# NHRC's errors of omission

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The National Human Rights Commission is supposed to be the guardian of human rights in the country. While various experts have already lamented how the NHRC is a toothless body, it still has various powers in holding state authorities accountable. As the topmost human rights body in the country, its staff is expected to have the legal acumen to tackle the systemic human rights abuses whilst also understanding how marginalisation and oppression works. In this article, I will write about how incorrect interpretation of law by this quasi-judicial body is leading to in limine dismissals (rejection of applications at the threshold) of valid applications of human rights abuse.

This author was involved in drafting an application to the NHRC which was dismissed in limine under Regulation 9(xi) of the NHRC (Procedure) Regulations 1997. This regulation states that the NHRC can dismiss an application in limine if the case is "sub-judice before a Commission/ Court/ Tribunal".

This application was regarding unjust investigation, and police brutality against a lawyer in Gujarat, who was a social justice and human rights advocate, and is known in the bar for the same. She was allegedly framed in a case of forgery and criminal conspiracy under various sections of IPC. Curiously, she was not even mentioned in the FIR. Despite this fact, the police produced her before the magistrate after almost 68 hours of her detention, in violation of her fundamental right under Article 22(2) of the Constitution. Her bail was rejected first by the magistrate and then by the sessions court during peak Covid-19 time, violating basic principles of bail as prima facie mitigating circumstances existed. The High Court then had to step in to grant her bail stating that the case against her was based on surmises, conjecture and presumptions. The chargesheet was filed two months after the application was filed with the NHRC.

The NHRC dismissed the application in limine, not once but twice citing Regulation 9(xi), stating that the case was sub-judice. The fact of the matter is that this interpretation of the NHRC is not just flawed but prima facie legally wrong. What is even more concerning is that we don't know how many legitimate cases have been rejected since 1997 due to wrong interpretation of this provision.

Section 2(i) of the Criminal Procedure Code states that a "judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath". This definition is unchanged from the previous version of the code. This definition contains "inquiry" and "trial" under its ambit and not investigation. Therefore, the stage of investigation cannot be equated to a judicial proceeding. This was also the view agreed upon by the Delhi High Court in RPS Panwar v Union of India. The court upheld the view of the administrative tribunal which had stated that mere registration of a case could not be treated as commencement of judicial proceedings.

Similarly, a Special Bench of the Patna High Court in Gopal Marwari & ors v. Emperor held that judicial proceedings are only set to commence after the magistrate decides to

act on the report submitted by the police (chargesheet). Hence, any stage prior to the magistrate deciding to act on the chargesheet can't be stated to come under the ambit of judicial proceedings. Interpreting the definition of "judicial proceedings" as stated in the CrpC, the Allahabad High Court in Sheo Raj v. State had stated that evidence cannot be legally taken on oath during an investigation. The court also held that even though the statement under section 164 of the CrPC is under oath, the statement is not in the nature of evidence and proceedings of recording this statement will not be considered as judicial proceedings according to the definition in the Code. Therefore, at no stage of an investigation, the proceedings shall be deemed to be judicial proceedings.

These interpretations by various courts, conclusively hold that mere filing of an FIR and the stage of investigation would not be considered as a judicial proceeding.

These legal arguments were communicated to the NHRC through three distinct letters addressed to the Registrar and the CEO of the NHRC. The commission clubbed the letters with the original applications filed and dismissed them in limine again, without addressing the larger issue communicated to them. This was after the entire argument and interpretation related to the pendency of proceedings in criminal matters was communicated in simple and sound legal language.

To understand the view of the NHRC better, we filed a Right to Information Application seeking the base document or legislation on the basis of which, a matter is concluded to be sub-judice under Regulation 9(xi). After not getting a satisfactory reply, we filed an appeal. The Appellate Authority, vide order dated 31/03/ 2021 stated that,"Any matter which is pending for adjudication before a court of law is a sub-judice matter. Whenever a complainant makes a reference to a matter pending before the court of law for consideration, the same is considered to be subjudice and under Regulation 9(xi) of NHRC (procedure) Regulations, as amended in 1997, such a complaint is not ordinarily maintainable."

The NHRC did not refer to any legislation or common law principle which explains or defines what constitutes pendency of a judicial proceeding. Not going into the defective nature of the regulation itself, the fact that it is wrongly interpreted is worrisome. Furthermore, the NHRC (Procedure) Regulations, is a subordinate legislation and as such cannot go outside the ambit of the existing legislative framework governing the doctrine of sub-judice in criminal proceedings.

What is of more serious concern is that this is a systemic issue in the NHRC. Of the 86,187 cases disposed of in 2016-17, 33,290 were dismissed in limine. That is an astonishing 38.6 per cent of all the cases disposed off. Of these, how many were dismissed due to erroneous interpretation of sub-judice is something worth investigating. Similarly in 2017-18, 42 per cent cases were dismissed in limine. These are staggering figures. When we tried to dig deeper into the cases that have been dismissed in limine, and asked the NHRC for the data of cases dismissed in limine for

being sub-judice, they replied by stating, “as such no data is maintained in the Commission.”

There is no way of ascertaining how many cases have been dismissed in limine for the reason of the case being sub-judice. This sort of (non) accountability mechanism when an institution is dealing with serious human rights issues is nothing short of irresponsible.

Most cases of police and state brutality, torture, filing of fraudulent FIRs takes place before the court takes cognisance of the matter, before it even becomes sub-judice (pending in a judicial proceeding). The nature of in limine dismissals by the NHRC is worrying, as there is no way of knowing how many people with genuine concerns have filed applications and have received rejections in the last 23 years on the basis of wrong interpretation of a straight-forward law by this quasi-judicial body.

My experience of the back and forth with the NHRC, and of multitude of people who face human rights abuses and have approached the NHRC has been about its pedantic government-office like approach to critical questions concerning human rights. The nature of the work involved in human rights commissions across the country begs the question of the sensitivity of their staff towards issues involving human rights and social justice. This brings out larger questions of not just their training, but worldview towards these issues. The letter highlighting the incorrect and erroneous interpretation of Regulation 9(xi) was highlighted to the CEO and Registrar of the NHRC. Yet, there does not appear to be a desire look into this systemic issue which has resulted in the NHRC turning a blind eye to innumerable human rights abuses.

# Wrongful confinement

https://indianexpress.com/article/opinion/columns/bail-jurisprudence-womens-prisons-judiciary-7282034/

For women and children, life in Indian prisons means being subjected to the patriarchy of custodial institutions in unusually cruel ways that have not found much judicial reflection in bail jurisprudence. For bail jurisprudence is foundationally adult, able-bodied and male. It does not empathise with women and children, or the elderly and the afflicted. It does not consider the vicarious liability of the state for the systemic and everyday forms of violence, humiliation and deprivation on women or transgender undertrials. Custodial rape, pregnancy or childbirth is not seen as cruel, inhumane and degrading treatment of women prisoners as women. Nor are the rights of children of incarcerated parents put at the centre of bail jurisprudence. The abject state of women's prisons, which is much worse than male prisons, is often not seen as a justified ground for the release of women undertrials, even in a pandemic.

In State v. Suman Kumari, Additional Sessions Judge Vishal Gogne made an important departure from malestream bail jurisprudence by privileging the rights of children of incarcerated parents. In this case of dowry murder allegation, the court noticed that the accused sister-in-law of the dead victim was also a mother of a 21-month infant. The mother, who was in prison since December 9, 2020, had applied for regular bail.

Granting bail to the mother on April 2, the court pointed out that the incarceration of mothers amounts to the "de facto detention of their infant/toddler wards". This was seen as a serious violation of Article 37 of the United Nations Convention on the Rights of the Child, 1989. As also a violation of the JJ Act, 2015 which mandates the best interests of the child as paramount and under Section 3 advocates "institutionalisation of the child as a step of last resort".

Further, the court points out that the child in "de facto detention" must not suffer worse custodial conditions than children in conflict with the law or children in need of care and protection. Further, the court calls for "empathy" as "the ground for bail" to shine "light upon the often-forgotten victims of incarceration viz the children of imprisoned parents." The legal gaze on the plight of children of incarcerated parents highlights the injustice of such "detention without cause".

This was a regular bail hearing — and most of the accused's incarceration with her young baby was during the time when the prison has been under lockdown and with little, if any gynaecological, paediatric, legal or familial care. This order is very significant today as the mutant COVID-19 ravages prisons.

Despite the 2020 NHRC recommendations to state governments to release women prisoners, especially pregnant women, most states have not recommended the release of pregnant women or mothers with children from prisons. In 2020, the high-powered committee of the Delhi High Court did not release all pregnant women or mothers with

infants, despite representations from women's rights activists and academics. Their criteria for release were based on offence, duration of sentence, nationality etc.

Ignoring, therefore, the Disaster Management Act, 2005 (DMA) which constitutes overcrowded prisons as hotspots of mass contagion, and mandates that mitigation, rescue or relief must be read with Section 61 of the DMA. Section 61 says that the state must provide compensation and relief to the victims of disaster and that "there shall be no discrimination on the ground of sex, caste, community, descent or religion". The disaster law recognises the differential needs of women and other vulnerable populations in prisons. Surely, the disaster law must be read with prison rules so that all women, children and transgender prisoners are considered the most vulnerable populations, who deserve immediate rescue and relief, mitigation and compensation.

Currently, a public interest litigation has been filed in the Delhi High Court to release prisoners on interim bail following reports that 117 prisoners and 14 jail staff have been infected as on April 17 in Tihar Jail where the number of actual prisoners is more than double the capacity. Fifty-five inmates and four jail staff members have been infected in the Sabarmati Central jail, while 198 prisoners are infected in Maharashtra prisons. Forty-four women prisoners are infected in the Patiala jail, while Gurdaspur Jail reported 200 cases. Pregnant women and children, who cannot be given vaccines, continue to be imprisoned as a virulent virus sweeps through our prisons. We can only hope that our courts will release women and trans-prisoners and provide them with the support to survive once released, in this health emergency.

This pandemic has taught us that by refusing to even give interim bail to women undertrials, including mothers and pregnant women or the elderly and the seriously ill, and victims of prison rape, the criminal legal system is attached to a spectacular form of cruelty. Courts have refused to recognise that our prisons are overpopulated and gendered by design. Unusually cruel gendered, reproductive and sexual punishment is built into the design of our prisons which remain colonial.

We must, therefore, ask ourselves why the decolonisation of the Indian prison system has not yet begun? It is high time that the practice of imprisoning women, children and sexual minorities in prisons, irrespective of offence, nationality or exceptional laws, is abolished altogether as the first step towards decolonising the prison system. And non-custodial measures replace the practice of imprisoning women undertrials. Our courts need to strengthen law's constitutional quest for humanity, and displace its historical attachment to custodial cruelty, as a basic feature of decolonising Indian law.

# Hazards in manual scavenging have few takers

https://www.dailypioneer.com/2021/state-editions/hazards-in-manual-scavenging-have-few-takers.html

A few days ago, the Chief Minister's announcement of compensation for the families of two sanitation workers, who died while entering and cleaning sewerage line in the CDA locality of Cuttack, hit the headlines. The Chief Minister’s office ordered transfer of the concerned engineers and registration of an FIR against the service provider.

The families of the deceased were to be paid a sum of Rs 10 lakh each. Besides, the Orissa High Court has expressed shock that the shameful practice of manual cleaning of sewers and septic tanks still continues. Deaths of sanitation workers in the line of duty shock humanity. Imagine a human being entering septic tanks and sewer lines to clean them. To remind the reader these sewer lines and septic tanks contain human waste like excreta and urine mixed with soiled water.

The resulting toxic gases formed on decomposition of human waste is the main reason for sanitation workers entering these closed chambers losing their lives. Drowning in human waste is another way they can lose their life.

It is encouraging to note the swift action taken by the Chief Minister ’s office in this case . However, such deaths are unfortunately not uncommon. Just last month two sanitation workers died in Bhubaneswar. Their families' plight was overlooked. The National Human Rights Commission had to seek an Action Taken Report from the Odisha Government on April 12.

The NHRC inquired about whether the minimum legally mandated compensation of Rs 10 lakh had been paid to the families. They were also concerned about whether the people responsible had been booked. The condition across India is equally gloomy. In a recent article, Radhika Bordia and Yogesh Pawar noted that there were at least 400 such deaths all over India since 2013. In 2013, the Parliament passed the new law known as “Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act.”

The Act improved on the previous Act of 1993, by expanding the definition of manual scavenging to include all those involved in manually cleaning, handling or disposing undecomposed human excreta. The law also codified previous court judgements of paying a compensation of Rs 10 lakh per death. The responsibility of compensation is vested with the State Government regardless of the employment status of the victim.

The laws also require criminal charges to be applied on those responsible. As sewer lines and septic tanks contain decomposed excreta, manually handling them is not considered manual scavenging under existing laws.

Hence, people entering and cleaning septic tanks and sewers at risk of their health, life and dignity is perfectly legal. In fact such workers are legally called “safai karmacharis"

and not manual scavengers. The Asian Human Rights Commission considers manual cleaning of sewer lines and septic tanks as manual scavenging too.

While we may argue on the name, there should be no argument on the fact that such an occupation goes against human dignity. Multiple Indian court judgements have upheld the right to life with dignity under Article 21 of the Constitution for these hapless workers.

The existing laws only suggest that protective gear be given to people entering and cleaning sewers. In practice, a survey in 2015 by Dr Shailesh Darokar of Tata Institute of Social Sciences noted that septic tanks and sewers continue to be designed only for manual cleaning . He also noted protective equipment was poorly used in the absence of clear specifications in existing laws . In March, Union Minister Ram Das Athavale informed the Parliament that there was no proposal to make mechanised cleaning of sewer lines mandatory. Most houses in India lack access to Government sanitary services and depend on their own septic tanks.

Change is thus quite literally in our hands. It is the civic duty of all Indians to help phase out the inhuman occupation.

By simply remodelling one's septic tank to allow mechanised cleaning, lives can be saved. Where legislation and executive action may be wanting , it is the common man who can usher in change. For it is when the people of India find such “sanitation work” intolerable and feel the need to improve the existing system , will real change occur.

In September 2020, the Chief Minister of Odisha launched the “Garima” scheme to rehabilitate manual scavengers. He dedicated a corpus fund of Rs 50 crore for the purpose.

Good intentions need to translate to good actions. It is equally important that all State Governments and civic bodies work together with sanitary service providers and workers to phase out the occupation.

# Allahabad HC Directs UP Government to File Reply in 1987 Maliana Massacre Case

https://thewire.in/law/allahabad-hc-directs-up-government-to-file-reply-in-1987-maliana-massacre-case

The Division Bench of Allahabad high court on Monday directed the Uttar Pradesh government to file a reply as a counter-affidavit to a writ petition filed by senior journalist Qurban Ali in the 1987 Maliana village massacre where 72 Muslims in Meerut district of Uttar Pradesh died. The case has come to a standstill in the trial court as key court papers, including the First Information Report, went missing.

Apart from Ali, the others petitioners in the case before the high court are former Director General of Uttar Pradesh police, Vibhuti Narain Rai; a victim Ismail, who lost 11 family members and a lawyer Rashid, who conducted the case in a Meerut trial court.

Three decades on, Maliana massacre case has not progressed much

The petitioners submitted before the high court that despite over three decades having passed since the May 23, 1987 massacre, the case has not moved much in the trial court as key court papers had mysteriously gone missing. They have also accused the UP Police and Provincial Armed Constabulary (PAC) personnel of intimidating victims and witnesses not to depose.

On April 19, a bench of Acting Chief Justice Sanjay Yadav and Justice Prakash Padia heard the case via video conferencing. The counsel for Uttar Pradesh government argued that the case was very old and there was no merit in it. However, the Division Bench insisted that the state should file a counter-affidavit. “Taking into consideration the grievance raised in the petition and the relief sought we call upon the State to file counter affidavit and para-wise reply to the writ petition. List in week commencing 24th May, 2021 in the additional cause list,” the Bench ruled.

For the petitioners, noted human rights activist and senior Supreme Court lawyer Colin Gonsalves appeared in the case.

Sessions court had acquitted Hashimpura killing accused

It may be recalled that in the Hashimpura case, which was of a similarly grave nature and which is also connected to the violence during the Meerut riots of 1987, the Delhi high court had in 2018 convicted 16 accused PAC personnel and sentenced them to life imprisonment for the murder of at least 40 Muslim men, who were picked up on May 22, 1987 and later killed in cold blood in Uttar Pradesh. Three other PAC personnel were also part of the same team but had died before the judgment came.

In the Hashimpura case, the sessions court had, in March 2015, acquitted the accused despite stating that it had been “duly proved and established” that “about 40-45”

persons belonging to Mohalla Hashimpura were “abducted in a yellow colour PAC truck” belonging to the 41st battalion of PAC.

It had also noted that PAC officials were involved in the abduction and that the victims had been subsequently “shot at and thrown” into waters of Gang Nahar, Murad Nagar and Hindon river, Ghaziabad. However, the court had held that “it has not been proved beyond reasonable doubts” that the accused are the PAC officials who had carried out the abductions and killings.

Also read: Salman Khurshid’s ‘Blood on Congress’s Hands’ Remark Sparks Controversy

Delhi HC convicted all 16 charged officers for Hashimpura killings

The Delhi high court had subsequently convicted all 19 accused PAC personnel, of whom three had died by then, for the crime and sentenced them to life imprisonment. It had overturned the March 2015 ruling of the sessions court which acquitted the accused. The lower court had acknowledged that it was “duly proved and established” that “about 40-45” persons belonging to Mohalla Hashimpura were “abducted in a yellow colour PAC truck” belonging to the 41st battalion of PAC and were subsequently “shot at and thrown” into waters of Gang Nahar, Murad Nagar and Hindon river, Ghaziabad.

However, it had held that “it has not been proved beyond reasonable doubts” that the accused are the PAC officials who had carried out the abductions and killings.

The high court overturned the trial court’s decision and convicted the 16 PAC officials charged. Sentencing them to life imprisonment, a bench of Justices S. Muralidhar and Vinod Goel had termed the massacre a “targeted killing” of unarmed and defenceless people by the police.

Maliana, Hashimpura cases linked to 1987 Meerut riots

Following this high court ruling, there is renewed hope of getting justice for the Maliana case victims. This massacre had taken place during the Meerut riots of 1987, in which intermittent rioting was witnessed from May to July and in which 174 people were killed and 171 injured.

The petitioners in the case have submitted that according to the various studies and reports, it can be safely ascertained that the rioting in Meerut during April-May, 1987, actually left 250 dead and property worth of more than Rs 10 crores destroyed.

Communal violence first broke out on April 14, 1987, when the Nauchandi fair was taking place. During the violence, a sub inspector was struck by a firecracker and as he was drunk, he opened fire, killing two Muslims. There was another incident the same day in which some Muslims, who had arranged a religious sermon near the Hashimpura

crossing, objected to film songs being played on loudspeakers during a ‘mundan’ function in the house of a Hindu family. As someone from the Hindu side allegedly fired, the Muslims allegedly set some Hindus shops afire. In the ensuing violence, 12 people were killed.

Subsequently, from May 19 to 23, the entire Meerut town was placed under curfew. It was during this period that on May 22, PAC personnel rounded up several hundred Muslim men in the Hashimpura area. Many of them were then taken to nearby canals and shot dead.

‘PAC opened indiscriminate fire on Muslims in Maliana village’

The following day, the PAC had gone to Maliana village under the pretext that Muslims from Meerut were hiding there. It is alleged that the PAC men went around shooting indiscriminately at unarmed men, women and children and also burnt some of the victims alive in their own houses. A total of 80 bodies were later found in the area.

The petitioners said the exact count of the number of dead in the Maliana massacre was not known but the official figures said 117 people were killed, 159 persons injured, and 623 houses, 344 shops and 14 factories were looted, burned and destroyed.

Another report noted that in the first three or four days of the riot, 51 Hindus were killed, and from May 21 to 25 at least 295 Muslims were killed, almost all by or under the active supervision of the police and the PAC. Violence, including bomb explosions and isolated incidents of killing and stabbing, continued until June 15.

‘UP government went into denial, tried to cover up massacre’

It has been alleged that the initial response of the government to the massacres at Meerut and Maliana was one of denial, followed by attempts to cover up the crime.

In the Maliana case, the petitioners have noted that many questions have remained unanswered and that there was a striking closeness to the Hashimpura killings.

Justice Qurban Ali asked, “What about the Maliana killings where 72 Muslims were killed by the 44th battalion of PAC led by Commandant R.D. Tripathi on May 23rd 1987? It happened the day following the Hashimpura killings.”

He also added that while as per media reports an FIR was lodged, “there is no mention of the PAC personnel in the FIR”. “With a ‘shoddy’ investigation by the State agency and a weak chargesheet by the prosecution, Maliana Muslims feel they will not get justice, just as the victims of Hashimpura did in October 2018. The trial in this case has not even crossed the first stage.”

Over 800 dates, but no justice

Ali also noted that “in the past 31 years, 800 dates have been fixed for the hearing, but only three of the 35 prosecution witnesses have been examined by the Meerut court. The last hearing was held almost two years ago.”

As for the laxity of the prosecution, he said, it can be gauged from the fact that the main FIR, the basis of the entire case against 95 rioters from the nearby villages, suddenly “disappeared” in 2010. “The sessions court in Meerut refused to go ahead with the trial without a copy of the FIR and a ‘search’ for the FIR is still on.”

However, eyewitnesses had deposed that “the PAC led by senior officers including the Commandant of the 44th battalion entered Maliana about 2:30 pm on 23rd May 1987 and killed more than 70 Muslims. The then CM Vir Bahadur Singh put the numbers of the dead at 10. The DM said that 12 were killed in Maliana but later, in the first week of June 1987, he accepted that 15 people were killed by police in Maliana. Several bodies were found in a well.”

Compensation not paid

Ali said the issue of compensation has also not been settled. “Now the biggest issue is that of compensation. Initially, kin of deceased got compensation of Rs.40,000 per person but on the eve of the 2007 UP Assembly elections it was enhanced by the then UP Government to Rs. 4,60,000 per person. There are reports that even this amount was not distributed to the kin of all victims, he said, adding that as per NHRC guidelines and Supreme Court orders, the compensation should have been at least Rs 15 lakh per person.”

# कोविड अस्पताल में युवक की मौत मामले की हो न्यायिक जांच: सत्येंद्रनाथ

https://www.jagran.com/jharkhand/garhwa-garhwa-news-21575740.html

कोविड अस्पातल में युवक की मौत को बताया संदिग्ध, हो जांच मानवाधिकार संगठनों ने भी उठाई आवाज, शिकायत करने की बात कही

फोटो- 6- सत्येंद्रनाथ तिवारी, पूर्व विधायक, गढवा

संवाद सहयोगी, गढ़वा : कोविड अस्पताल में कोरोना संक्रमित युवक की मौत पर पूर्व विधायक सत्येंद्र नाथ तिवारी ने सवाल उठाते हुए मामले की न्यायिक जांच कराने की मांग की है। साथ ही इसे संदिग्ध मौत बताते हुए सिविल सर्जन को बर्खास्त करने एवं एफआईआर दर्ज कराने की मांग राज्य सरकार से की है। साथ ही साथ मृतक के स्वजनों को 50 लाख रुपये मुआवजा देने व परिवार के एक व्यक्ति को सरकारी नौकरी देने की मांग की है। उन्होंने कहा कि झारखंड में कोरोना महामारी विकराल रूप धारण कर चुका है। लेकिन महागठबंधन की सरकार राज्य की सवा तीन करोड़ जनसंख्या को भगवान भरोसे छोड़ कर लूट में व्यस्त है। केंद्र सरकार द्वारा सैकड़ों की संख्या में वेंटीलेटर झारखंड को मुहैया कराई गई थी लेकिन राज्य सरकार अभी तक अधिकांश जिला अस्पतालों में उन वेंटिलेटरों को चालू तक नहीं किया गया। जिसका खामियाजा आमजन को आज प्राण की आहुति देकर चुकानी पड़ रही है। राज्य के अस्पतालों में दवाई, बेड, ऑक्सीजन, वेंटीलेटर इत्यादि के अभाव में प्रतिदिन दर्जनों कोरोना संक्रमित मरीज जान गंवा रहे हैं। इधर, इस मामले को लेक गढ़वा जिला मानवाधिकार संगठन पीयूसीएल व ज्ञान विज्ञान समिति गढ़वा ने मामले की जांच करते हुए इसकी शिकायत राष्ट्रीय मानवाधिकार आयोग से करने की बात कही है। इसके लिए पांच सदस्यीय टीम बनाकर जांच करने का निर्णय लिया है। गढ़वा जिला ज्ञान विज्ञान समिति के अध्यक्ष संजय तिवारी तथा गढ़वा पीयूसीएल के सचिव सुरेश मानस ने कहा कि यह एक गंभीर मानवाधिकार का मामला है। नीरज उपाध्याय की मृत्यु के पीछे गंभीर प्रशासनिक लापरवाही सामने आई है।

THE CARAVAN, Delhi, 21.4.2021
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# Learning Experience

The troubling aspects of the National Education Policy / **Education**

/ ANJELA TANEJA

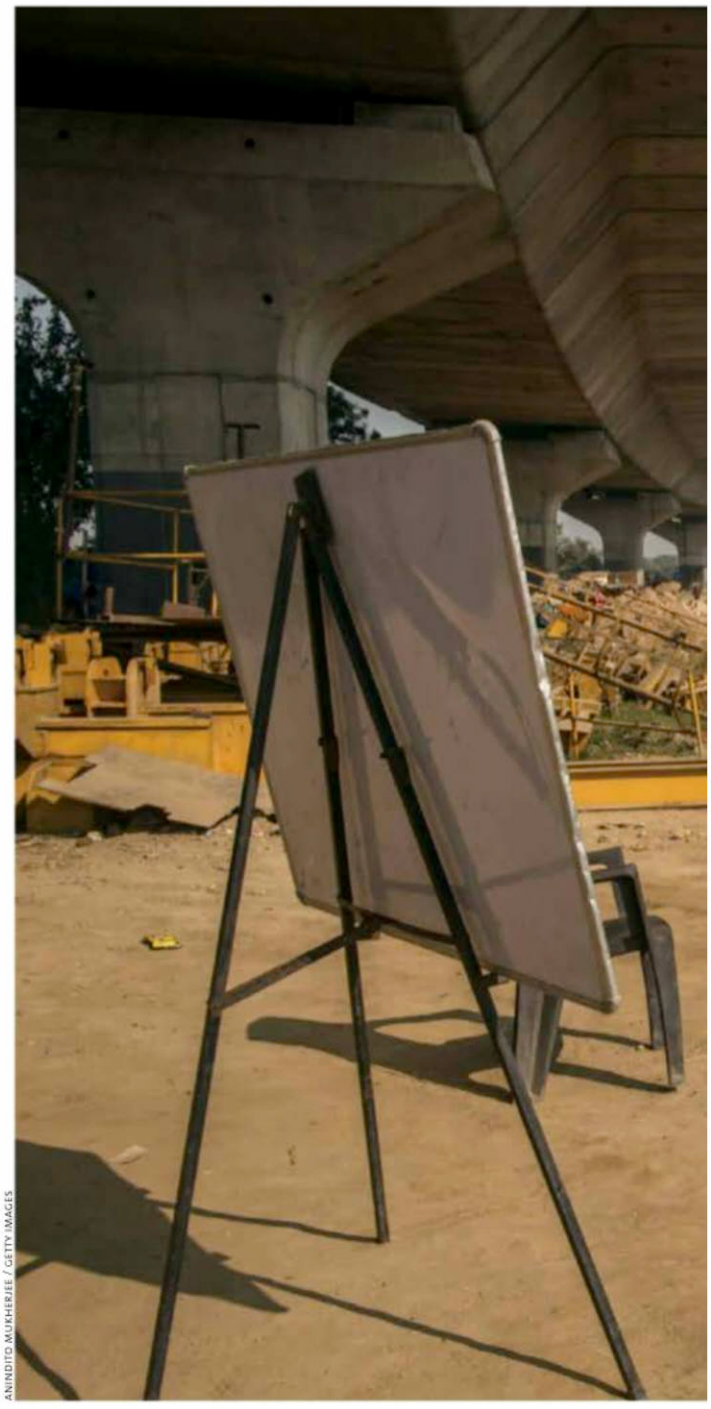
Every few decades, India gets a new National Education Policy—a framework to guide the development of education in the country. The first education policy was passed in 1968, the second in 1986 and the third was approved by the cabinet on 29 July last year. This policy will provide the vision for India's education not just now, but for decades to come.

The 2020 edition of the NEP promises some sweeping changes in India's education system. It plans to overhaul the 10+2 structure of school education into a 5+3+3+4 model, bringing preschool education into the ambit of formal schooling. It seeks to introduce pedagogic and curriculum reforms, including with respect to the flexibility of subjects and synergy between streams of learning, as well as changes in the assessment system. It aims to promote multilingualism and the learning of native languages. All this is accompanied by proposed changes in how the education system would be governed, including restructuring how both government and private schools are managed, evaluated and supported. The policy also includes an overhaul of education departments and a reiterated commitment to enhance education spending to six percent of the gross domestic product. India's flagship education programme—Samagra Shiksha—is already undergoing restructuring in line with NEP provisions.

In February this year, the ministry of education constituted a review committee to oversee the implementation of the policy, and to assess the progress made in achieving its targets. The central and state governments have since held a series of consultations. Several state-level expert committees have been formed on various subjects. A draft plan for the NEP's implementation has been shared with the states, which are supposed to put it in action. Along with scores of other education researchers, I was asked for suggestions on the draft plan by the Haryana government.

While there are several aspects of the NEP 2020 that are commendable, there are also several areas that are points of concern. These include risks of further commercialisation of education, informalisation of learning, an uncritical emphasis on the use of technology, insufficient attention to problems of discrimination, and the need to ensure adequate financing for implementation.

The NEP recognises the commercialisation of education as an issue, noting that the current regulatory regime has been unsuccessful in protecting parents



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BELOW: Despite a digital divide between the haves and have-nots, the NEP frequently appears to place the onus of ensuring digital access on the household rather than the state.

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from exploitation by private schools. Unfortunately, while acknowledging this, the draft action plan encouraged states to create guidelines to further incentivise "private philanthropic" activity in education. It also recommends states to develop policies fostering public-private partnerships and proposes a "light but tight regulatory" framework. So, while the problem is acknowledged, the measures suggested seem less like solutions and more like they could worsen the situation. Stronger mechanisms for monitoring private schools and grievance redressal in cases of violations by private providers are urgently needed. The plan seems to make a distinction between "private" and "philanthropic private" schools, which is dangerous and should be avoided in order to not legitimise the idea of for-profit education. A recent study by Oxfam India found that, despite the visible collective hardship caused by the pandemic, 40 percent of private schools across the country hiked their fees, in direct contravention of existing government orders.

Thus, the tasks suggested in the draft action plan by the ministry of education seem to be dissonant with the NEP's stated objectives. Instead of addressing commercialisation of education, it is talking about "ease of doing business" in education—encouraging NGOs to build schools, among other measures. This, coupled with a mention of exploring opportunities for "higher cost recovery," adds to the fear that education might no longer exist in the not-for-profit domain.

The NEP proposes the creation of alternative and innovative education centres to ensure that children who have dropped out of schools can continue learning. The focus on out-of-school children is admirable, but treating these centres as alternatives to formal schooling risks informalisation of education and institutionalisation of a separate type of school—possibly one that does not meet existing norms of the Right of Children to Free and Compulsory Education Act, 2009. Since often out-of-school children disproportionately belong to marginalised groups, such as Dalits, Adivasis and Muslims, these groups are likely to be most affected. In addition, the proposal to involve civil-society organisations in setting up and running these centres, will effectively outsource the responsibility of the state to get children to school.

The commitment to expanding and strengthening the National Institute of Open Schooling and open-school systems run by state governments is useful, but this should not be seen as an alternative to enrolling children in formal day schools. In line with provisions of the Child Labour (Prohibition and Regulation) Act, the emphasis should be on completion of universal formal education till the age of 14. Only after this age can the NIOS be encouraged as an alternative for students who have dropped out or have practical difficulties in attending regular school.

The NEP also needs to push the envelope much further on ensuring equity and non-discrimination. The fourth National Family Health Survey showed that girls from families in the top quintile of household wealth get nine years of education on average, while girls from households in the bottom quintile get almost no formal education at all. Parental wealth or caste should not determine a child's destiny. More concrete actions are needed to address social, geographical and structural inequalities based on familial wealth. These could include fee waivers for girls, the introduction of regular equity audits in the education system and a zero-tolerance approach backed by a robust grievance-redressal mechanism to instances of discrimination. The government needs to aim at ensuring universal enrolment, focus on ensuring the return of out-of-school children into formal education via special training programmes and tracking attendance. A starting point, as suggested by the National Human Rights Commission's Advisory for Protection of Rights of Children, would be to revise out-of-school children data.

Despite acknowledging the existence of a digital divide between the haves and have-nots, the NEP lays great emphasis on the use of technology for student learning and teachers' professional development. It frequently appears to place the onus of ensuring digital access on the household rather than the state. According to the National Sample Survey on Education 2017–18, only 15 percent of India's rural population has access to the internet, and the figure is even lower for children from marginalised social groups such as Dalits, Adivasis and Muslims. India needs to urgently enhance the digital infrastructure of its schools, and not expect every child to have a personal digital device.

It is critical to prioritise investing in building digital access to schools. Teachers need to be trained to use technology effectively for learning as well. In a study by Oxfam India from September last year, over eighty percent of government teachers reported struggling with teaching online when digital modes were introduced during the pandemic. The draft action plan also proposes shifting teacher-training to online modes. Since real-life practice and observation are key aspects of teacher-training, in-person classes would in fact be a better alternative. At the least, even if technology is used, it should include a two-way interface to enable interaction between trainers and trainees.

The implementation of the policy is also predicated on the availability of resources. However, both the policy and the education-ministry roadmap do not address adequately the question of additional funds. While the NEP says that the government plans to increase the spending on education to six percent of the GDP "very soon," there are no concrete details about when and how it plans to go about financing the sector. It is imperative that a greater share of the investment goes to the lower tiers of the education system, especially since gross inequalities in spending within the current system need to be addressed. It is difficult to explain why per-child spending for elementary education in Kendriya Vidyalayas is about ₹27,000—four times the per-capita education expenditure in Delhi and six times of the national figure.

Education is the most important determinant in creating equality of opportunity. Given the existing disparity, the metric of the success of the NEP 2020 would be how much it is able to help India's marginalised communities. ■