormous proportions not only in magnitude but also in influencing the policy formulation through serious and often nontransparent liaison with politicians in power. It is now common knowledge that multinationals have acquired aura, influence and networking that enables them to make those in authority and decision making positions often dance to their tune. Market driven economy would encourage the producer to attempt all means and modes to further fuel the crass consumerism that has already cast a shadow on such practices and widespread human beliefs that encourage ethics and morals in commerce and business. When Mahatma Gandhi said that nature has sufficient to meet the needs of everyone but not the greed of anyone he was in fact issuing a futuristic alert. It was; sadly enough; totally ignored in his own country and that too by those in power and authority who swear by his principles. What particularly needs to be explored through research and learned work is the issue how India succumbed then policy dictates of the Western powers

without synchronizing external inputs with its own ideology of progress and development? One would like to search for an animated discussion on this aspect in scholarly works that are now available in good numbers emanating from practically every country. The present volume under review is one of such efforts.

Authors included in this edited volume have contributed in sectors of their expertise. The First two chapters deal with general aspects of globalisation including the context of India and also the myth and realities of globalisation .Free Trade Agreement, climate change and its impact on Indian economy; power sector reforms; Right to Information; social entrepreneurship; media; gender and political significance of the last general elections are included in the content list. It is evident and interesting that subtle intrusions in social and cultural arenas often escape the attention of even those who are supposed to have a comprehensive view and skills to visualise the future implications. What happens to cultural intrusion that has already made serious inroads in homes and hearths? How is education being impacted by the huge rush on the part of entrepreneurs and neo-rich on one hand and the concerns on the quality of learner attainments on the other? Unemployment amongst young persons results in so many problems. When coupled with exploitation it results in violent movements. The loss of local skills, crafts and lack of luster in agriculture has seriously impacted the chances of substantial progress in particularly in rural areas. External experts seem excited about the demographic advantage that India has in terms of its growing young population. It appears very attractive for the ageing societies. It does offer employment opportunities to thousands of young persons if they are suitably educated and trained in skills. That is not happening. Responses like rural employment guarantee scheme or unemployment allowance for a certain period could not be long term solutions. Every country has to evolve its own perceptions for its young persons to enable them to contribute effectively and creatively in the process of nation building. Unrestricted entry of software professionals in certain sought-after countries may appear very encouraging but that too faces internal resistance as is already visible in some countries like the US. Not all the countries that are signatories to WTO have opened their borders to jobseekers from everywhere else. There are limitations to dependence on the job market beyond the national borders.

A very pertinent point has been raised in the chapter on ASEAN-India Free Trade agreement. Signing the free trade in goods agreement with the Association of South East Asian Nations has evoked mixed reactions in India. The plantation sector appears particularly vulnerable. Planters of tea coffee and spices in southern India are very rightly apprehensive as cheaper imports from ASEAN countries under FTA would be detrimental to their interests. Several similar aspects have been discussed in the concerned chapter like how lower import duties on items such as coffee and pepper could lead to deluge of imports from ASEAN countries like Indonesia making Indian farmers vulnerable. The pros and cons of ASEAN are well illustrated. The same author discusses global climate change on expected lines. Industrialised nations though primarily responsible for high volume of carbon emissions but are unwilling to support the developing countries to enable access to green technology. This is a very critical sector as if the carbon emissions continue at the same level then it would cross the threshold in next twenty years and that may lead to climate catastrophe. India has its power requirements that could lead to increase in emissions but is taking up precautionary measures seriously the details of which have been spelt out in the National Action Plan on Climate Change. The detailed discussion on power sector reveals how the State Electricity Boards have failed miserably in performing their assigned tasks. How tough though essential and urgent, it has become to dismantle these. Power sector would require huge levels of ingenuity and innovations including commissioning alternative modes to meet the growing requirements.

The chapters on Right to Information, social entrepreneurship and elections represent one major current of change: citizens are now far more alert and conscious of their rights and also of the responsibilities. RTI has empowered citizens across the socio-economic divisions and this alertness has made the functionaries of the government comparatively more active and accountable. Attempts to dilute the RTI have been seriously resisted. One could be sure that its impact on programme implementation would become more intense in years ahead and transparency in the system would hopefully reduce the misery of citizens. The chapter on social entrepreneurship presents the conceptualization in the contemporary context which could have been strengthened if an in-depth discussion on traditional understanding of social responsibilities was also included. SEWA is a great success story and could claim credit to be a trail blazer in empowerment of

women. Media and gender in the democracy shall remain in serious discussion for decades ahead. There have been several impediments in giving equal rights to women. The Women reservation bill that promises 33% reservations in Parliament and state legislatures has now been pending for years. No one openly opposes it but they find out ways and means to scuttle it every time. The manner in which corporate culture, the film industry and the electronic media presents women is certainly not in consonance with the dignity of women and it just does not match with the image of womanhood in India. It is a poor copy of the Western culture. The manner in which women have been made a part of entertainment industry is a blatant denial of dignity of womanhood. The discussion on the elections to 15th Lok Sabha could have pointed out how promises are made just to be forgotten; not once but on umpteen occasions. It needs to be studied how the rise of regional and caste-combination based parties fit in the constitutional framework and how the preparedness of the nation is impacted or impaired when a weak and allies-dependent government comes to power.

The book attempts to take up some key issues that need awareness of the people as the globalization impacts everyone irrespective of any conceivable diversity. To a serious reader each of the area leaves a couple of queries and questions unanswered which; in a way; would prompt the reader to search for other sources as well. That is the best that this volume offers.

Quest for a Human Rights–Sensitive Police

Pupul Dutta Prasad*

Review of Human Rights and Police Administration', by Kamalaxi G. Tadsad and Harish Ramaswamy, Concept Publishing Company Pvt. Ltd., New Delhi.

The challenge of promoting and protecting human rights would have been easier had the idea of universal human rights been as universally acceptable as it is thought to be. The fact, however, is that human rights have to contend with hostility in different forms across many countries and cultures, including even democratic societies which boast of their firm commitment to the universal values. Elements within the State act as a drag on the progressive realisation of human rights. The police in India is widely perceived to be one such entity which has not yet fully warmed up to human rights, and remains sceptical of their impact on its efficacy. Notwithstanding the fact that there is no outright disavowal of human rights per se by the police, at least not publicly, that large majority of the police regards human rights as an encumbrance is no less pernicious. Therefore, human rights awareness and education of stakeholders definitely needs greater attention than hitherto given in order to improve this situation. The present book has, among other things, underscored the foregoing point by an empirical study supported by theoretical underpinnings.

The police is an indispensable agency of the State through which coercive powers synonymous with sovereignty are exercised. So critical is the role of the police that it has a direct bearing on the nature of the political system itself. An accountable democratic police seeking to maintain peace and public order and human rights has a democratising influence on the

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larger system of which it is a part. On the other end of the spectrum that the nature of the police can manifest, a repressive force with no compunctions in being a politicised tool in the hands of the rulers can unleash a reign of terror. These are not to discount the dialectical effect of the political process in shaping the nature of the police, but rather only to highlight the great potential power of the police. Therefore, how to make the police accountable and trustworthy enough to be seen as a bulwark of democracy and human rights is an enduring question all mature societies must continuously confront.

It is to the credit of the authors to have taken up a subject whose significance cannot be overemphasised: the interrelationship between human rights and police administration in India. Human rights in this country, as elsewhere, cannot be properly safeguarded unless the police as the ubiquitous arm of the state erodes human rights without any reservations. Violations of human rights by the police either in the name of fighting crime or maintaining security are a severe breach of the State's obligation towards its people which goes as far back as the Social Contract. The book under review, therefore, strongly recommends that the police should leave the uneasy relationship with human rights behind and become an ally instead of an adversary.

The reasons for the police administration to be instinctively wary of human rights, and vice-versa for human rights activists to be deeply distrustful of the police, cannot be appreciated without tracing the respective histories of human rights and the police. And this is what the authors do in the Chapters 2 and 3. Giving a historical account of the concept of human rights in a single chapter is certainly a lot of ground to cover. But the authors pull it off rather well. The tour d'horizon gives a fair taste of how contested the concept of human rights has been with various traditions or theories, e.g., liberal, libertine, Marxian, utilitarian, advancing their contending interpretations. The United Nations has certainly done a great service by helping crystallize the modern understanding of human rights in the form of international human rights instruments. The tumultuous evolutionary history of human rights and the ever-present hazards, however, make sure that human rights activists do not really take anything for granted. In this zealous guard of human rights, the question of ceding even an inch of ground to anyone, let alone the police, does not arise.

The police in India feels equally justified in taking an adversarial stance vis-à-vis human rights. With multitude of functions to perform like prevention and detection of crime, investigation of offences, maintenance of internal security, enforcement of myriad laws, collection of intelligence, regulation of vehicles, etc., the police says it has its hand full. It would much rather do without the instrument of human rights finding faults and creating hindrance in the discharge of vital duties of policing. A common refrain is that human rights have become such a nuisance that the police finds it difficult to perform and deliver results.

How widespread the above mind-set among the police is reflected in the results of a survey carried out by the authors. The survey reveals that more than 60% of the police personnel who were interviewed characterised the role of human rights in police functioning as interference. However, the authors do a less than emphatic job of repudiating a belief system that smacks of a deep-seated pathology in the police. Neither do they fully analyse the underlying reasons for the persistence of such a flawed thinking. It is all very well of the authors to have laid great store by education, training and orientation of police officers in the field of human rights. But to blame the police psyche exclusively on the lack of these inputs at the level of the individual, as witnessed in the findings and recommendations given by the authors, and ignore the systemic causes is to have proverbially missed the wood for the trees.

The task of policing in a country of India's dimensions, diversity, and complexity hardly has a parallel. To be fair, the Indian police has performed creditably and continue to do so. In fact, one has to feel for the police personnel who work in most shabby and adverse conditions and yet display fine attributes of the profession. However, what is at issue here is the question of both perception and reality. The police is still not trusted by the common people, is still seen as unaccountable to the people at large. Stalled police reforms have not helped either in shaking off the tag of being the force of the rulers or the dominant interests, an enduring legacy of the British Raj. That the police detests being scrutinised for violations of human rights, a reality too commonplace to be overlooked, is a stark reminder that there is a long way to go before democratic ethos are instilled in our police. For the police to demand exemption from complying with the human rights provisions so that it can go after crime, terror, and insurgency in an unhindered manner is akin to asking the people to enter into a Faustian bargain with the police.

There is another reality which if kept in mind can help the police in eschewing the excessive use of power. It is beyond the best of the police organisations to put an end to crime and disorder. After all, crime and disorder are not the function of non-policing or bad policing alone. There is considerable evidence to show that factors that give rise to criminality in here in a plethora of socio-economic, psychological, cultural, and other contexts. Therefore, the police can, at best, be managers of crime. To harbour grander designs may amount to courting hubris.

Coming back to the book, it suffers from some serious limitations. Frankly, the most flattering thing that can be said about it is that it flatters to deceive. The language in which the book has been written is far from lucid. In fact, in some instances the articulation is downright clumsy. For example, it is absurd to frame a question like, 'What is the extent of jurisdiction of human rights in matters of police administration?' The empirical study, which is the centrepiece of the book, disappoints as it is not backed up with thorough analyses. So, does the book have anything important to add to the existing literature? It is hard to answer in the affirmative.

That said, it is not at all undesirable to be told something that we may already know, if what is being told is worth repeating. Truth deserves to be repeated constantly. So does the truth about human rights in the police administration in India. When there is so little that comes by way of an engaging academic conversation on the subject, the authors must be commended for their contribution.

The book makes a strong case for a mutually beneficial relationship between the police and human rights for a better society. The appalling level of human rights awareness of the police in general highlighted by the authors ought to be taken seriously for it has the potential in the long run of insidiously chipping away at the whole architecture of human rights so painstakingly put together over the years. The deleterious effects in the present are, of course, all too obvious.

Despite all the odds, the optimism expressed by the authors about brighter prospects ahead is very valid. Tireless efforts being made at multiple levels of government, police formations, human rights commissions, and civil society for the success of human rights have already brought significant changes. It is another matter that a humane police is, and must always be, a work in progress.

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