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silverlinecom2003@yahoo.com

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Justice A. S. Anand
Chairperson
(Former Chief Justice of India)

PREFACE

Section 12 (h) of the Protection of Human Rights Act, 1993 gives mandate to the National Human Rights Commission (NHRC) to "spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means".

In pursuance of this statutory responsibility the Commission has been undertaking activities like training programmes, seminars, workshops, newsletter, printing of literature. The Commission is conscious to interact with all the sections so as to make them aware of the issues relating to human rights. The publication of a journal on human rights is one such endeavour. The current issue of journal for 2005 is focused on the issue of human rights education. We have got articles from eminent persons spreading from experts drawn from Judiciary, Armed forces, Academicians and Field practitioners. We have covered a wide canvas of themes such as:

- Lawyers as a catalyst for Human Rights Awareness;
- Role of Human Rights Education for Empowerment of Women;
- From Legal Education to Justice Education: Globalization, Human Rights and Access to Justice;
- Human Rights in the Armed Forces;

- Role of National Human Rights Institutions-Indian Experience;
- Making Human Rights Education inclusive the Indian Experience;
- Human Rights Education in India: Concepts & Concerns.

We have also included various recommendations, statements and interventions brought out by the Commission especially of persons with mental illness facing trial and protection of rights of the victims of electrocution. These are targeted especially to sensitize the States of these victims.

I sincerely hope that the Journal will spread awareness about the Human Rights issues and generate action in the key areas of relevance.

November 23, 2005

(A.S. Anand)

Lawyers as a Catalyst For Human Rights Awareness

P. P. Rao

In order to appreciate the role and potential of lawyers in promoting awareness of human rights, it is necessary to have an idea of human rights as well as the nature of the legal profession and its obligations. There is no single comprehensive or exhaustive code of human rights as such. Human rights have more than one source. Section 2 (d) of the Protection of Human Rights Act, 1993 defines "human rights" as the rights relating 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. Human rights are not static. New rights are recognized and enforced from time to time. Only persons fully conversant with the latest developments about the expanding horizons of Human Rights can promote their awareness better than others. They are none other than members of the legal fraternity which includes judges, lawyers, law teachers and even law students.

I. Sources of Human Rights

(a) Universal Declaration of Human Rights, 1948

India is committed to the Universal Declaration and most of the International Covenants dealing with human rights. The preamble of the Universal Declaration notes that Member States have pledged themselves to achieve in co-operation with the United Nations the promotion of universal respect for, and observance of, human rights and fundamental freedoms and adds that a common understanding of these

rights and freedoms is of the greatest importance for the full realization of this pledge.

(b) Rights in Parts III & IV of the Constitution

The Framers of the Constitution of India incorporated in Part III some of the basic rights set out in the Universal Declaration which are enforceable by the Supreme Court and the High Courts and relegated other basic rights like, right to education, employment, health, public assistance etc. to Part IV of the Constitution keeping in view the economic capacity of the State, as they required building up of infrastructure involving good deal of planning and massive investment. Article 37 says: "the provisions contained in this Part (Part IV) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." Even though initially the Supreme Court had treated 'the Directive Principles of State Policy' in Part IV as subservient to 'the Fundamental Rights' in Part III[1] but subsequently a larger Bench of the Supreme Court[2] appreciated the dynamic character of the Directive Principles in fulfilling the needs and aspirations of the people and struck a proper balance between Parts III and IV. This has paved the way for judicial activism and the expansion of the basic human rights while interpreting the relevant provisions of Parts III and IV absorbing to an extent, some of the Directive Principles into Fundamental Rights. For instance, the Directive Principle in Article 39A to provide free legal aid has been read into Article 21, i.e. the fundamental right to life and liberty[3]. The Directive Principle to protect and improve the environment in Article 48-A has also been read into Art.21[4]. Again, the right of every child to free education until he completes the age of 14 years contemplated by Article 45 was also read into Article 21 in *J.P. Unikrishnan v. State of A.P.*[5]. In *U.P. State Electricity Board v. Hari Shanker*

[1] *State of Madras v. Smt Champakam Dorairajan, (1951) SCR 525 = AIR 1951 SC 226 and In Re: The Kerala Education Bill, (1959) SCR 995 = AIR 1958 SC 956*

[2] *Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225 =AIR 1973 SC 1461 = 1973 Supp.SCR 1*

[3] *M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544 = (1979) 1 SCR 192 = AIR 1978 SC 1548*

[4] *M.C. Mehta & Anr. v.. UOI (1987) 1 SCC 395 = 1987 1 SCR 819 =AIR 1987 SC 1086 and Subhash Kumar v. State of Bihar (1991) 1 SCC 598*

[5] *(1993) 1 SCC 645 = (1993) 1 SCR 594 = AIR 1993 SC 2178*

Jain[6] referring to Article 37, the Court held: *"Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of judges when interpreting statutes which concern themselves directly or indirectly with matters, set out in the Directive Principles of State Policy."*. Dealing with the concept of 'reasonableness' underlying the rights conferred by Articles 14, 19 and 21 the Supreme Court observed in *Kasturi Lal v. State of J&K*[7] that the Directive Principles concretize and give shape to the concept of reasonableness envisaged in these and other Articles enumerating the fundamental rights. Any action taken by the Government with a view to giving effect to any of the Directive Principles would, ordinarily, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would, prima facie, incur the reproach of being unreasonable. This interpretation has helped to secure enforcement of some of the Directive Principles by reading them into fundamental rights, having regard to the economic capacity of the State.

(c) Enlargement of Fundamental Rights

Another development which needs to be noted is the enlargement of the 'Fundamental Rights' in Part III through liberal interpretation of the provisions thereof. Article 21 has been interpreted to include a variety of rights: right to go abroad[8], right to privacy[9], right against solitary confinement[10], right against bar fetters[11], right to legal aid[12], right to speedy trial[13], right against handcuffing[14], right against delayed execution

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[6] *(1978) 4 SCC 16 = (1979) 1 SCR 355 = AIR 1979 SC 65.*

[7] *(1980) 4 SCC 1 = AIR 1980 SC 1992 = (1980) 3 SCR 1338.*

[8] *Satwant Singh Sawhney v. D. Ramarathnam A.P.O., New Delhi (1967) 3 SCR 525 = AIR 1967 SC 1836*

[9] *Gobind v. State of M.P. (1975) 2 SCC 148 = (1975) SCC (Cri.) 468 = (1975) 3 SCR 946 and R.Rajagopal v. State of T.N. (1994) 6 SCC 632*

[10] *Sunil Batra v. Delhi Administration (1978) 4 SCC 494 = (1979) 1 SCR 392 = AIR 1978 SC 1675*

[11] *- do - This aspect was dealt with in the same decision in the case of Charles Sobraj v. Supdt. Central Jail.*

[12] *See foot note 3.*

[13] *Hussainara Khatoon v. Home Secretry, State of Bihar (1980) 1 SCC 81 = (1979) 3 SCR 169 = AIR 1979 SC 1360*

[14] *Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 526 = (1980) 3 SCR 855 = AIR 1980 SC 1535*

of death sentence[15], right against custodial violence[16], right against public hanging[17], right to medical assistance[18], right to shelter[19], right to health[20], right to free education until a child completes the age of 14 years[21], right to fresh water and air[22] etc. Similarly, the Supreme Court has spelt out the right to freedom of the press from Article 19(1) (a) which speaks of the citizens' "right to freedom of speech and expression"[23]. More recently, the Supreme Court has read into Article 19(1) (a) voters' right to know the antecedents of the candidates contesting at an election, their assets and liabilities and their educational qualifications[24]. The National Commission to Review the Working of the Constitution, in its Report submitted in March, 2002, has recommended amending Articles 19, 21 etc. by way of codification of some of the basic human rights recognized by the Supreme Court in its decisions. It has also recommended inclusion of new provisions in Parts III and IV of the Constitution[25] in addition to the existing rights.

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[15] *T.V. Vathieeswaran v. State of T.N. (1983) 2 SCC 68 = (1983) 2 SCR 348 = AIR 1983 SC 361*

[16] *Sheela Barse v. State of Maharashtra (1983) 2 SCC 96 = (1983) 2 SCR 337 = AIR 1983 SC 387*

[17] *Attorney-General v. Lachmi Devi (1989) Supp. 1 SCC 264 = AIR 1986 SC 467*

[18] *Pt. Parmanand Katara v. UOI (1989) 4 SCC 286 = (1989) 3 SCR 997 = AIR 1989 SC 2039*

[19] *Shantistar Builders v. N.K. Totame (1990) 1 SCC 520.= (1990) 1 SCR 60 = AIR 1990 SC 616*

[20] *Consumer Education & Research Centre Vs. UOI (1995) 3 SCC 42 = AIR 1995 SC 922*

[21] *See foot note No. 5.*

[22] *M.C. Mehta v. UOI AIR 1988 SC 1037 = (1988) 1 SCR 279 = (1988) 4 SCC 463; M.C. Mehta v. UOI (1999) 6 SCC 9; A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999) 2 SCC 718 = AIR 1999 SC 812*

[23] *Brij Bhushan v. UOI, AIR 1950 SC 129 = (1950) SCR 605; Express Newspaper (P) Ltd. v. UOI, AIR 1958 SC 578 = (1959) SCR 12; Sakal Papers (P) Ltd. v. UOI, AIR 1962 SC 305 = (1962) 3 SCR 842.*

[24] *UOI Vs. Association for Democratic Reforms (2002) 5 SCC 294 ; People's Union for Civil Liberties Vs. UOI (2003) 4 SCC 399*

[25] *By way of codification of rights already recognized by the Judiciary, the Commission suggested inclusion of the following:*

- *(i) Freedom of the press and other media, freedom to hold opinions and to seek, receive and impart information and ideas.*
- *(ii) Right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*
- *(iii) Right to compensation in cases of illegal deprivation of right to life and liberty.*
- *(iv) Right to leave the territory of India and to return to India.*
- *(v) Right to respect for one's private and family life, his home and his correspondence.*
- *(vi) Right to access to courts and tribunals and speedy justice.*
- *(vii) Right to equal justice and free legal aid.*
- *(viii) Right of children to free education until they complete the age of 14 years.*
- *(ix) In the case of girls and children of members of Scheduled Castes and Scheduled Tribes, right to free education until they complete the age of 18 years.*
- *(x) Right of every child to care and assistance in basic needs and protection from any kind or form of neglect and exploitation.*
- *(xi) Right to safe drinking water, prevention of pollution, conservation of ecology and sustainable development.*

(d) Interim Legislation

There is yet another strategy adopted by the Supreme Court to secure enjoyment of human rights by vulnerable sections of society, and that is to resort to interim legislation in areas not covered by any Act of Parliament or of a State legislature or a set of executive instructions so that inaction on the part of the legislature or the Executive does not hinder the operation of human rights. For instance, in *Visakha v. State of Rajasthan*[26], a case of sexual harassment at the work place, the Court found it necessary to lay down a set of binding guidelines and norms, consistent with the basic human rights incorporated in the Constitution and the provisions of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) which was ratified by India. The Court directed that these be followed by all concerned in all work places for the preservation and enforcement of right to gender equality of working women. The Court clarified: "These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field". In another case[27] the Court laid down a set of procedural safeguards to be followed in cases of adoption of abandoned children by foreign or Indian parents. Likewise, in *D.K. Basu's v. State of West Bengal*[28] the Court gave elaborate directions to be complied with by the police in all cases of arrest and detention till legal provisions are made in that behalf. The Court made it clear that failure to comply with the requirements shall apart from rendering the official concerned liable to disciplinary action, also render him liable to be punished for contempt of court.

(e) Follow up Legislation

There are several Acts made by Parliament which give effect to the human rights set out in Parts-III and IV of the Constitution. For instance, Article 17 abolishes untouchability and provides that the enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. Parliament has enacted the Protection of Civil Rights Act, 1955 by way of follow up legislation. Abolition of untouchability is a facet of equality. To secure enforcement of the right

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[26] *(1997) 6 SCC 241 = AIR 1997 SC 3011*

[27] *Laxmikant Pandey v. UOI (1987)1 SCR 387 = (1987) 1 SCC 66 = AIR 1987 SC 232*

[28] *(1997) 1 SCC 416 = AIR 1997 SC 610*

conferred by Article 17, it is necessary to invoke the provisions of the 1955 Act wherever necessary. Section 8 of the Representation of the Peoples Act, 1951 provides for disqualification of a person for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State on conviction for the offence punishable under the Protection of Civil Rights Act, 1955. The Equal Remuneration Act, 1976 gives effect to Article 39 of the Constitution which requires the State to direct its policy towards securing that there is equal pay for equal work for both men and women. The provisions of the Act are enforceable in a court of law. Article 19 of the Constitution which guarantees the right to freedom of speech etc. to all citizens makes the rights subject to the power of the State to make laws imposing reasonable restrictions on certain grounds stated in clauses (2) to (6). To know the ambit of each freedom, one has to be conversant not only with the laws made by Union Parliament and the Legislature of the State concerned imposing restrictions, but also with judicial decisions upholding or striking down the restrictions imposed.

(f) Public Interest Litigation

To make human rights meaningful to millions of poor, illiterate and unorganized sections of people the Judiciary has opened its doors to Public Interest Litigation. PIL is being increasingly invoked not only on behalf of indigent citizens who cannot by themselves move a court of law for the redressal of their grievances, but also for other purposes. The volume of public interest litigation has regrettably assumed undue proportions. In several decisions the Supreme Court was constrained to point out how PIL is being misused on a large scale by converting it into "private interest litigation", "publicity interest litigation", "political interest litigation" or "paise income litigation"[29]. Notwithstanding its misuse by unscrupulous persons, public interest litigation has brought relief to many a common man at the instance of public-spirited lawyers, non-governmental organizations and social activists. Asiad workers, slum dwellers, pavement dwellers, under-trial prisoners, victims of police

[29] *Dr. B.Singh v. UOI (2004) 3 SCC 363 = AIR 2004 SC 1923*

excesses, project displaced persons, child labour, destitute women and sufferers of environmental pollution are among the numerous beneficiaries of PIL.

II. Promotion of Awareness

(a) Role of the Media, NGOs and Social Activists

The media, both print and electronic, have been spreading awareness of human rights, competing with one another, not only by publishing/ telecasting news and views about the decisions of courts enforcing human rights, but also by reporting independently violations of human rights. Investigative journalism has helped the cause of human rights. In several cases, on the basis of press reports about violations of human rights, public interest litigation has been initiated. There are occasions when courts have taken suo motu notice of violation of human rights as reported in the media and called upon the concerned authorities to do the needful. The only difficulty with the news reporters is that quite a few of them tend to sensationalise news and often indulge in trial by the media, wittingly or unwittingly. This is not permissible. Despite these shortcomings, the role of the media in promoting human rights is commendable. Similarly, several non-governmental organizations such as Common Cause, Centre for Public Interest Litigation, Citizens for Democracy, People's Union for Civil Liberties, People's Union for Democratic Rights, Association for Democratic Reforms, Lok Satta, etc. have been taking up issues of public interest in the High Courts and in the Supreme Court and contributing to the spread of knowledge of human rights. Social activists too have helped growth of awareness of human rights through public interest litigation. However, the contribution made by the lawyers as a single class remains outstanding and unmatched because of their special knowledge, equipment, ability and experience in this area.

(b) Role of Lawyers

Members of the legal profession have a deeper understanding of not only the human rights enumerated in the Constitution but also the relevant laws and International Covenants and Conventions. They are

aware of the ever-expanding frontiers of human rights and their interpretation by courts. They have access to the codified, uncodified and emerging human rights. They have the added advantage of being fully conversant with court procedures, practices and precedents which enables them to secure relief to the litigant public better than others. There are many lawyers with a deep commitment to human rights who take up public interest litigation in a missionary spirit without any expectation of remuneration or reward for their services. This apart, whenever a court requests a lawyer to assist in a case as an *amicus curaie,* the lawyer invariably rises to the occasion without the slightest hesitation and renders full assistance to the court giving the case priority over all other work of his. This has been the unbroken tradition of the Bar. The pre-eminent position enjoyed by the Indian Judiciary in the area of enforcement of human rights which is recognized and appreciated all over the world, is at least partly due to the assistance given by the lawyers. The rule of law cannot be sustained without the help of lawyers. The legal profession, by its very nature, permits larger freedom to its members to take up issues of public interest while judicial discipline imposes constraints on judges. The lawyers have a significant role and responsibility in spreading awareness and reaching the benefits of human rights to the have-nots in particular.

(c) Professional Obligations of the Bar and Expectations

At the inaugural session of the Supreme Court, Chief Justice Hari Lal J. Kania, observed: "When India and the world are passing through the transitional stage and travelling along somewhat uncertain paths of peace, the profession of law is very important in the structure of the society. The lawyers equipped with knowledge of law are expected to fight for the freedom of the citizen and also the maintenance of law and order. While in the name of Independence confusion or disorder in society cannot be permitted, the lawyers' profession will naturally resist encroachments attempted in the name of law and order on the liberty of the subject and on fundamental human rights. The profession of law, with the inauguration of the Republic of India, has thus also to discharge a more onerous obligation, which we are quite sure it is capable of and will be willing, to do".

The Law Commission of India with M.C. Setalvad as Chairman in its 14th Report on Reform of Judicial Administration touched upon the lawyer's role in modern India. The Commission observed: "The unified Bar of India can be a powerful influence for welding the country together and for combating all sectional, regional and communal trends. It can largely mould public opinion in matters relating to law, legislation and the administration of justice. The impact of the lawyer on public affairs is waning. An all India Bar, organized and striving after true ideals, could restore, and even add to, the influence that lawyers used to exercise in public affairs. These tasks can, however, be achieved only if the lawyer lives up to the great ideal of his profession, and maintains proper professional standards not only of efficiency but of integrity..... Some of our eminent lawyers have helped to frame our great Constitution. It will be for the unified Bar of India to help achieve the lofty ideals embodied in its noble Preamble. The lawyer of the future will have to think less of advancing himself and his profession and more of service to the common man and his motherland.....". Emphasizing the need for legal aid which is an obligation flowing from Article 14 of the Constitution which provides that the State shall not deny to any person equality before the law or the equal protection of the laws, the Law Commission observed: "The training and equipment of the lawyer, his close association with the machinery for administration of justice and his knowledge of its procedures tend to make him the fittest instrument for administering a scheme of legal aid. Therefore though the State may provide funds for the purpose, the day–to-day administration of the scheme will have to be looked after by bodies which wholly or preponderatingly composed of lawyers.....". Adverting to the duty of lawyers the Commission said: "Lawyers in India would not be worthy of the great traditions of the profession if they failed to render this social service which can be so usefully and appropriately rendered by them. A true welfare State can function only if every citizen renders some service as a sacrifice and the lawyer working in his professional capacity is not an exception."

Rule 46 of the Rules of Conduct for Advocates framed by the Bar Council of India reads: "Every Advocate shall in the practice of the

profession of law bear in mind that any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society." The Law Day Charter which is read out every year on November 26 at the Law Day function, inter alia, says: "We acknowledge the social responsibilities and the professional obligations of Law in public interest and public service. We emphasize, in particular, the need to ensure equal and universal access of the people to the system of justice, especially to the poor, the weak, the deprived and the down-trodden, the need for legal literacy and legal aid, and the need for social audit and evaluation of laws and for scientific, rational and pragmatic law reform." Rendering free legal assistance to the needy citizens who cannot afford to pay for legal services is a paramount professional obligation which every lawyer is required to discharge. Article 39-A of the Constitution directs the State, inter alia, to provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Legal Services Authorities Act, 1987 provides for the establishment of legal aid fund at the National, State and District level and makes provision for affording legal services. The Legal Services Authorities at the District level, the High Court level and the Supreme Court level utilize the services of a large body of lawyers to secure enforcement of the rights of weaker sections at State expense.

Having regard to the diverse sources and ever increasing dimensions of human rights, the members of the legal profession more than any other section of society have the ability, equipment and the potential to spread awareness of human rights and the means of securing their enforcement. They would be the best catalysts for human rights awareness, particularly lawyers with a passionate commitment to the human rights. There is need to motivate more and more members of the Bar to work for the human rights movement and for this purpose the National Human Rights Commission may organize workshops, seminars and conferences, as one of the functions of the Commission mentioned in Section 12(h) of the Protection of Human Rights Act,

1993 is to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means. The functions of the State Bar Councils and the Bar Council of India set out in Sections 6 and 7 of the Advocates Act, 1961 also include conducting seminars and organizing talks on legal topics by eminent jurists and publishing journals and papers of legal interest and organizing legal aid to the poor. The functions of the Central Legal Services Authority constituted under the 1987 Act include organizing legal aid camps, especially in rural areas and taking appropriate measures for spreading legal literacy and legal awareness amongst the people and in particular to educate weaker sections of the society about their rights, benefits and privileges.

Some of the functions of these three statutory authorities, namely, the National Human Rights Commission, the Bar Councils and the Legal Services Authorities, are overlapping. All of them have a common commitment to safeguard and secure the enforcement of human rights. Awareness of human rights needs to be spread in all parts of the country including remote and inaccessible areas. By coordinating their efforts, they can accomplish the task better with the help of public-spirited members of the Bar practising in different Courts and Tribunals all over the country, retired judges, law teachers and students.

Human Rights Education for Empowerment of Women

-Sujata Manohar

The Beijing Platform of Action 1995, devoted a special section on "Education and Training" as a critical area of concern for women's empowerment. It said, "Education is a human right and an essential tool for achieving equality, development and peace. Though overall progress has been achieved in girls' enrolment in primary and secondary school levels, girls in many countries still face discrimination due to customary attitudes, early marriages and pregnancies, lack of accessible schools and inadequate and gender biased teaching or educational material. Girls continue to be denied quality education especially at higher level and in science and technology". Ten years later, the position unfortunately, is not very different. The governments then had committed themselves to universal access to basic education by the year 2000 and completion of primary education by at least 80% of primary school-aged children by that year. The target has not been achieved. All governments including the Indian government also then agreed to close gender gap in primary and secondary school education by the year 2000 and to achieve universal education before the year 2015. However, in the first-ever gender gap study covering fifty-eight nations, the World Economic Forum (WEF) has in May this year, ranked India at a lowly 53rd position. One of the yardsticks for measuring the global gender gap was women's access to education. As the report says, "The ranking reflects large disparities in women and men in all criteria of index".

More recently, in April 2000 the World Education Forum held in Dakar, Senegal adopted six major educational goals (two of which became

the millennium development goals). The goals include achieving universal primary education, gender equality, improving literacy rate and educational quality by the year 2015. The nations participating also agreed to realize a more immediate and urgent goal; gender parity in the enrolment of girls and boys at primary and secondary levels by 2005 and full equality at all levels of education by 2015. However, in India in 2001, the female literacy percentage was 54.16% as compared to 78.85% for males. The dropout rate for girls in classes I to V 42.28% as against 38.67% for boys. The rate increased at higher levels of education. It is therefore not surprising that women in India hold only 20% of professional positions. It is being increasingly realized that lack of education and training are vital shortcomings which block women's progress towards empowerment and enjoyment of human rights. The Constitution now guarantees free and compulsory education for all children within the ages 6 to 14 as a fundamental right. Yet the policies necessary to realize the constitutional mandate are either not in place or are inadequate, although it is becoming clear that investing in formal and non-formal education and training for girls and women is one of the best means of achieving sustainable development and economic growth.

There are several elements that affect girl children receiving school education. The main hurdle is the mind-set which, in rural areas, is a major stumbling block to women's empowerment. Social values generate women's vulnerability in our society. Rural societies discount education for girls considering it as irrelevant. The girls are expected to work in the home, look after their siblings and help their mother. Child marriages or early marriages and setting up a family are considered the only major goals which women should aspire for. It results in a major denial of choices for women. It affects their ability to contribute to socio-economic well being, affects their right to information and education, their right to health and to reproductive choices and makes them dependent and ignorant human beings. It is in this context that education and human rights education become important; not just for the girl child but for the entire community; if it hopes to develop, become economically prosperous, socially egalitarian and respectful of human rights.

As a result of its Beijing commitment, India formulated a National Policy for the Empowerment of Women in 1996. In the Preamble to the Policy statement it is noted that in recent years empowerment of women has been recognized as a central issue. Referring to our international commitment, the policy also refers to India ratifying various international human rights treaties and conventions to secure equal rights for women, including CEDAW and the Convention on the Rights of the Child. India has also undertaken legal reforms to prevent and punish violence against women, to provide for better representation of women at the grassroots level in the village Panchayats and Municipalities and has improved women's inheritance rights through amendments to the Hindu Succession Act. However there still exists a very wide gap between the goals enunciated in the Constitution, legislation, government policies, plans, programmes and related mechanisms on the one hand and the reality of the status of women in India on the other hand. This general disparity manifests itself in various forms, the most obvious being continuously declining sex ratio in the last few decades. Social stereotyping and violence at domestic and societal level are some of the other manifestations. Discrimination against girl children persists, resulting in diminished access to education, health care and earning a livelihood - making them poor, marginalized and socially excluded. One of the methods of breaking out of this vicious circle of denials is through education and training. It opens new avenues for women through creating awareness of human rights values and provides a means of economic empowerment.

The UN High Commission for Human Rights has called human rights education as one of the four pillars for promotion of human rights. Access to formal education for the girl child means setting up of an adequate number of schools which are easily accessible to girls. Schools which are at a considerable distance from home are not suitable for girl children when parents may be worried about their safety if they travel long distances. The second important consideration is the quality of education which is made available in schools, particularly in rural areas where teachers of good calibre may not be readily available. This is an area where we need to take advantage of technology relating

to distant education, making available high quality teaching material to remote areas so that education which is of a good quality and which is of relevance to the students is made available to all children. This will increase enrolment and retention rates of girls in schools. It will also facilitate a lifetime of learning as well as give women a means for development of skills. Looking to the socially disadvantaged status of girl children, and the responsibility often thrust on them to take care of siblings, many non-governmental organizations have suggested that Anganwadis should be attached to schools for girls so that siblings may be looked after in Anganwadis while the girl children receive education in schools. Another method for making education more attractive is to provide a free midday meal for children.

Of course providing education does not necessarily mean creating acceptance of human rights values among students or the community. For this purpose, education must be oriented towards promotion and protection of human rights, and human rights education must be integrated with the formal educational system. This is an aspect to which a great deal of importance has been attached by the National Human Rights Commission as well as by various international bodies for promotion of human rights education in the Asia Pacific Region. The expert meeting on National Human Rights Action Plans and Human Rights Education in the Asia-Pacific Region held in Bangkok in October 2004 recommends that a national strategy concerning Human Rights education in the school system should include:

- The infusion of Human Rights within all curriculum subjects (social studies, literature, geography, foreign languages, sciences, etc) and revision of related textbooks;

- The development of culturally specific and acceptable human rights education materials;

- The training of teachers and other educational personnel; and

- The establishment of mechanisms to ensure a school environment

conducive to human rights, which ensure respect among all actors and promote participatory approaches and methodologies.

It has also recommended that all relevant actors should be involved such as ministries (ministry of education as well as, ministry of foreign affairs, ministry of culture, ministry of justice, etc.), national Human Rights Institutions, teachers and other educational personnel, students, parents/families, academics and researchers, cultural workers (artists) specific groups (such as organizations of disabled people), religious institutions and media. These actors should work together in a spirit of mutual respect and active participation.

One of the major recommendations is Human Rights education for the public and for critical target groups including the police and the military. Human Rights education therefore has to have a manifold orientation. It should be oriented not just towards the formal stream of education through primary schools, secondary schools, universities, etc. or allied teachers' training programmes. It should also have an orientation towards the community as well as towards special groups. A Human Rights education curriculum in schools has an impact on the children depending upon their family values and family conduct. For example, when there is discrimination against the girl child in the family and in the home, merely learning about non-discrimination in school will not have the required impact. It is therefore important that special programmes are held for educating the family and the community in human rights, to make them aware of the need for non-discrimination which alone can lead a community towards development, and prosperity.

Human Rights education therefore needs to travel beyond its formal setting and reach the community. Awareness generation programmes such as those undertaken by the National Human Right Commission, by the civil society and non-government organizations and by the government and its various institutions need to be more extensive. The media also has an extremely important role to play in creating this awareness of Human Rights and in highlighting violations of

Human Rights whenever they occur. Vulnerable groups such as children, the handicapped, the elderly, victims of trafficking and others as well as discriminated groups such as women, scheduled castes, tribals and others need to be empowered through creating programmes of awareness, and creating systems that strengthen their vulnerabilities. Education is an important part of this system. Other groups in need of Human Rights education are those involved in law enforcement and protection of victims of crime. The National Human Rights Commission has very rightly evolved special training programmes for the police and for the law enforcement agencies. The judiciary has embarked on a gender sensitization programme for judicial officers.

The aim of Human Rights education is to bring about a long term change in the value systems within the society. Although we are an ancient culture taking pride in traditions and morality, these traditions and these values are not necessarily aligned to value systems of the present day – egalitarian values and a culture of human rights emphasizing a life with dignity, which are incorporated in our own constitution. The value of equality and non-discrimination against women and girl children needs to be accepted and properly understood socially, economically and politically before we can have a strong value-based response to the challenges of modern times. While education and awareness aim at a long term change in attitudes, behaviour can be changed more readily by providing for appropriate laws that punish undesirable behaviour including discriminatory practices. An effective law, for example, against degrading practices such as dowry, heavy marriage expenses, child marriage, child labour, bonded labour and the like, if properly and conscientiously enforced, can effectively curb such practices. A strong law enforcement machinery aware of its human rights obligations, and proper prosecution and punishment of criminals can play a major role in changing behaviour patterns. Hence a Human Rights orientation for the law enforcement agencies is of crucial importance. For empowering women and girl children, laws which provide for compulsory schooling, laws which ban child labour and child marriages, laws which provide for equal wages for equal work, for protection against sexual harassment at the workplace, all need to be

properly enforced. This is a major disaster area for us. Our systems are weak and although we have legislation which empowers and protects against discrimination, it has become ineffective because the law enforcement machinery is neither sensitive to these laws nor is it sufficiently efficient to enforce these laws.

Therefore any improvement in India's position on the empowerment graph internationally depends on efficiency and effectiveness of its legal and socio-economic measures for empowerment. The creation of this strength depends to a large extent on effective measures for educating the girl child, and for educating entire communities in Human Rights issues. We need to change rural societies which depend heavily on women for their survival and which are therefore resistant to educating them. We also need to improve women's access to human rights through providing an access to information, to family planning and health care and to giving them knowledge which equips them to lead a creative and economically empowered life. Educating women and girls, and educating communities in human rights and human values is a challenge which must be met if this country wants to fight centuries of backwardness and step into an era of socio-economic development.

From Legal Education to Justice Education: Globalization, Human Rights and Access to Justice

Prof. Ranbir Singh

Introduction

The great pledge to project social justice as a fact of national life and underwrite its triple components of equality, dignity and the basic minima of human needs to every Indian was made at the historic hour before midnight when Indian awoke to freedom, but the midnight continues and the masses, particularly the dalits, caught in the darkness ask in agony 'where is the dawn'? Social justice; is the ideological signature of our Constitution[1].

The forerunner of the modern university system in India – by design which was built for sustaining the colonial interests, later started transforming itself to the sweeping values of democracy, socialist values and political thoughts emanating from Europe to look inward for its freedom. Among the various segments of universities, it was the lawyers who stood at the threshold between the ideals of the freedom movement and its realization on the ground – providing the skills essential to deliver justice to common citizen and enabling the common citizen to access justice.

In the present time a necessary fall out of trend of globalization and liberal economic policies, India too has moved from its "Socialistic Pattern" stance to the "free market economy" with a distant shift in the role of the State in the emerging economic order. India's new

[1] *V.R. Krishna Iyer, "Social Justice-Sunset or Dawn", IInd ed. 1987, pp. 57-58.*

economic policy is based on the notion that economic growth is possible only if the internal entrepreneurs are liberated from State controls so that foreign investors in India help this goal, the Government is promising attractive returns for the investment from Indian and foreign businessmen. For instance, the government has introduced or is likely to introduce cuts in governmental expenditure on development as well as mass welfare schemes such as basic health care, education, subsidies on fertilizers and other welfare measures: On the other hand, various concessions and incentives are being offered to enlarge the capacities of private and foreign enterprises to invest in India on soft terms.

Developing countries like India are likely to face new challenges for the world trading system after coming into force of World Trade Organization (WTO). Insistence by some developed countries on making environmental and labour standards a precondition to market access and free trade would have far-reaching consequences for developing economies. The critical questions that must be asked however are, will developing economies be able to claim an equitable share of the new world trade over. How to cope with the adverse effect of preferential trading arrangements and growing regionalism despite WTO's guiding principle of non-discrimination? What strategic laws and policies should be evolved to meet the challenge of the new world trade over?

It is against this backdrop that the role of legal education in upholding human rights and facilitating access to justice needs to be examined.

Institutions are not market places, nor is education a commodity traded on demand and supply. Institutions are knowledge spaces and education is a value in itself to distinguish between fair and unfair, just and unjust. It has to inculcate values like sacrifice, sensitivity to sufferings, courage to fight for justice and fairness, to stand up for the dispossessed and marginalized, the determination to stand against the odds for the sake of justice.[2] To echo Michael Gibbons:

[2] *Ranbir Singh, "Universities Engaging with Their Social and Cultural Environment: NALSAR – A Case Study" 1 NALSAR Law Review, 2003 p.29.*

However, the question remains whether by being pushed closer to industry, universities will fail their public service missions. In order to solve these tensions and still fulfill their public service role, universities need to move from the production of reliable knowledge to what may be termed 'socially robust knowledge', which is increasingly in demand across the world. Paradoxically, it appears that through closer engagement with the wider research community, universities will be able to maintain their integrity and impartiality as institutions that serve the participants in the process of globalization[3].

Legal Education and Globalization

The present should be grounded in strong realities to plan for future strategies. In such context, we need to transform 'legal education' into 'justice education'. After all 'Law' is an instrument to attain 'Justice' and hence it needs to be broadened in its construct as 'Justice Education'. Such an approach is essential to realize the ideals set in the Constitution. For such a vision to be realized, the chain of causation will occur from the portals of legal education. The process will involve translating the ideals as goals, strategizing the goals into appropriate content and curriculum and infusing them with effective teaching methods. If done, it will raise a new breed of professionally equipped and socially relevant lawyers who will rise to become the vanguard of the judicial system in the service of the society.

The existing agenda and the dire need to fulfill the same is mind-boggling. From these basic interrogations should spring forth, as from the burning embers of the old order, a New Order in the new millennium based on a New Jurisprudence - socially relevant, purposive and just. It is pertinent to remember the words of Swami Vivekananda, "*so long as the millions live in hunger and ignorance, I hold everyone traitor, who, having been educated at their expense pays not the least heed to them*". If such a value system is lost, the legal education and its outcome could turn out be a potential conduit to a new variance of colonization sans territorial control. The need of the hour is to set the

[3] *Michael Gibbons, "Globalisation and the Future of Higher Education", (May), 155, The Bulletin (ACU), 2003, p.8.*

goals which should set the house in order to gear up for meeting the challenges of Globalization.

In other words, there is a huge unfinished task at hand at present and added to that the juggernaut of Globalization is rolling which needs to be negotiated. The present condition poses us the question, are we equipped to deal the phenomenon of globalization? Globalization in the modern sense is launched from the pad of International Legal Order and not from Missile silos. For negotiating this, not just values and emotions but skills and reasoning have to be important. It is in this context, we need to take a re-look at the content, curriculum and teaching methods to meet the goals set out in our Constitution. This audit and the balance sheet should serve as a basis for setting some effective goals of the future of Indian Legal Education.

A precondition for a successful democracy, according to the noted political sociologist Barrington Moore, has been a successful alliance between the urban middle classes and the rural peasantry. This cannot come about if the few cities continue to prosper while the millions of villages suffer. Finally, if poverty reduction became sluggish during the 1990s, which were the reform years, such a discovery would immediately lead those against reforms to argue: "I told you so". But on careful consideration it will be abundantly clear that one cannot blame the reforms for the slow process of poverty alleviation, especially in the rural areas. The markets have indeed performed. Consider the following: India in the '90s have moved much beyond the sluggish Hindu rate of growth; today the World Bank admits that India is the fourth largest economy in the world going by purchasing power parity estimates. But why does India continue to house the world's largest poor? The State is the real culprit. Instead of investing in education, public health and empowering the poor by rebuilding their entitlements, the State continued to regulate and throttle the markets for the first four decades. Today, instead of planning out the strategies of long-term poverty alleviation, it has even abandoned the basics of governance[4].

[4] *The Indian Express, Sept. 13, 2000.*

The Crisis in Access to Justice

Today India is free – many Indians are not. Ours is a story of Republican India betrayed, promises unkept, unfulfilled and the Indian Democracy hijacked. The manifesto of the people of India provided in the Preamble of the Constitution, Justice—social, economic, political still remains a distant dream. The big question is, have we achieved what is provided in the Preamble. The answer is a big no. Why this has happened? Answer is not very difficult to find. In more than five decades of freedom, India is not one India. It is two Indias. One is "We the People of India", that is those people who are rich, wealthy and powerful and the other category is "We the Other People of India", those who are poor, downtrodden, dalits, Harijans, havenots, disadvantaged etc., etc., sections of society. Frankly speaking, the 4th World within the 3rd World. Why this has happened when the present day India has covered a long journey of freedom, things have not changed much. Instead of White Britishers we have bred White Indians. The petty Indian, the have-nots, have not only remained invisible to affluent eye but also feel distanced from the democratic agenda of the Indian Republic. This has happened not without a reason in all these years. Though the Britishers have gone, the masters have changed. In place of Britishers we have Indian masters but the system remains the same–it has not changed. It should be everybody's wish in the free India in the 21st century to at least, if not achieve, aspire to have some fruits of what is provided in the Preamble of India Constitution, which in human rights terms we call "First Generation Human Rights".

The fundamental rights provided in the Constitution of India and the promises of Human Rights would mean something real to all Indians if the system would respond positively to the demands of the needy, the neglected, the hapless women and the bonded children, etc. The problem is not that we do not have enough laws or we are not aware of the human rights. The problem is because of the insensitivity of the people, those who matter in the system. The difficulty is also of the right attitude towards the problems. 80% of India is agriculturally based-dependent on labour living in the countryside, mostly without enjoying any facilities worthy—may it be proper food, shelter, clothing, health care or even education. The myth of human rights comes more apparently

visible in India and threatens to pose a much bigger problem in the new millennium. The starvation deaths are still a reality not only in Kalahandi (Orissa), but also in various other parts of the country. The suicides of farmers have become a common feature. The situation is really grim and explosive.

If the implementation of the human rights in India has to be properly effectuated and implemented the reality of violation of human rights has to be faced with a much more sense of sincerity and honesty towards the other people of India. Otherwise what is engraved in the Constitution in chapters, thereon fundamental rights and directive principles will always remain a distant dream to achieve. Law would become a teasing illusion and in a state of suspended animation. One may ask how long. Nobody knows except the power that be. But the time to face the problem squarely is today not tomorrow.

Fifty six years of freedom behind for "We the people of India", Article 38-Part IV of the Constitution provides the Directive Principles of State Policy which promises that "*the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life*". Articles 15, 16,17,19, 21,41 and 43 of the Constitution, underwrite equality, dignity and minimum of human needs to every citizen of India. But when we have a Synoptic view, Systemic view, Symptomatic view, we find repeating a story of failures from one place to another where we have not kept the promises we made in Preamble and so betrayed Republican India by constantly denying Justice–i) Social, ii) Economic and iii) Political.

Especially for Indians–the real Indians–the "other people"–we the 80% poor dalits, harijans, untouchables, downtrodden, backwards by whatever name Constitution may identify these invisible–not visible to the affluent eye of the law and the human beings–but we the real Indians. The gap has widened between the rich and poor, the urban and the rural. We have more people below the poverty

line inspite of Constitutional mandate of equality and equal opportunity–the rich have become richer and the poor poorer. The fourth world has merged within the third world which is a sad story to repeat for an Indian. India's revolution of August 15, 1947 has remained unaccomplished.

The problem before us is how to redesign the institutions, sustain the operators and recondition the climate–through a new legal culture of Administrative Law, Parliamentary Process and Socially sensitive judicial process so that justice for millions is actualized. The big agenda before the Nation is:

a) How to evolve a system which is responsive, accountable, not apathetic to people's demands which sans of slum justice. How to have a new Constitutional order where the operators are no more–"untroubled by the miseries of the masses".

b) How to assure the man in the street that he is not alienated against the law since he is baffled with its buck. "Himalayan heaps" of legislation frighten away the common man, as the right of a person with grievance to seek its redress without paying a price in civilized jurisprudence is eagerly missing.

c) The real concern is painful absence of a theory of a human justice which will make Indians free, not merely India free–we have to find answer to new enemies of people's justice; communalism and religious fanaticism are invasions on social justice, especially gender justice.

On the education front universal primary education is a Constitutional directive. Increase of illiterates is the truth. Educational justice and employment justice, facet of human dignity and personality are in crisis. The slum dwellers and pavement dwellers live sub-human lives. The right to live as a fundamental right under the Constitution is not only shrivelled and dried but bleed for miserable Indians. The social justice context of the right to life has been appraised in practice.

The Constitution inscribes justice as the first promise of the Republic which means that State power will execute the pledge of 'Justice' in favour of the millions who are the Republic. Social Justice is people's justice where the tyranny of power is transformed into the democracy of social good. So the questions are:

–How to inaugurate a humane tomorrow?
–How to have authentic social justice against counterfeit justice?
–How to check bleeding harijans–baiting which continues unabated, and the law abolishing untouchability, an untouchable show piece?

The Role of 'Justice Education'

A strong independent, competent legal profession is imperative to any free people. We live in a society that is diverse, mobile and dynamic, but its very pluralism and creativeness make it capable of both enormous progress of debilitating conflicts that can blunt all semblance of order. One role of the lawyer in a common law system is to be a balance wheel, a harmonizer, and a reconciler. He must be more than simply a skilled legal mechanic. He must be that but in a larger sense he must also be a legal architect, engineer, builder and, from time to time, an inventor as well[5].

The answer to the above unkept and unfulfilled promises by those responsible for governing the country lies in providing Human Rights Education. Human Rights Education must be a wholesome programme aimed at and should be ideally linked to creating a respect for the human rights available to all human beings. The protection of such rights and to effectuate them through proper implementation would certainly desire for a concerted culture which will be sensitive to the basic necessities of each and every human being in a society. A society founded on principals of equality, liberty, equity and justice have to respond to the manifesto of human rights literacy and awareness, so that people know their rights and can realize them through effective implementation in case of violations. In a democratic society to be

[5] *V.R.Krishna Iyer, "The Social Dimensions of Law and Justice in Contemporary India – The Dynamics of a New Jurisprudence", p.1.*

called a civil society in true sense of the term, 'Human Rights' occupies a very prominent place and Human Rights Education is the most effective mechanism through which people having diverse culture, tradition and religion can promote tolerance and live in peace without conflict and clash of interest. A right kind of Human Rights Education has to have overtones of local situations and call for a comprehensive approach. Any democracy, would survive, if it will imbibe and nurture an effective Human Rights Education and awareness culture. All this is of much relevance for developing nations and more so for India. Human Rights Education for all levels is the need of the day for which every citizen of India should work for to ensure justice–social, economic and political for 'We the people of India', the words of wisdom engraved in our Preamble.

After Independence, legal education in the country should have undergone a complete transformation so that legal education and legal profession could translate the ideals enshrined in the Indian Constitution into a reality and thereby achieve justice–social, economic and political. Alas! the task was not taken up at the right time, to fit in and to nurture the constitutional philosophy of social justice. Legal education and profession since then has lagged much behind and to a great extent has not even been able to play its role as an effective means of providing justice.

The whole system is in a state of deep slumber. And the much-desired reforms remain in a situation of suspended animation, thus leaving us to face the challenging decades ahead. Perhaps, we should constantly remind ourselves of a simple fact that the Indian Republic is the most daring and therefore the most difficult experiment in democracy. In the course of this experiment the real challenge is largely on the legal education and legal profession because people see lawyers as "more equal" than themselves. The people of India regard lawyers as guardians of their freedom and their rights. The legal profession has to crusade against injustice and exploitation and at the same time assist in promoting changes and development in the law, to benefit the poor and the deprived. The responsibility is heavy, because lawyers

have to contribute not only to their purse (of course they have to for their survival) but more so to the happiness of the mankind and 'the other people' in the nation.

"Legal Education" as "Justice Education" in the new millennium has to prepare the law students to assume the responsibility to liberate legal education from its shackles. We have to prepare them to place their skills at the service of the people. This social push will produce great changes in the life of the common man of India. Even after 57 years of Independence, the poor man stares at the face of the mankind and asks why is he invisible to the affluent eye of the law. Should all this not kindle the law teachers', the law students' and the lawyers' interest to poverty-oriented research for improving the plight of the neglected sections of the society? If we were to ask: 'What is Law?', the Lawmen may answer: 'Not justice'. And if we ask: 'What is justice?', the radical humanists answer: 'Not Law'. This also shows the crisis that grips our times for we have groups–the angry young, the neglected old, the exploited many and the thinking few–who question: 'What is Law, if it is not Justice? Why is Law not dead if it upholds injustice?'. In the present times there is a need to bring law close to the people so that it can appreciate, understand and solve the problems of the child, the women, the downtrodden, the weak, and also the underprivileged. There has to be a radical change not only in the thinking of the budding lawyers but also in the way they look at their profession and implement the law. Unless it is done, unless it is achieved, the goal of social justice will be a far cry. In this direction the role of law schools becomes important and pivotal. Let the words of Vivekananda not be ignored. He said, "*So long as the millions live in hunger and ignorance, I hold everyone traitor who, having been educated at their expense pays not the least heed to them*". Hence, the law schools have to make constant endeavour for preparing sensitized advocates who are dedicated servants of humanity and are, in the words of Justice Krishna Iyer, "Development Lawyers".

In the present times there is a need to bring law close to the people and to appreciate, to understand and solve the problems of the child,

women, the downtrodden, the weak, the weakest and also the underprivileged sections of the society. There has to be a radical change not only in the thinking of budding lawyers but also in the way they look at their profession and implement the law. Unless it is achieved, the goal of social justice will be a far cry. In this direction the role of law schools becomes important and pivotal.

Conclusion

The goal of legal education should be, the pledge of Nehru:

The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over[6].

But even after these years of Independence, the poor man stares at the face of the mankind and asks why 'he is invisible to the affluent eye of the law'? Should all this not kindle the law teachers', interest and prompt research for improving the plight of the neglected sections of the society? All such research and development must be poverty oriented. It is apt to remind ourselves what Robert F. Kennedy, in his address on Law Day in Chicago way back in 1964, observed:

To the poor man, 'legal' has become a synonym simply for technicalities and obstruction, not for that which is to be respected. The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away. First, we have to make law less complex and more workable. Lawyers have been paid well, to proliferate subtleties and complexities. It is about time we brought our intellectual resources to bear on eliminating some of those intricacies. A wealthy client can pay counsel to unravel or to create complex tangle of questions concerning divorce, conflict of laws and full faith and credit in order to straighten

[6] *Quoted by Granville Austin, "The Indian Constitution: Cornerstone of a Nation", 1972, p.26:Vide V.R. Krishna Iyer, op cit.n.4 at p.31.*

out or cast doubt upon certain custody and support obligations. It makes no kind of sense to have to go through similarly complex legal mazes to determine whether Mrs. Jones should have been denied social security or aid to dependent children benefits. To put a price tag on justice may be to deny it. Second we have to begin asserting rights which the poor have always had in theory but which they have never been able to assert on their own behalf. Unasserted, unknown, unavailable rights are no rights at all[7].

The present day crisis of legal education is that in our society the very existence of legal system is being subjected to criticisms. Legal systems are being challenged and faced with queries like – 'Does it bring justice?' 'Does it serve the needs of the people or is it only protecting those who wield political and economic power?' 'Is law there to protect and promote the class interest of the privileged few?' Law schools can no longer afford to remain a silent spectator of the sufferings of the masses. The time has come that they learn to fight for sufferings of the masses and the under privileged by playing an active role in mitigating injustice which poor people suffer in the present day socio-economic environment. Law schools have to wake up and take the challenge and devise means and tools to make law an instrument of socio-economic change. The students of law now have to know what is poverty of the people, how people still survive on half a meal or on discarded food. Why people face the winter with their blood. Why are they still subject to untouchability and many more social maladies and inequalities? Law schools should wage a war against socio-economic exploitation of the neglected masses.

The observations of R. Smith are very pertinent:

In all their work, they (Legal Aid Societies) are relieving the bar of a heavy burden by performing for the bar its legal and ethical obligation to see that no one shall suffer injustice through inability, because of poverty, to obtain needed legal advice and assistance. Each case, which a legal

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[7] *Supra n.6 at p.6.*

aid organization undertakes, puts the bar in debt to it, for in the conduct of the case; it is doing the work of the bar for the bar[8].

The students of law who are future lawyers have to be prepared for a special role in the society. They have to be prepared and moulded to be good advocates, good judges, good legislators and above all good human beings so that they are able to:

- Understand not only the legal rules but also the socio-economic and political backgrounds in which they are framed;
- Understand judicial, legislative and administrative institutions and their true role in the society;
- Understand a lawyer's skill not only of investigating, interviewing, drafting and negotiating, but also of helping, counselling and mediating, etc;
- Understand the problems of a common man and be concerned about them;
- Understand their duties not only towards the clients, the courts, the fellow lawyers but also towards the society and specially the underprivileged;
- Understand not only the theory and mechanism of disputes settlement but also take part in providing access to justice through non-judicial dispute resolution mechanism through legal aid and people's court;
- Understand law and also come out with suggestions to reform it so that the law becomes more humane;
- Understand the importance of skill-oriented legal education

[8] *R. Smith, "Justice and the Poor", 1972, p.243.*

programmes like legal aid; para-legal services, etc.;

- Understand the importance of imparting training to para-legals for bringing legal awareness in the society;

- Understand the problems of the poor, the deprived and the handicapped, the downtrodden and the under privileged so that in them the poor man finds a true friend and a real helper;

- Understand legislation and whenever social legislation is found defective in practice or procedural provisions too tangled, dilatory and expensive, reform can be and should be proposed;

- Understand poverty programmes in the field of law and provide all possible help in them; and

- Understand that peaceful fights in course will siphon off violent fights in the streets.

With an era of globalization, it is true that the country will have a technological push but along with that an ethical push is also imperative for any civil society. The legal system existing in India is costly for the poor man who finds it difficult to access. The result being the orphans in the area are likely to remain orphans devoid of the help of law. Unless steps are taken to strengthen public good through a responsive legal system sensitive to poor people's needs justice is going to be a far cry. Reaching the unreached and including the excluded within the domain of justice should be the goal of real legal education in the country. In the era of globalization the challenges for legal education are daunting but the law schools of the day have to rise to the occasion. The Legal education has to respond to the call of justice—social, economic and political. Today, tomorrow may be too late and let us all not forget, there is very narrow line between anger and hunger.

Law schools have a duty to engage with community and become

instrumental in fulfilling the promises made to the people of India in the Preamble of the Constitution. In sum, it is apt to remind ourselves of Dostoevsky. Challenging mankind's indifference to the suffering humanity, in his view, is crucial if law has to fulfill the agenda of justice. As he rightly put it, "Everyone is responsible to everyone for everything".

Human Rights in the Armed Forces

General (Retd) V. P. Malik

In India, the traditional application of humanitarian law to the armed forces is almost as old as the armed conflicts themselves. There are several examples of prescribed humane behaviour for the forces during conflict in Ramayana and in Mahabharat. These are a part of our cultural legacy. If Lord Krishna in Bhagwat Gita taught Arjun and his soldiers about righteousness or *Dharma*, Guru Gobind Singh's message to his soldiers was in his prayer *"De Shiva war mohe, shubh karman se kabhi na taru."*

Even during British colonial rule of India, the armed forces followed the concept of *"Naam, Namak, Nishan:* Be Honourable, True to your salt, and Uphold the Flag".

Very early in my military career, I watched my Commanding Officer rebuke a soldier for his bad behaviour in the lines. His only words were, *"Insan bano* (Be human)". Rest of it was in his looks!

In Kargil war, Indian battalions recovered over 270 dead bodies of Pakistani soldiers after re-capturing posts occupied by them. Some of the dead soldiers were found to have been half buried in shallow pits. Others had been covered with stones or left in the open by the withdrawing Pakistanis. It was the Indian troops who gave all of them a burial befitting a soldier as per Muslim rites.

Upholding human dignity, personal values, and mitigation of collateral

hardship to the public; these are corner stones of the professional ethos in the Indian armed forces. Such an ethos is systematically imbibed in all ranks through training, motivation, and enforcement of stringent discipline, and monitoring of operations. The respect for human rights thus comes naturally to all ranks. Also, secularism, discipline, integrity, loyalty, espirit-de-corps, apolitical outlook: these are essential values that are inculcated in the forces. These values contribute to their civilized behaviour.

It is, therefore, not surprising that India has been a ready signatory to International Humanitarian Law and all 12 conventions on terrorism.

India firmly shares the perception of Madrid Declaration, which advocated "harmonisation of domestic law regarding compensation for the victims of terrorism and the drafting of an international statute for the victims of terrorism". India is one of the active participants in the deliberations of the Counter Terrorism Committee set up by the Chairman of the Security Council pursuant to Resolution 1373.

The Indian Army took immediate cognizance of the Protection of Human Rights Act, 1993. It established its Human Rights Cell in March 1993, six months prior to the establishment of the National Human Rights Commission in India. Its COAS-Ten Commandments laying down the Code of Conduct for all ranks operating against armed insurgents and terrorists i.e. do's and dont's, are recognized by the Indian judicial system, and by the United Nations.

The doubts about human rights conduct of the soldiers in India and abroad arise currently on account of lack of understanding about terrorism and insurgencies, the difficulties faced in dealing with them, and human rights aberrations that take place in such operations.

Terrorism and Indian Experience

Terrorism is not a new phenomenon that started only after September 11, 2001, as some foreigners would have the world to believe.

There has rarely been a period in modern history, when the world has not been confronted with terrorism; somewhere or the other, in some form or another, for some reason or the other. Terrorism ebbs and flows, and keeps undergoing many mutations.

India has faced this menace ever since its independence. In October 1947, Razakar raiders from Pakistan–the same people who joined Taliban and Al Qaeda 50 years later– frustrated because the Maharaja of Jammu and Kashmir was not willing to merge his state with Pakistan, walked into his territory looting, pillaging, violating human rights and attempting to coerce his government into submission. That situation led to the first Indo-Pak war, our first military experience after Independence. Since then, we have faced insurgencies and terrorism in many parts of our country; most of the time exploited, influenced and aided from outside.

Although internal security and terrorism is primarily a responsibility of the civil police, central police organization, and the para military forces; but due to foreign influence and thus meshing of internal and external security, the armed forces, particularly the Army, have been involved in combating terrorism in increasing numbers. Currently, nearly one-third of Indian Army is operationally committed for this purpose. The experience, successful in many parts of the country, has been extremely valuable.

In April 2003, while addressing an annual meet of the American Jewish Committee in Washington DC on 'Global Terrorism', I said, "....terrorism is not just a military problem. It is primarily a major socio-political problem. In the worldwide counter terrorism strategy, beside checking violence, we have to isolate and combat an *ideology* that is irrational and not acceptable to modern society. We have to stop countries, ethnic groups and societies, who have perfected the art of recruiting even children to fight a Jehad. We have to use all available means; not just military but political, economic and other kind of persuasion and pressures. For this, we need both hard power as well as soft power: hard power to deal with armed terrorists, and

soft power to deal humanely with societies, their culture, traditions and ethos."

I also stated that the 'more likely targets of global terrorism are the democratic societies. That is so because pluralism, peaceful co-existence, dialogue as the basis of resolution of differences, adult franchise as the optimal means of organizing internal affairs of the nations–these are an anathema to the terrorist groups. Such democratic societies challenge the very cause and rationale of the terrorists' existence.'

The Indian Strategy

India has a population of over 1 billion spread over 3.1 billion sq kilometers. We have people speaking 16 major languages and 200 dialects. There are a dozen ethnic groups, seven major religious communities with several sects and sub-sects, and 68 socio-cultural sub-regions: all part of a developing, semi-literate society. There are rapidly rising social, political and economic aspirations of groups in our multi-ethnic, lingual, cultural and communal social structure. All these aspects are considered in our politico-military strategy in dealing with terrorism and insurgencies.

Although we have been one of the longest victims of terrorism, insurgencies, and a proxy war, we are also one of the few nations who have handled terrorism successfully in Mizoram, Punjab and several other parts of our country. Most importantly, we have not allowed terrorism to politically or economically destabilize our nation.

We approach terrorism comprehensively; as a phenomenon with political, economic, social, perceptual, psychological, operational and diplomatic aspects, all of which need equal and simultaneous attention. There is a holistic approach to all these dimensions. Therefore, we have the system of unified command in terrorist affected areas under a Governor or the Chief Minister, with committees made up of all the earlier mentioned functionaries.

We also believe in a healthy, well-functioning democracy, good

governance, and a secular and liberal mind-set, which makes no distinction between the majority and the minority, and treats everyone equal in the eyes of the law. Firmness and determination in action, tampered by a civilized, democratic and patient behaviour by the State, have been the hallmark of India's counter-terrorism policy.

The aim of the security operations is to isolate and arrest or eliminate the hardcore secessionist elements and to deter their supporters. The security forces use a stick and carrot approach. They employ the principle of 'use of minimum force' during such operations–not the overkill required in a war. The rules of engagement are based on two forms of self-restraint: 'discrimination and proportionality'. Civilians and civilian places are to be kept distinct from military targets and protected from deliberate attack. Any action against military targets must be carried out in a manner so as to avoid unreasonable harm to civilians. It must however be realized that the stress and dangers involved, the fog of war, and the adversary's deliberate provocations makes their application difficult even amongst the most conscientious military forces.

The security forces not only fight militants and anti-social elements, but also reassure innocent people feeling insecure or neglected due to the inadequate civil administration. Tough measures lead to increasing alienation. Conversely, attempts to appeasement carry the risk of being read as a sign of weakening resolve. You have to find the right balance.

With experience, we have realized that we need specially organized, equipped and trained, areas-oriented security forces to deal with insurgencies and terrorism. Special Forces, Rashtriya Rifles, Assam Rifles, Rapid Reaction Force etc. These are some examples. These forces, and those who work alongside, need training for local terrain, people, their language, customs, and traditions. Special training schools have to be established for this purpose. The Army insists that every soldier deployed for such operations, carries a do's and dont's card on his person.

During sustained operations, the security forces often involve senior and respected citizens, and professionals, as a link between them and the locals.[1] They also form citizens' committees to learn about their difficulties, and hold meetings with them as frequently as possible. Along with sustained operations, small and large-scale civic action programs are undertaken. In some areas, the Indian Army formed the Army Development Group and launched Operation Sadbhavana (Goodwill) for this purpose. The over all aim is to win the hearts and minds of the populace. It is counter productive to alienate hundreds and thousands in order to kill a suspect.

Human Rights

In view of the strategy and approach described above, the Indian armed forces are committed to protecting human rights of its citizens even while conducting counter terrorism or counter insurgency operations. These are not viewed as an impediment but an essential requirement of operations. For this reason, considering their long and large commitment in such operations, their human rights track record as compared to armed forces engaged in such operations in other parts of the world, is not just good but commendable.

However, considering the type of operations wherein it is usually not possible to identify the difference between a friend and foe, and the long and large commitment, stress and strain of operations, one cannot rule out aberrations. These aberrations, and allegations of aberrations, are dealt with as per Defence Services Regulations and Army Act, in as transparent manner as possible. Detailed procedures are laid down for this purpose.

Any deliberate instance of ill-treatment or misbehavior by any individual is considered as an act of indiscipline, punishable under Army Act. Beside Army law, a large number of policy letters and guidelines are in place to deal with erring soldiers who commit human right violations. It is the responsibility of the Human Rights Cell in

[1] *The present Army Chief, General J J Singh, then working under me conducted such an operation in Anantnag, J&K, in 1991.*

the Adjutant General's Branch, with its subordinate offices at lower levels, to act as the nodal agency for receiving allegations from various agencies. These offices are also responsible for investigating the veracity of such allegations and ensuring that corrective action is taken to minimize and prevent human rights abuses.

As per statistics maintained since 1994, there have been 1212 allegations of human rights violation by members of armed forces. 1154 such instances have been investigated so far. Out of these, only 52 allegations (4.5 percent of the total allegations) have been found to be true. In these, 110 army personnel have been punished. The punishments varied from life imprisonment to dismissal and censures, and are open to challenge and appeal. The details are given in the attached Annexure.

The implementation of humanitarian law requires self-discipline, extensive training down to the grass root level and an adequate monitoring system. There is a concerted effort to sensitize all ranks regarding human rights through systematic and coordinated training imparted right from the time they are inducted into the Army. This continues in the form of training capsules at unit level and by various training institutions throughout their career. The subject is part of the curriculum in training institutions such as Army War College, Infantry School, Defence Services Staff College and the Institute of Military Law. A number of case studies, based on encountered situations in the past, have been prepared for wider dissemination amongst formations. These illustrations are meant to assist the troops in undertaking anti-terrorist missions in a legally sustainable manner.

Having given the human rights status of the Indian armed forces, I must address the on-going debate on the Armed Forces Special Powers Act-1958 and some other lacunae in the International Humanitarian Law and systems.

Armed Forces Special Powers Act-1958

As is well known that the Supreme Court of India has already dealt

with the legality of the Armed Forces Special Powers Act-1958 in the *Naga People's Movement of Human Rights v. Union of India case.* In that case, it explained the extent of authority available to the Army officers operating in an area where the provisions of the said Act were invoked. The court was called upon to decide whether the administrative orders issued by the commanders to their subordinates were legally enforceable. A number of vital questions arose. Do the military personnel have the authority to interrogate the security suspects? Can the units retain the arms, ammunition and explosives seized by the Army soldiers? Whether conferment of enhanced powers on the NCOs would be an arbitrary act? Is it open for the troops to strike at the hideouts harbouring the militants? The court squarely addressed all these questions.

My views on this Act are based on experience and submission before Justice Jeevan Reddy Committee, appointed by the Government of India to review the Act after recent agitations in Manipur.

In early 1990, I was commanding a Division that had troops deployed for counter insurgency operations in Manipur, Nagaland and a part of Arunachal Pradesh. During the run up to Manipur Assembly elections, a political party leader, in order to garner students' support and votes, made removal of the Armed Forces Special Powers Act a major electoral issue. When he won the elections and became the Chief Minister, I went to call on him.

After congratulating him on his appointment as Chief Minister, I asked him what did he plan to do about the Special Powers Act. He said that in view of the popular demand, he would write to the Ministry of Home Affairs at the Centre and have it removed. I told the Chief Minister that it was OK by me. I will pull out our troops from the 60 odd posts in Manipur, concentrate them outside Manipur, and train them for their primary responsibility of fighting a conventional war.

"But you cannot do that! What will happen to the law and order situation?" he said. I appreciated his concern and told him politely but firmly that I couldn't help him to maintain that without a proper

legal cover. I said "I cannot have my subordinates hold me responsible for giving them an unlawful command."

Then I respectfully stated, "Sir, the best way out is to create conditions in the State wherein the Special Powers Act is not necessary. If you and the Centre do not consider and declare Manipur State to be a 'disturbed area', the Act cannot be applied. Please do not blame the Act for the problems of Manipur. The fact is that despite several elections in the State, we have not been able to create conditions when this Act need not be applied in Manipur. The Armed Forces or the Assam Rifles cannot create those conditions. These are primarily of socio-political and socio-economic nature, under your charge now."

Having made the basic point about the Act, let me briefly discuss its contents.

Para 3 of the Act defines power to declare areas to be disturbed areas. It states that for using armed forces in aid of civil power, the Governor of that State/Union Territory or the Central Government has to, by Official Gazette Notification, declare the whole or affected part of the State/Union Territory to be a 'disturbed area'. Para 4 states that 'a commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces in a disturbed area, may: -

- Fire upon/use force, even to causing death, against any person contravening law and order or carrying weapons, ammunition or explosives, *if in his opinion it is necessary for maintenance of law and order and after giving due warning.* (The 'opinion' usually has to be justified subsequently).

- Destroy armed dump or fortified position or shelter from which armed attacks can be made or can be used for training by hostiles, *if necessary to do so.*
- Arrest without warrant any person who has committed a cognizable

offence and may use suitable force, *if necessary to do so.*

- Enter any premises without a warrant to arrest a terrorist/suspect, or to recover a wrongfully confined person, stolen property, or arms/explosives wrongfully kept.

Para 5 of the Act lays down that the arrested persons will be handed over to the nearest police station *with least possible delay along with the circumstances of the report.* This is notwithstanding the fact- as is widely known- that most terrorists continue to languish in civil jails for years. Many either get away due to lack of evidence or simply manage to escape.

The need for an act like the Armed Forces Special Powers Act for counter insurgency and anti terrorist operations is unquestionable. However, it can be reviewed or amended slightly due to changed circumstances, as is being done now. We can also improve its application e.g. make more judicial magistrates accompany military patrols, increase joint military-civil police operations in the urban areas so that Police does the arrests, and streamline early handover of arrested people when civil police is not available with Army patrols.

I cannot perceive removal of the Act altogether. In disturbed conditions, when there is a danger of ambush at every nook and corner in a jungle or built up area, and the civil police is not available, the Armed Forces will not be able to perform counter insurgency or counter terrorist operations without a legal authorization of this nature.

By defending the need for the Armed Forces Special Powers Act does not mean that I condone any crime or violations committed by soldiers in the area where it is applicable. Or for that matter any human rights violation anywhere. If any such acts are committed, it is in the interest of the Armed Forces to take disciplinary action against the offenders, as prescribed by civil and military laws.

The Lacunae in International Humanitarian Law

Notwithstanding the above mentioned strategic approach in dealing with terrorism, the enforcement of human rights concept and laid down laws, there is a need to recognize the dilemma that is faced by all liberal states in dealing with terrorists and armed insurgents. While the liberal states follow the International Humanitarian Law in letter and spirit, the terrorists and armed insurgents are under no such constraints. In fact they exploit such a situation to achieve their objectives. While operating in J & K, I have personally come across instances of the terrorists taking shelter in and firing from mosques, hospitals, schools and colleges. There have also been cases where they have used women and children as shields to escape when cornered by the Security Forces. False allegations to implicate Security Forces personnel in cases of molestations and rape are not uncommon.

When the State persists in using lawful methods, lawfully applied, it runs the risks of not being effective enough against those who have no scruples about using every kind of violent method. If it allows the Security Forces to take lesser chances in dealing with terrorists and armed rebels, even through legislative sanction, the human rightists object to it. We need to review the viability of the Law and its different interpretations holistically, lest people start applying double standards. This is already taking place in many parts of the world.

Also, there is inadequate recognition of the human rights of the soldiers engaged in combating terrorists and armed insurgents. When the latter commit heinous crimes against innocent soldiers or their families, there is hardly any condemnation or compensation. We have had several instances of soldiers' children and families being targeted by the terrorists. In one instance in Kaluchak in May 2002, 19 members of soldiers' families were killed and an equal number wounded.

Role of the United Nations

On account of foreign support to armed insurgents and terrorists, it has become necessary to deal with international aspects of security forces operations.

In the last 40 years, starting September 1963, the United Nations has adopted 12 conventions concerning counter-terrorism. The number of signatories kept increasing with each successive convention indicating that when the international community feels a real threat to most of its members, it tends to unite and find the best ways to protect the security and well-being of the world population.

The United Nations Security Council Resolution 1373, unanimously and un-equivocally, condemned the attacks on 9/11 and expressed its determination to prevent all such acts. It urged the Member States to work together urgently to prevent and suppress terrorist acts. It also decided that member states should 'deny safe haven to those who finance, plan, support, or commit terrorist acts.' It called to find ways of intensifying and accelerating the exchange of operational information regarding actions of terrorist persons or networks, traffic in arms, explosives or sensitive materials, use of communication technologies and the threat posed by the possession of weapons of mass destruction by terrorist groups.

However, the global cooperative effort is still at the beginning of the learning curve. In Resolution 1373, we have a comprehensive and powerful statement of intent. This has been further reinforced in Resolution 1456. The United Nations decided to monitor its implementation and establish a committee with the assistance of appropriate expertise. Regrettably, this Committee and the Monitoring Group have not been able to work purposefully or get anyone guilty punished or even censored.

Conclusion

The track record of Indian armed forces in following human rights is second to none. In fact, there is no parallel instance where a country, facing proxy war and intense insurgency situations, aided and abetted by a foreign power, and where its Security Forces have suffered such heavy losses, has maintained such a disciplinary code.

Fighting armed insurgents, terrorists, and proxy wars with soldiers' hands tied behind the back is not easy, particularly when the insurgents

and terrorists are using more and more state of the art weapons and equipment, and follow no scruples.

Terrorism today is a hydra headed monster. Its primary targets are liberal and democratic societies. It is a threat, which requires a multiple track response: political, diplomatic, military, policing and law and order to name a few. In the absence of a global framework, domestic legislations remain the only legal remedy against terrorism.

Along with our endeavours to follow human rights scrupulously, we should also recognize the lacunae in the existing system for dealing with armed insurgents and terrorists operationally and legally. The Security Forces and other law enforcers deserve more effective legal tools and better legal cover.

Democratic nations have a much greater stake and more significant role in dealing with global terrorism. They would more naturally develop multi-lateral institutions and multi-national coordination required to counter terrorists. They would not get bogged down in definitional or causal arguments. Blocking financial supplies, disrupting networks, sharing intelligence, simplifying extradition procedures–these are preventive measures which can only be effective through international cooperation based on trust and shared values.

Our own system requires periodic consultations to improve modes of dealing with armed insurgents and terrorists, and evidence collection for prosecution of hard-core terrorists. Integration of military operational elements and its law officials for such consultations in the National and State level Human Rights Commission would be very useful.

Annexure

State of Allegations on Human Rights Violations Against Army from 1994 to 30 Jun 2005

Sl. No.	Items/Nomenclature	Up to 30 Jun 2005
1.	*Number of Allegations received:* - (a) Allegations received from NHRC (b) Allegations received from other sources including suo-moto cognizance by Army (c) Total allegations	 849 363 1212
2.	*Number of allegations investigated*	*1154*
3.	*Number of allegations under investigation*	*58*
4.	*Number of allegations found false/baseless*	*1102*
5.	*Number of allegations found true*	*52*
6.	*Number of personnel punished*	*110*
7.	*Number of cases awarded monetary compensation*	*17*

Role of National Human Rights Institutions - Indian Experience

Justice (Dr.) A.S. Anand

Soon after its establishment, the United Nations undertook an exercise to identify mechanisms that could assist it in effectively implementing its goal in the area of protection and promotion of Human Rights. It was, however, in 1946 that the United Nations Economic and Social Council (ECOSOC) asked the Member States of the United Nations to consider the "desirability of establishing information groups or local Human Rights Committees within their respective countries to collaborate with them in furthering the working of the Commission on Human Rights." [1]

A decade and a half later, in 1960, the ECOSOC through a resolution recognized the distinctive role which National Institutions could play in the protection and promotion of Human Rights and invited the Governments to encourage formation and continuation of National Human Rights Institutions (NHRIs) in their respective countries. Later on, the Commission on Human Rights organized a Seminar in Geneva in September, 1978, where a set of guidelines was evolved regarding the functions which NHRIs could discharge. The Commission on Human Rights and the United Nations General Assembly endorsed these guidelines. From 1980, the United Nations took steps to involve itself actively in the project of establishing NHRIs. A series of reports were prepared by the Secretary General, United Nations on the subject and his efforts culminated in a

[1] *Fact Sheet No.19, National Institutions for the Protection and Promotion of Human Rights, Office of the High Commissioner for Human Rights, United Nations.*

Workshop by the Commission on Human Rights in 1990 with an object to review pattern of cooperation between National and International Institutions and to examine the factors that could result in improving the effectiveness of NHRIs. The conclusion arrived at, after deliberations of this Workshop, came to be known as "**Paris Principles**" of 1991. These were endorsed by the United Nations Commission on Human Rights in 1992. The role of NHRIs was also recognized in the Vienna Declaration and Programme of Action at the end of the Vienna World Conference on Human Rights in 1993. The United Nations General Assembly through its resolution 48A/134 of 20th December, 1993 endorsed the same.

The "Paris Principles" provide enormous guidance and directions not only regarding the formation of NHRIs, but also about the functions of NHRIs and principles they must follow in order to function effectively.

Independent National Human Rights Institutions (NHRIs) play a very active and valuable role in strengthening democratic institutions and building good governance within and across nations. NHRIs are the primary mechanisms for translating international concepts and norms into a local culture of human rights. Needless to mention that human rights are best secured when they have taken root in the local culture and international human rights standards are best implemented when they have been incorporated into national legislation and are promoted through national institutions. For effective domestic protection of human rights requires a network of complementary norms and mechanisms as well as the existence of National human Rights Institutions to ensure:

(a) State adherence to human rights treaties;

(b) Implementation of the international human rights obligations in domestic law;

(c) Creating awareness about human rights and assisting in spread of human rights education;

(d) Effective and accessible State institutions where individuals can obtain redress for human rights breaches, such as institutional bodies like NHRIs;

(e) A sensitive human rights NGO community or the human rights defenders; and a population that has a strong human rights culture.

The international community has increasingly recognized the importance of NHRIs. As per the United Nations Centre for Human Rights Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, a NHRI has been described as 'a body which is established by a government under the Constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights'. Although courts have an important role to play in protecting the human rights of the individual against the State, they have many other judicial functions and are not usually included within the concept of the NHRI as it is currently understood.

The United Nations has also intensified its advisory services to governments and greatly expanded its technical cooperation programmes within the larger framework of promoting democracy, development and human rights, strengthening the capacity of States to promote and protect human rights within their jurisdictions. The programmes, supervised by the Office of the High Commissioner for Human Rights, focus on countries in transition to democracy and on developing countries which request technical expertise in establishing National Human Rights structures. It would not be out of place to mention that the concerned Office of the United Nations on its own has also laid considerable emphasis on capacity building and technical assistance to support the establishment and operation of NHRIs, particularly through the formulation and implementation of comprehensive national plans of action. These plans identify national priorities in the promotion and protection of human rights

and set targets and benchmarks for its achievement. Regional international organizations too have recognized the role of NHRIs. Most recently, the United Nations Commission for Human Rights at its 58th Session, in its Resolution on National Institutions for the Promotion and Protection of Human Rights supported this notion by stressing that **'national institutions have a potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights'**. It called **'upon all States to ensure that all human rights are appropriately reflected in the mandate of their NHRIs when established'**.

As of now, there exists a considerable amount of variation in the structure and number of NHRIs within and across countries due to historical, political, cultural, social and economic factors. It has been seen that the nomenclature usually used for NHRIs is either the 'Ombudsman' as in Sweden or 'Human Rights Commissions' which have been established in a number of Commonwealth Member States such as Australia, New Zealand, India and Sri Lanka or 'Truth and Reconciliation Commissions' as in South Africa. A body like this is either incorporated in the Constitution of a given country or the legislature or executive branch of the government or some combination of the two may establish it. As these institutions are rooted in their local ethos, its prime objective is to monitor the work of governments from within and impress upon them to carry out their treaty obligations under the human rights conventions. Whatever be the mode of establishment and its composition, the essential components of an effective NHRI are:

- Independence;
- Mandate and powers;
- Accountability and relationship with other institutions; and
- Accessibility.

It is a well-established fact that an effective national institution would be one, which is capable of acting independently of the government, of party politics and of all other entities and situations, which may be in a position to affect its work. NHRIs are not anti-

government bodies. They act as facilitators. In fact, the mandate of the NHRI should be broad enough to advise the government on all human rights aspects and policies. A typical national institution should have financial autonomy and independence with a broad mandate to protect and promote human rights which should include jurisdiction over all categories of human rights and cover all public and private actors. NHRIs are only recommendatory or advisory bodies. They are not adjudicators – that function vests in courts of law or tribunals exercising judicial or quasi-judicial functions. The NHRIs should realize their accountability to the public and must evaluate the effectiveness of its activity regularly. They need to be transparent about their activities.

The spectre of terrorism has acquired a sinister dimension and terrorist threats which we are now facing are on an unprecedented global scale and must be countered effectively but it must be remembered that since fundamental rationale of anti-terrorism measures is to protect human rights and democracy, the counter terrorism measures should not undermine democratic values, violate human rights and subvert the Rule of Law. The battle against terrorism has to be carried out in keeping with international human rights obligations and the basic tenets of the Rule of Law. In the fight against terrorism, the State cannot declare war on the civil liberties of the people. In the fight against terrorism, sensitization level of human rights cannot be allowed to be sacrificed. A critical task of striking a fair balance by way of security concerns and human rights is to be performed and need of proportionality must not be ignored. It must stand as a caution that in times of distress like the acts of 9/11 in USA and 7/7 in London, that the shield of necessity and national security must not be used to chill civil liberties of the citizens. NHRI need to be on a constant vigil and advise the concerned Governments against chilling the civil liberties of the citizens by enacting draconian laws which violate human rights of the citizens.

Coordination with NGOs and Human Rights Defenders

NHRIs need to establish and maintain contacts with civil societies

in order to ensure that public concerns and priorities are handled in the institutional work to further public legitimacy. Human Rights Defenders is an expression used to describe people who, individually or with others, groups or institutions, act to promote and protect human rights. They act at the local, national, regional and international levels.

In 1998 the UN General Assembly adopted a Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to promote and protect universally recognized human rights and fundamental freedoms. This Declaration is also referred to as the Declaration on Human Rights Defenders. It was intended to ensure protection afforded to Human Rights Defenders against onslaught on their rights by government or non-State actors.

It is not a secret that in many countries Human Rights Defenders, through the legislation or otherwise, face organizational obstruction in their work. They face a threat to their own fundamental rights including the right to free speech and fair trial. There have been instances of Human Rights Defenders even being killed because of their work in certain countries. The UN Declaration has, however, failed to offer proper protection to them even though the importance of their role stands recognized in various articles of the Declaration. It is, therefore, the responsibility of National Human Rights Institutions to ensure that Human Rights Defenders are able to promote and protect human rights without suffering abrogation of their own rights. The 'Paris Principles Method of Operation' addressed the importance of having NHRIs maintain contact with other institutions and Non-Governmental organizations involved in the promotion and protection of human rights.

It is, however, our experience that many of the NGOs and Human Rights Defenders concentrate only on civil and political rights ignoring economic, social and cultural rights of the people. In order to be effective and serve the cause of protection of human rights and assist the NHRIs in discharge of their functions, the NGOs need also to

function and work for protection and promotion of economic, social and cultural rights as indeed to enjoy civil and political rights, it is necessary that economic, social and cultural rights are rightly promoted. This is something for the Human Rights Defenders to ponder over and think. Indeed, as I have already said, the NHRIs require to solidly support the Human Rights Defenders in the discharge of their functions and offer them protection against any onslaught of their rights; it is equally important for the Human Rights Defenders to support the NHRIs fully so that the NHRIs are able to discharge the basic obligations of protecting and promoting human rights and fundamental freedoms of the citizens. They must also evaluate their rolls and be accountable.

The Indian Experience

The National Human Rights Commission of India (NHRC) was created by an Act of Union Parliament – The Protection of Human Rights Act, 1993. Like other National Institutions, NHRC is also only a recommendatory/ advisory body with no mechanism for enforceability of its recommendations. However, the Commission has "used" its composition, independence and transparency to achieve some of its objectives for "better protection" of human rights. NHRC is an independent, autonomous statutory body, not subject to direction or control of any authority.

According to the Statement of Objects and Reasons of the "Protection of Human Rights Act, 1993", NHRC was constituted for "better" protection of human rights and for matters connected therewith or incidental thereto. The announcement of the creation of the Commission was initially received with mixed reviews. While many had an open mind on how the Commission would fare, there were also some who held that the Statute was fatally flawed. According to the latter group, the Commission would be a "toothless tiger" and a mere 'post office' to provide a certificate of 'good behaviour' to the Government for its "wrong-doings" rather than to ensure 'better' protection of Human Rights. The Commission, therefore, right from the inception had a great deal of "friendly fire" to deal with and much to disprove to the critics and skeptics alike. It had to

labour hard to prove to itself and to the public of India, many of whom chose to repose their trust in it with number of complaints to the Commission increasing exponentially with each passing year.

Independence of NHRC

The greatest strength of NHRC is that the Act provides the Commission with the independence, functional autonomy and broad mandate that are essential to the proper functioning of a National Institution based on the "Principles relating to the status of National Institutions" (the "Paris Principles"). The independence of the Commission has been well guaranteed by the provisions of the Statute relating to its composition, the method of appointment of the Chairperson and Members and their removal. The power of selecting the Chairperson/Members vests with a Committee which consists of:

(a) The Prime Minister; (b) Speaker of the House of the People; (c) Minister in-charge of the Ministry of Home Affairs in the Government of India; (d) Leader of the Opposition in the House of the People; (e) Leader of the Opposition in the Council of States; (f) Deputy Chairman of the Council of States.

This ensures that the appointees enjoy not only the confidence of the party in power but also of the Leaders of the Opposition and the Legislature. The Commission consists of:

(a) a Chairperson who has been a Chief Justice of the Supreme Court;

(b) one Member who is, or has been, a Judge of the Supreme Court;

(c) one Member who is, or has been, the Chief Justice of a High Court;

(d) two Members to be appointed from amongst persons having

knowledge of, or practical experience in, matters relating to human rights[2].

The presence of a former Chief Justice of India, as its Chairperson and his selection being made not by the Government of the day but also by the Leaders of the Opposition have lent credibility to the NHRC. The Chairperson and Members are not subordinate to any one in regard to the discharge of their duties. They have security of tenure. The Chairperson/Member can be removed from his office by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson/Member ought on any such ground be removed vide Section 5(1)[3].

There are two other matters of importance in this behalf. On ceasing to hold office, the Chairperson/Member **is ineligible** for further employment under the Government of India or under the Government of any State vide Section 6(3). The rules framed regulating the conditions of service of the Chairperson and the four Members, provide that they shall be paid the same emoluments as are payable to the Chief Justice of India and Judges of the Supreme Court, respectively. The salary and allowances and other terms and conditions of service of the Chairperson/Member cannot be varied to his disadvantage after his appointment vide proviso to Section 8.

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[2] *In addition to the five permanent Members contemplated by sub-section (2) of the Section 3, there are three ex-officio Members as provided in sub-Section (3) of Section 3, viz.,*
(i) Chairperson of the National Commission for Minorities;
(ii) Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes; and
(iii) Chairperson of the National Commission for Women.
The functions of those three ex-officio Members are limited to the discharge of functions specified only in clauses (b) to (j) of Section 12.

[3] *The President can also remove from office the Chairperson / Member, if he:-*
(a) is adjudged an insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office; or
(c) is unfit to continue in office by reason of infirmity of mind or body; or
(d) is of unsound mind and stands so declared by a competent court; or
(e) is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude, vide Section 5(2)

One other factor which contributes to its independence is its budget. As regards finances, the NHRC prepares its own budget and forwards it to the Central Government, which after considering the same, formulates the proposal for grant and places the same before the Parliament. The Parliament passes the law providing for due appropriation of grant to the NHRC vide section 32(1). The Commission is entitled to spend the amount as it deems fit for performing its functions and enjoys financial autonomy vide Section 32(2). The Government cannot play around with the budget of NHRC after it is passed by the Parliament. The Commission is required by section 20 to submit Annual Report to the Central Government. The report received from the Commission is required to be placed by the Central Government before each House of Parliament along with a memorandum of action taken or proposed to be taken on the recommendations, if any. This gives an opportunity to the Parliament to debate on all issues contained in the report.

Having said all this, I must point out one glaring shortcomings in the method of procedure for appointment of members of the Commission. Under the statute, the Chairperson is not required to be consulted and, therefore, collegium can force either "unwanted" or "undeserving" member of the Commission. Since the responsibility for smooth functioning of the Commission including the making of roster of cases falls on the Chairperson, it is necessary that he must be consulted before a person is appointed to the Commission and his views given appropriate weightage.

The high goal which was set for the Commission in the Statements of Objects and Reasons in the Act was found difficult to be fulfilled because of certain weaknesses in various provisions of the Act. The Commission, therefore, felt constrained to make proposals to have the Act amended so that provisions of the Act would help rather than come in the way of proper discharge of its functions as envisaged in the Statement of Objects and Reasons. In the sixth year of its existence, the NHRC requested the former Chief Justice of India (Justice Mr. A.M. Ahmadi) to head a High Level Advisory Committee to make a

comprehensive assessment of the need for amendments to the Act. After a careful consideration of the advice of the Advisory Committee, the NHRC forwarded its own proposals to the Central Government for amending various provisions of the Act in March 2000. These proposals were annexed in full to the Commission's Annual Report for 1999-2000[4]. More than five years have gone by but the proposals for amendment of various provisions of the Act are still pending for consideration of the Government of India and have not been taken to the Parliament for amendment of the Act.

Human rights violations in India stem as much from the abuse of power by public servants as by dereliction of their public duties. Section 12(a) of the Act has conferred powers on the Commission to investigate complaints alleging violation of human rights, both, suo-motu or on a petition presented to it by a victim or any person on his behalf. No form or court fee is prescribed for lodging a complaint with NHRC. The complainant is free to use any language of his choice. If the Members are not familiar with the language of the complaint, the same is translated at the cost of the Commission. The Commission normally records its findings in English. There is no specific bar against entertaining complaints by NHRC before the other available remedies are exhausted except those of which cognizance has already been taken by a State Commission or any other Commission duly constituted by the Government – of the State or the Union [Section 36(1)] or has been brought to its notice beyond one year of the commission of such violation [Section 36(2)]. Access to the Commission has been thus, made open, easy and cheap. Citizens have begun to feel that they can seek relief from NHRC instead of moving the judiciary, where the process is expensive and cumbersome!

A clear indication of the trust reposed in the Commission by the people of the country – and an equally clear indication of their yearning for an accessible mechanism to redress their human rights grievances – is to be found in the number of complaints addressed to the Commission over the years. This number has increased exponentially.

[4] *For details, see the website of the Commission, http://nhrc.nic.in*

By way of illustration, in the first six months of the Commission's existence, October 1993-March 1994, the Commission registered 496 cases. This number grew to 6,987 in 1994-95; 36,791 in 1997-98; 40,724 in 1998-99; 71,555 in 2000-01; in 2003-2004 the number of such cases was 72,990 and in 2004-2005, the number was about 75,000 cases, indicating the confidence which the citizens have come to repose in the Commission and their trust in it. Besides, frequent invoking of suo-motu jurisdiction is also a characteristic of the Commission. Based on reports in print as well as electronic media regarding violation of human rights of individual or groups, the Commission initiates proceedings. Since, the Commission has its own investigation division headed by an officer of the rank of Director General of Police, the Commission refers matters to it for conducting investigations and often for an on-the-spot inquiry.

The Commission, however, has no jurisdiction to itself inquire into allegations of violation of human rights by Armed Forces, which means "the Naval, Military and Air Force including any other armed forces of the Union" (Section 19).

There is no appeal against the recommendation of the NHRC. The High Court and the Supreme Court, of course, have right under the Constitution to issue writs/orders or directions against the State or any authority, including the Commission.

No other national institution in India has functions of the diversity or order of magnitude of the NHRC. Section 12 of the Act catalogues the functions of the Commission. The functions include:

- intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

- visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment,

reformation or protection to study the living conditions of the inmates and make recommendations thereon;

- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;

- study treaties and other international instruments on human rights and make recommendations for their effective implementation;

- undertake and promote research in the field of human rights;

- spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;

- encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

- such other functions as it may consider necessary for the promotion of human rights.

The Commission also has the capacity to intervene in any proceedings involving any allegation of violation of human rights pending before a court, with the approval of that court. Besides, the Commission has been specifically empowered to "approach the Supreme Court or the High Court concerned for such directions, orders or writs as that court may deem necessary" (Section 18(2)). These provisions have been found to be of great value.

Ever since its inception, the Commission has been dealing with a wide range of subjects. Some of these are: custodial violence/deaths, torture, prison reforms; rights of women and children, in particular, trafficking in women and children and sexual harassment of women at the work place; rights of minorities and marginalized sections, bonded labour, health and disability related issues.

In the performance of its statutory responsibility, particularly those contained in clause (d), (f) and (j) of Section 12 (supra), the Commission has been reviewing legislations and treaties and making recommendations.

While expressing its opposition to the continuance of Terrorism and Disruptive Activities Act (TADA), the Commission referred to the obligations of the State under international Covenants and opined that such a stringent law which violates human rights of the citizens was not needed and that the correct remedy for speedy trial and punishment of crimes connected with terrorism lay in strengthening of the investigation and prosecution machinery and the criminal justice system and not by adopting draconian laws which have the tendency of grave misuse. After its lapse, the Commission unanimously expressed the view that there was no need to enact a law based on the draft Prevention of Terrorism Bill, 2000 and that needed solution should be found under the existing laws, properly enforced, implemented and amended, if necessary. This was also reflected in the Annual Report of the Commission for the year 2000-2001. The Commission also expressed its opposition to the Prevention of Terrorism Ordinance, 2001. Subsequently, however (ignoring the opinion of the Commission), the Prevention of Terrorism Ordinance, 2001 was enacted into a law (POTA) following a joint session of the Parliament. The Commission, therefore, took the position that while it respects the constitutional process leading to the adoption of Prevention of Terrorism Act, even though it had made known its opposition against contents of the Act before it was enacted and asserted that, "The Commission retains the responsibility under its own Statute to ensure that the Act is not implemented in a manner that is violative of the Constitution and the treaty obligations of the country".

The Commission, concerned with the incidents of child marriages which is widely prevalent in some of the States in India, made detailed recommendations for amendment of Child Marriage Restraint Act, 1929. The Bill introduced in the Union Parliament in 2005 has incorporated all the amendments suggested by the Commission.

One other area of concern to the Commission has been the growing trafficking in women and children. Despite constitutional prohibitions contained in Article 23, the evil continues. In order to know the trends, dimensions, factors and responses related to trafficking in women and children in India, the Commission, in collaboration with the UNIFEM and the Institute of Social Sciences, New Delhi initiated an Action Research on Trafficking in Women and Children in India in the year 2001. This was completed and its report was released to the public on 24th August, 2004. This report disclosed very disturbing trends and made a number of recommendations with a view to prevent and combat trafficking. The recommendations made on the basis of the findings recorded in the report of the Action Research include making amendments to the existing legislation; enactment of extra territorial legislations to check cross-border terrorism and to make trafficking offence a federal crime as is the case with narcotic offences, over which the State police, CBI and Narcotics Control Bureau have concurrent jurisdiction. According to the information available with the Commission, the recommendations are under consideration of the Government for effecting amendments in the existing legislation.

The Commission has also made detailed comments on Domestic Violence Act. The Commission has, from time to time, been sending its comments on various other legislations also and has been instrumental in persuading the Government to enact the Right to Information Act, 2005.

The efforts of the Commission to persuade the Government to ratify the torture convention have not borne any results so far, though, the Commission achieved success in persuading the Government to sign the Optional Protocol; 2000 (Child Rights) in November, 2004.

The Commission also undertakes research projects on pertinent issues and has been instrumental in promoting human rights literacy and awareness by organizing internship and training programmes for students, judicial officers, civil servants, police personnel, paramilitary and armed forces, civil society. It also holds training, sensitization and capacity building workshops for various stakeholders.

One other high-profile function of the Commission is to hold public inquiries into human rights issues of national importance. Such public inquiries provide an opportunity to raise community awareness of a particular issue. These inquiries receive lot of media attention which helps in public's understanding of an issue. The NHRC has conducted national inquiries into a range of important human rights issues essentially in the area of health care and disability related issues. It has conducted a national conference on HIV/AIDS and made recommendations to the Government. A manual on Human Rights, Disability and Law has also been prepared in collaboration with the Canadian Human Rights Commission and Indira Gandhi National Open University, New Delhi.

Judiciary in every country has an obligation and a constitutional role to protect human rights of citizens. Under the Constitution of India, this function is assigned to the superior judiciary – High Courts and the Supreme Court. The Supreme Court of India is perhaps one of the most active Courts when it comes to the matter of protection of human rights. It has great reputation of independence and credibility. Since both the superior judiciary in India and the NHRC are engaged in the task of protecting human rights of the citizens, there is great complementarity between the two. The NHRC has successfully approached the Supreme Court and the High Courts in a number of cases, with important orders being made on the basis of pleas of NHRC. One of the important recent cases is what has come to be known as the 'Best Bakery case' arising out of Gujarat Riots. Cases of mentally challenged undertrial prisons like Charanjit Singh (20 years UTP), Jai Singh (26 years UTP) and Machang Lalung (54 years UTP), have also brought relief to the concerned.

The Supreme Court has also reposed great faith and confidence in the Commission and has in a number of cases, which were under its consideration particularly involving group rights, remitted matters to the NHRC. Some of the important remits made by the Supreme Court to the Commission are:

- cases arising out of allegations of deaths by starvation in the "KBK" districts of Orissa;[5]

- the monitoring of programmes to end bonded and child labour in the country;[6]

- the handling of allegations relating to the "mass cremation" of persons declared "unidentified" in certain districts of the Punjab;[7]

- the proper management of institutions for the mentally challenged in Ranchi, Gwalior and Agra; and of the Protective Home for Women in the latter city[8]; and

- lifting the ban on the sale of non-iodised salt.

Even High Courts have referred cases to the Commission concerning violation of Human Rights. For instance, the High Court of Allahabad remitted to the Commission a case concerning the deprivation of land of certain poor landholders who were being exploited by people, who acting in collusion with revenue officials, had shown them as dead in the revenue records in order to appropriate their land, while the persons were very much alive.

Such remits from the Supreme Court of India and the High Courts to the NHRC have actually enhanced the prestige and credibility of the Commission.

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[5] *Case No.37/3/97-LD(FC)*
[6] *File No.2/6/2002-PRP&P*
[7] *Case No. 1/1997/NHRC*
[8] *Case No.40/2/2003-2004/NHRC*

In India the NHRC has often taken up cases, when brought to its notice, of any assault on the fundamental rights and freedoms of human right defenders and has taken up their cause with the concerned State authorities and governments so that they continue to function fairly, reasonably, objectively and without any fear. It is the perception of the NHRC that human rights defenders and NGOs act as 'extended' arms of the NHRIs and its 'eyes' and 'ears'. They operate to monitor human rights situations and report these to the NHRI. At times, they act as the 'bridge' between the civil society and the Commission to draw its attention to the violation of human rights of a person, group or a particular area. The Protection of Human Rights Act, 1993, expressly requires the Commission, under Section 12(i) of the Act, to encourage the efforts of Non-Governmental Organizations (NGOs) and institutions working in the field of human rights. In order to strengthen and consolidate this relationship, the Commission has been holding a series of consultations with NGOs, on a regional basis. This has proven to be of considerable value both to the Commission and to the NGOs, reinforcing their understanding of each other and their capacity to work together in the furtherance of rights across the country.

In conclusion, I may say that human rights laws are among the foundation stones of a functioning democracy. It is here that a bold and independent national human rights institution becomes more crucial for promoting and protecting human rights. Such institutions play a critical role in order to vigorously defend human rights of all concerned before the Government, the Parliament and the Courts. As a matter of fact, the NHRIs must aim to develop a human rights culture in the country and continuously seek to become the conscience of the nation. A NHRI, as an independent and autonomous body, with its established credibility and impartiality is in a unique position to contribute to peace initiatives and ushering in a culture of human rights. Let us work towards better protection of human rights.

Making Human Rights Education Inclusive the Indian Experience

Devaki Jain & Sitharamam Kakarala

The concept underpinning human rights education is that education should not only aim at forming trained, professional workers, but also at contributing to the development of individuals who possess the skills to interact in a society. Human rights education, human rights into education aim at providing pupils and students with the abilities to accompany and produce societal changes. Education is seen as a way to empower people, improve their quality of life and increase their capacity to participate in the decision-making processes leading to social, cultural and economic policies.

-UNESCO[1]

Human rights education and dissemination is a fundamental human right. This imposes on governments in particular great responsibilities to explicate, propagate and disseminate human rights principles and their protection mechanisms.

-The Cairo Declaration on Human Rights Education and Dissemination[2]

"The true republic: men, their rights and nothing more; women, their rights and nothing less."

-Susan B. Anthony (1820-1906) – American suffragist[3]

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[1] *"What is Human Rights Education?" http://portal.unesco.org/education/en/ev.php-URL_ ID=1920&URL _DO=DO_TOPIC&URL_SECTION=201.html.*

[2] *http://www.cihrs.org/activities/Conference/Conference2_d.htm.*

[3] *The Revolution, newspaper written and published by Susan B. Anthony and Elizabeth Cady Stanton, 1868 (Hymowitz, 161)*

1. Setting the Stage

Over the last five decades, ever since the Universal Declaration was adopted by the United Nations General Assembly in 1948, there has been a considerable accumulation of human rights instruments, running into hundreds in quantity. The proliferation happened not only at the international level, wherein besides the United Nations, inter-governmental agencies such as International Labour Organisation and United Nations Educational, Scientific and Cultural Organisation also actively embraced paths of standard setting in their respective fields of work in the light of human rights principles, but also at the regional and national levels.[4]

Simultaneously there has been a continuous search to make the concept of human rights inclusive of the various contexts and the varied human and political experiences of citizens/people.

In this essay, we

- Review the historical evolution of Human Rights concepts, instruments and knowledge pools, in order to broaden the scope of Human Rights Education.

- Draw attention to the significance for all aspects of the landscape mentioned above of the engagement of women in this theatre of knowledge and action.

- Spell out some of the problematiques of engaging with human rights as the best framework for engineering a just society.

- Reveal the importance of other forms of pedagogy, not only the classroom and how that has also been supported by the UGC and the NHRC.

[4] *As per some estimates, within the United Nations framework there are more than 200 human rights documents, including Conventions, Declarations and Guidelines of administrative behaviour. Besides that, the ILO, UNESCO and such similar bodies have adopted numerous Conventions and Declarations in their respective fields of work. There are three well-functioning Regional mechanisms in the jurisdictions of Europe (1950), the North and South Americas (1969) and Africa (1980). Besides all these, ever since the declaration of the Paris Principles in the year 1991 regarding the establishment of national human rights commissions, there are 99 national level human rights commissions established all over the world, often under specialist national statutes (see for details: http://www.nhri.net/nationaldatalist.asp). In countries like India, subsequently state level human rights commissions have also been established.*

2. Women Transform Human Rights: Its content, scope and outreach

A closer look at the process by which the Universal Declaration of Human Rights' language emerged illustrates the value of involving women in conceptualizing and drafting instruments. However the argument here is not only about women's aspirations and efforts. The argument is that their efforts at being included and given equal place in the justice and rights framework, has in it the torchlight for all other excluded and subordinated social formations.

If just the one needle point of women's rights is taken as the probe, and every step in the human rights agenda, plan of action, assessment, implementation, is looked at with just this one thread, it will not only be enabling for women, but for dalits, for minorities, for any of the groups that have been incarcerated by hierarchical, historically discriminating society and societies.

Of course, unfortunately this cannot happen unless women, as well as these groups themselves rise and make this point and then have very strongly bonded collective actions and advocacies – in other words, claim agency.

In the quest for **justice** - for removal of discrimination, subordination, neglect, that women are engaged in, **rights** - its definition, its identification, its affirmation perhaps is the most vital factor. A striking aspect of women's participation in rights affirmation, is the presence, of other social and political movements engaged in the struggle against racism, colonialism, ethnic oppression and so on. There is a commonality of language, purpose and legal negotiations, among these various struggles. Therefore those working on women's rights enter as participants of a larger community in the struggle against overall discrimination and oppression, and not only in a gendered identity. The identity is embedded in the broader collectivist efforts – there is a common space, a "***human commons***"?

The Universal Declaration of Human Rights (UDHR) (1948) sets out basic rights and freedoms to which all men and women are entitled

– among them the right to life, to work, to education, to liberty and nationality, to freedom of speech, religion, and belief and freedom from fear, and to take part in government. It describes rights as inalienable and indivisible. Yet the implication that these rights apply to every single human being did not come out clearly in the draft formulation of its first article "All men are created equal".[5]

Hansa Mehta, an Indian delegate to the meeting of the Human Rights drafting committee, protested at the use of gender-opaque language, "That would never do", she said, " 'all men' might be interpreted to exclude women". Although Eleanor Roosevelt, the chair of the Human Rights Commission, tried to argue that the women of the United States had never felt they were cut out of the Declaration of Independence because it said "all men", she had to agree with the other women, mostly from the South, who felt strongly on this point. Thirty-two voted in favour of the change with only two countries voting against it and three abstentions. The formulation moved from "all men" to read "all human beings". [Perhaps this marked the beginning of the use of the language, human in the UN – later seen in its most visible form as human development.

It is often said, but not sufficiently known that "The women's movement influenced the content of nearly every article. The near absence of gender bias that resulted from the drafting process underscored the genuine universality of the rights contained in the UDHR."[6] (Eckert 2001).

Women's engagement with the rights discourse within the human rights mechanisms within the UN, that began with the drafting of the Charter and the UDHR, has raised many questions, and pointed to the tensions and problems related with language, definition and

[5] *Human Rights Commission, Third Session, ECOSOC document E/CN.4/SR.50, p. 9, quoted in Glendon,* A World Made New, *112. Eleanor Roosevelt had also initially opposed the creation of a separate Commission on the Status of Women for the same reasons. She felt that having a women-only body would tend to marginalize women's issues and women themselves at the UN. See Mathiason, "Mrs. Roosevelt's Letter," in* The Long Road to Beijing, *Part 1; and Galey, "Women Find a Place," 13-14.*

[6] *Universality by Consensus: The Evolution of the Universality in the Drafting of the UDHR by Amy Eckert in Human Rights and human Welfare Vol. 1:2 Columbia April 2001.*

practice. In the course of their struggles to establish a women-oriented human rights regime, women have also contributed to changing ideas, language and concepts in the area of human rights.

> When the Constitution of the to be born Republic of South Africa was being drafted in Geneva (prior to the declaration of its independence) by some of the leading men of the African National Congress, Dr Ginwala was asked to go to Geneva from London to assist them. At the end of the day, the draft read 'he' and 'he' and 'he'. Dr. Ginwala's protests were brushed aside exactly as Eleanor Roosevelt and others tried to brush aside Ms Hansa Mehta's protest. Dr. Ginwala, being junior to the leaders, politely asked them to let her take the draft to her room and see what can be done. Next morning she brought her draft, and wherever there was 'he' she put 'she'. The comrades were aghast. But Frene said, why not? 'She' includes he? At this point they gave in. The Constitution of the Republic of South Africa now has he/she through out. Dr Ginwala then makes the point that women have to be there, to bring their citizenship and their rights into these designing and deciding bodies. If they are not there it does not happen.[7] (Omara-Otunnu, 2000) Thus 1993 seems like 1946 - the voice of Hansa Mehta in 1946 and the voice of Frene Ginwala 1992/93 seem to be in one time and one place.

The insistence by women on semantic clarity was not a mere hair-splitting exercise – women have long suffered from the tyranny of a male-created vocabulary masquerading under the guise of 'universalist' language.

3. Human Rights Instruments

Even as there is an enormous proliferation of human rights instruments, standards and enforcement mechanisms there has also been an enormous landscape of discourse and continuous transformation

[7] *Elizabeth Omara-Otunnu University Of Connecticut Advance September 11, 2000 http://www.ucc.uconn.edu/~ADVANCE/00091115.HTM*

of all aspects of human rights, from its identification to its content and also its location and its implementation.

First, this proliferation has created a serious need for effective, value-based and systematic dissemination of those standards, the discourse, the complexity of this area of justice dispensation, and the emergent jurisprudence among the people at large.

Second, it has revealed that in forging the instruments there has been debate and disagreement, challenges and forward movements responding to new circumstances in the globe, and in the individual countries.

For example: the progressive changes that were brought about in designing an international instrument to safeguard women from discriminatory practices, a key value of the UN, which claimed to stand for equality, and equal status for all citizens, was the way women in the Commission on the Status of Women (CSW) moved the DEDAW (Declaration on the elimination of all forms of Discrimination against women) to the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women).

The process of drafting CEDAW[8], (1979), provides a vivid illustration of women's alchemy, or their capacity to gather in diverse elements and make them into an intelligible and practical whole. CEDAW has been called the Women's Bill of Rights. Its brilliance lies in its capturing of a wide range of elements, however awkward, into a standard. The awkwardness arises out of the complex nature of the inequality experienced by women. The core idea of CEDAW was discrimination. Equality had mostly been seen in terms of physical or quantifiable elements such as age or income or other such numbers. But discrimination operates within other categories such as race and class. It is a non-quantifiable element that exists in the mind as a perception. So it was a quantum leap forward that the CSW could find a term and a concept, which encompassed all inequalities, could be universalized across all other categories or classifications.

[8] *Convention on the Elimination of All Forms of Discrimination Against Women," Art. 1, UN document A/34/830, December 18, 1979.*

A Pioneering Human Rights Instrument

The Women's Convention (CEDAW) is a departure from the other human rights treaties and conventions (except to some extent those on racial discrimination). What makes the Convention a pioneering human rights instrument for women are the following:

- The centrality of the concept of "non-discrimination" to the equality of women.
- The inclusion of "private acts" in the definition of discrimination.
- The accompanying articulation of "prejudices," "customary practices," [and] "stereotyped roles of men and women" as features to be eliminated by state parties to comply with the Convention.
- It has upturned the model of "formal" approach to equality and established the norm of "equality of results" or "equality of outcomes"—in other words, equality in real terms.

The Convention defines the phrase "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"

4. Bringing Rights Consciousness into Human Rights Education

Putting Human Rights Education in place has created an equally important need for generating pedagogic and research processes, i.e., establishing institutional structures, providing necessary financial and

academic resources and materials etc., to meet the requirements of generating a large number of subject specialists, e.g., human rights lawyers and social activists, who would engage with the processes in an informed and committed manner.

Here a challenge that was offered by an interface organized by the UGC in 1999 to develop curriculum material for HRE in Universities, in consultation with some experts from the UK, opened new doors on where source material lay, for making HRE evocative for the Indian student. HRE, it is suggested is to provoke and stimulate interest in Indian citizens to protect human rights, to participate in activities, especially related to economic and social justice with the knowledge of the law and the ground realities.

The initiative that emerged from the above interface was an attempt to broaden the scope of the syllabus by bringing in the experience of movements for affirming of rights in India. From the historical struggles for freedom for political rights, spearheaded by Mahatma Gandhi in the 40's as a successful non-violent struggle; to the movement for the Right to Information in the current year of 2005, there have been non-violent and Indian-soil-generated rights movements in India. It was felt that by getting dossiers prepared on these movements and having them included as source material in the University Syllabus, it would encourage an Indian student, and point to something he/she could identify her/him self with. It could create a rights oriented citizenry; as well as a regard for the Indian culture of democracy, as most of the dossiers were of successful struggles for affirmation of rights. The details of this endeavour are given below,[9] but here it is being

[9] *KWIRC (Karnataka Women's Information and Resource Centre) Human Rights Dossiers.*

1. *Child Rights by* Maharukh Adenwalla
2. *Dalit Rights by* Martin McGowan
3. *Human Rights and the Environment by* Ashish Kothari & Anuprita Patel
4. *Land and Housing Rights by* Miloon Kothari & Sabrina Karmali
5. *Home based Workers' rights by*Renana Jhabvala, Vibha Puri Das & Aditi Kapoor
6. *Right to Information by* Aruna Roy *et al.*
7. *Fish Workers' Struggle for Human Rights by* Nalini Nayak
8. *Rights of the Disabled by* Meera Pillai
9. *Reproductive Rights by* Sarojini N
10. *Gandhian Rights by* Jeevan Kumar

used to reveal that inclusion of ideas, of new locations of knowledge, an important part of the evolution of educational material.

The NHRC further encouraged this process, and had the dossiers transliterated to suit the High School level syllabus as well as for the wider public, i.e. civil society organizations.

They also supported a meeting of all the writers – for them to interact and forge a common cause, also be a support group for the NHRC. At this meeting[10] the representative of U.G.C as well as Chairman of the Curriculum Development Committee of UGC, Justice Mallimath, and representatives of National Law School of India University, (NLSIU) were present. NLSIU (Bangalore) adopted the dossiers into their course as source material. It was also suggested that the course could include some field visits, that students may be exposed to some lived experiences with groups engaged in human rights struggles. The dossier writers collectively offered their spaces to students to learn the 'ground'. Hence this initiative not only added to some material but also added 'learning' techniques to the course.

Thus the history of the evolution of human rights educational material reveals that texts, source materials and other benchmarks and institutional innovations are emerging from other places, not only the UN or the early institutions of human rights education. Human rights education has also become popular education, developed and disseminated by movements, as for example the recent Right to Information movement which has led to an Act.

5. The Invisibility of Women's Contribution

One of the trajectories of the evolution of both the concepts as well as the practices, and the legal institutions in Human Rights Education, is the vivacity and richness brought to it by the women's movement, locally, nationally and internationally. Some of these

[10] *Human Rights Round table at the National Human Rights Commission on socio economic rights, Singamma Sreenivasan Foundation and NHRC, New Delhi, 2002.*

transformatory interventions have already been referred to as the language of the UDHR as well as the very special inclusive drafting of the CEDAW.

However there are many more, which are often not highlighted in mainstream essays on HRE, whether the reference is to civil society contributions, to significant institutions or to the definitional values or even to the transformatory power on general jurisprudence.

For example it is astonishing that in the HDR 2000[11], devoted to Rights and Development a follow on Amartya Sen's Development as Freedom[12] - which has so many boxes of interesting pieces from all over the world, both successes and failures, does not have examples of women's collective assertion or affirmation of rights. Nor does it have examples of specific changes in the laws on rape, on honour killings, on crimes during armed conflict and the various changes that have been made by women to illuminate human rights knowledge and transform some of the definitions. At every point then, the women's rights issue, often not yet made visible within a human rights idea and practice, has to be highlighted.

There is also the powerful transforming intervention of feminist legal centres on human rights and on law. Feminists have broadened the boundaries of custody and custodial violence; of genocide and war crimes. They have affirmed the universality of human rights and challenged the notion of cultural relativism in human rights identifications.

Mary Robinson affirms in HDR 2000 the universalization of human rights and the rejection of any qualification such as cultural relativism, Asian values etc. Such an affirmation is crucial from the point of view of women's rights. It is women who are the most likely to be injured by any form of qualification to universalization of human rights on the basis of region, tradition and cultural values. Almost invariably these

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[11] *Human Development Report – 2000* – Human Rights and Human Development, *Oxford University Press, 2000*

[12] *Amartya Sen Development as Freedom, New York: Knopf, and Oxford: Oxford University Press, 1999.*

have brought with them specific measures to control and subjugate women.[13]

6. The Role of UN and Other International Conferences on Rights as a source of Education

The United Nations World Conference on Human Rights held in Vienna in 1993 was the first such meeting since 1968, and it became a natural vehicle to highlight the new visions of human rights thinking and practice being developed by women. Its initial call did not mention women nor did it recognize any gender-specific aspects of human rights in its proposed agenda. Since the conference represented an historic reassessment of the status of human rights, it became the unifying public focus of a worldwide **Global Campaign for Women's Human Rights** - a broad and loose international collaborative effort to advance women's human rights. The campaign launched a petition calling upon the World Conference "to comprehensively address women's human rights at every level of its proceedings" and to recognize "gender violence, a universal phenomenon which takes many forms across culture, race, and class... as a violation of human rights requiring immediate action." The petition was eventually translated into 23 languages, and was used by over 1,000 sponsoring groups who gathered a half million signatures from 124 countries. The petition and its demands instigated discussions about why women's rights, and gender-based violence in particular, were left out of human rights considerations, and served to mobilize women around the World Conference. Women acted to inject issues of women's human rights into the entire pre-conference preparatory process.

Women from all regions demanded that women's human rights be discussed at the preparatory meetings held in Tunis, San Jose, and Bangkok, as well as at other non-governmental and national preparatory events. The idea of women's human rights was a framework for women to articulate and collaborate around broad and similar concerns about the status of women; it also provided women with a way to elaborate on

[13] *Devaki Jain,* Democratizing Culture, *for Seminar on Culture, Democracy and Development in South Asia (March 24-25,2000) -edited by N.N. Vohra., Delhi, Shipra, 2001, 309 p., tables, figs., ISBN 81-7541-070-1.*

the most pressing human rights issues specific to particular political, geographic, economic, and cultural contexts.

By the time the World Conference convened, the idea that "women's rights are human rights" had become the rallying call of thousands of people all over the world and one of the most discussed "new" human rights debates. The *Vienna Declaration and Program of Action*, which is the product of the conference and is meant to signal the agreement of the international community on the status of human rights, states unequivocally that:

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. *Vienna Declaration* (I,18,1993).

A forceful, recent illustration of women using the framework of rights to reflect a complex reality, was at the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) 2001. Women often experience violations of their rights based on their race or nationality as well as on their sex, gender, or sexual orientation. Women experience racism and sexism not as separate events but as violations that are mutually reinforcing. For example, soldiers and non-combatants subject women to sexual violence in armed conflict not just because they are women but also because they are women of a particular race, nationality, ethnicity, or religion. At WCAR women's rights activists successfully worked to have the final document reflect how **sex and race intersect** to make women vulnerable in ethnic conflict to sexual violence and to trafficking, and emphasized women's right to transfer their nationality, (on an equal basis with men) to their children.

The global conferences in the 1980s and 1990s proved to be fertile ground for raising issues of violence against women and which included the active participation of NGOs. International attention on issues such as acts of violence against women and discussion in international forums has prompted agencies like the United Nations to propose international covenants for ratification by nations.

Macro level changes affect micro level structures and processes and as micro or local level challenges develop, they influence macro level process, policy, and change. From its first use, the term "violence against women" encompassed a range of practices in diverse locations, from household brutality to the violence of state security forces. But this involved a process through which the network helped 'create' the issue, in part by naming, renaming, and working out definitions, whereby the concept of 'violence against women' eventually unified many practices that in the early 1970s were not understood to be connected (Keck and Sikkink 1998: 171). An example of this was the Final Declaration of the International Conference for the Protection of War Victims, held in Geneva in 1993 which expressed alarm at the "marked increase in acts of sexual violence against women and children."

The Committee on the Elimination of Discrimination Against Women recently addressed the issue of violence against women in a general recommendation adopted at its 1992 session. In its General recommendation No. 19 the primary aim of the Committee was to clarify the extent to which different forms of violence against women were in its view covered by the Women's Convention (in which the term "violence" does not appear). Another related goal of the general recommendation was to emphasize the overlap between the obligations which States Parties to the Women's Convention had assumed in relation to violence against women and the obligations which States Parties to other human rights treaties had assumed in relation to such violence. In its discussion the Committee characterised violence against women as a form of "discrimination against women" as defined in Article 1 of the Convention and noted that the Convention obliged States Parties to eliminate all forms of discrimination, whether perpetrated by public officials or private individuals.

This definition of discrimination [in Article 1 of the Convention] includes gender based violence - that is violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other

deprivations of liberty. Gender based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

Gender based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of Article 1 of the Convention.

The decisive impetus toward further progress on this issue was provided by the Beijing Platform for Action. One of the Platform's key objectives is "the elimination of all forms of violence against women." As many as three of the 12 strategic objectives of the Platform of Action are directly connected to the elimination of violence against women and girls. These three are: violence against women, women and armed conflict, and the girl-child. The importance of detecting and eliminating economic, structural, social and cultural violence against women runs throughout the Platform for Action. This also resulted in the violence against the girl child being mentioned in its first ever resolution on the girl-child by the General Assembly in 1995. The theme of eradicating violence against women also figured in the World Social Summit at Copenhagen in 1995 when all governments were urged to act to eliminate all forms of discrimination against women, including abuse and violence.

The issue of **eradicating violence against women** became the subject of a special resolution adopted by the 85th Inter-Parliamentary Conference in April 1991. Measures taken in various countries to follow up the resolution's recommendations have been regularly scrutinized by the Meeting of Women MPs, with close attention being paid to such issues as organized violence against women and sexual violence affecting women and young girls during armed conflicts. These aspects were further stressed in the resolution of the 96th Inter-Parliamentary Conference.

In 1992 and 1993, the IPU supported the adoption by the United

Nations of the 'International Declaration on the Elimination of Violence against Women' and urged Parliaments and Governments to reflect its principles and standards in national legislation. In May 1996, the IPU sent the Framework for Model Legislation on Domestic Violence to all member Parliaments and invited them to use this document - initially prepared by the UN Special Rapporteur on Violence a gainst Women, its Causes and Consequences - as a reference for national legislation.

Paradoxically, many of the most hidden and taboo-ridden "private" and intimate problems and wrongdoings between the genders have thereby become public politics in the form of global norms. One of the best examples is the issue of Men's Violence against Women (VAW), seen through internal changes and mobilization around the United Nations (UN) since the first UN Conference on women in 1975 (Pietilä 2001). Several multinational institutions have joined the UN in combating VAW (The Council of Europe, SAARC) and in a bid to further the issue of non-violence, the year 2000 was declared as the 'International Year for the Culture of Peace'. This provided the best possible framework for advancement of this issue (Pietilä, 1997). Furthermore the years 2001-2010 have been proclaimed by the UN as the 'International Decade for the Culture of Peace and Non-Violence'. Initially the discussions on the issue even at the CSW was framed in terms of domestic violence and violence involving specific categories of women – women detainees, refugee women etc. It was though viewed as a private matter between individuals that the state or international effort could do little about, it changed due to the concerted efforts of the women's movement and the Nairobi FLS urged governments to take measures against violence against women that it pointed out "exists in various forms in everyday life in all societies."

The fact that violence against women was acknowledged by the UN as a violation of human rights, regardless of where it occurs–in the home, in a public place, as part of warfare–implied that women's physical, psychological and sexual integrity was included among the basic citizen's rights. In this way, security, the original main principle of the UN, became fundamentally transformed.

However, the issue of violence against women has been at the forefront of the critique of the "mainstream's" failure to recognize violations of women's human dignity. The assertion frequently made by feminists (admittedly in some cases as an attempt to change perceptions rather than as a statement of the existing legal position) that "rape is a human rights violation" is met with the response from traditional human rights groups and the "mainstream" that this is only the case if it is carried out by officials of the State (for example, the rape of women prisoners by prison guards).

This example highlights the conceptual difficulties that the established framework of international human rights law has in recognizing that pervasive patterns of private violence against women may involve a failure by the State to respect the human rights of women. Yet the gulf between the two positions is by no means completely unbridgeable. While international law is traditionally reluctant to recognize the acts of private individuals as acts of the State, the discussion above has made clear that States are under an obligation in certain circumstances to take preventive or punitive measures against violations of the rights of individuals by private parties.

Parliament passed the bill in June 2005. This approval is seen as a positive step and it includes many of the recommendations made by various feminist lawyers and grassroots level groups. The scope of the bill is considerable and includes all forms of domestic violence – including threat of abuse (physical, sexual, verbal, emotional or economic). Domestic relationships are also defined to include relatives, or related by marriage or adoption. Therefore besides wives, sisters, mothers, daughters and others are also covered under the Act. The magistrate can pass an order allowing the women the right to reside in her matrimonial home or shared household, whether or not she has any title or right to such home or household. Besides there are other measures to help decrease the possibility of threat to the abused from the abuser for having complained. The bill also mentions 'protection officers' and allows registration of non-governmental

organizations as "service providers" who will proffer legal aid, medical examination or shelter for women in distress.

7. The Problematique of the Rights Framework

Ground swell movements in India including parts of the women's movement, are adopting the language of rights as it links them to constitutional and judicial mechanisms which seem to have more potential to provide justice than the government or even civic society — apart from the market of course. As globalization strides along—and inequality hurts harder—almost as hard if not harder than poverty and deprivation—people are mobilizing around rights even in the developing countries.

These responses can be traced to the gradual reduction of people's rights to what was earlier a free public utility - namely rivers, oceans, forests, grazing land etc. These natural resources are beginning to be contracted for production, for trade by agencies which are, once removed if not many times, removed from the people in these areas, who used to access them.

This crunch or squeeze to use the language of today is beginning to hurt deeply enough to be responded to with a movement for affirming people's rights to natural resources. Thus for example NAPM (National Alliance of People's Movements) - has moved from a call to support the right to work, to a call for the right to resources as even prior to the right to work, and the World Wide Women's Movement from a demand for benefit - sharing to a demand to lead, to have control over her body - sexuality, fertility and so on. The resource that she "owns".

However, the language of rights has always been a problem in poor unequal countries where instruments to enforce legal safeguards are muted or blunted by the very poverty and inequality of the situation.[14]

[14] *Jain, Devaki. Walking with Human Rights to development. Netherlands 1993.*

For example, one can go to the Human Rights Commission because children are not getting education, or women work. But after going to all those courts we come back to the same issue. One cannot implement what is decided internationally on Rights without development. It comes back to the same scene - poverty, lack of finance to get the basic amenities on the ground. We may go back again to Seattle and make a tremendous noise. But when we come back home, we are not able to bring that transformation. Those who come to USA find a very conservative government going backwards on many issues. Those who come back to their countries (to developing countries) often find a government, which says "I am no more a sovereign government. It is all being decided outside."

Another dilemma is in relation to child labour. We want every child to go to school. So we make elementary education compulsory, with punitive laws for defaulting parents. If the parent does not send the child to school, we put her in jail. So in fact we abrogate the woman's right over her child in order to give the child a Right. In a poverty stricken family, where the only employment opportunity is to the child-worker, it adds a rough edge, and takes away from the macro economic thrust that many of us wish to insist upon whether in relation to the Population Policy or the Child Labour Policy namely that there should be opportunity for livelihood; a Right to work framework for adults with a minimum wage insistence so that the adults earn enough so as not to send the children to work. This hope is now about to be fulfilled by the National Rural Employment Guarantee Act.

During the 1970s and 80s there was an increase in "the development of human rights norms in various international and regional treaties". The interaction between the UN and the NGOs also increased, and organizations like Amnesty International and Human Rights Watch started playing a more central role in defining norms. The 1979 UN Convention on the Elimination of Discrimination against Women (CEDAW) was seen as one of the most important and path-breaking interventions to ameliorate the gender blindness in the human rights movement. It clearly stated

that it is applicable to all women to all societies. This Convention, it has been suggested was possible due to the momentum that had been generated by the UN Decade for Women.

This brought into focus another dilemma *'Integrate Or Separate?* that haunts the feminist struggle against discrimination - to integrate or keep women's concern separate. The existence of a privileged dominant practice and a "specialized" marginal one presents a strategic choice in this area, as in many areas where the goal is to bring about the advancement of women. The question is: how does one ensure that feminist perspectives are incorporated within the dominant discourse while maintaining the separate focus which is apparently necessary to ensure that these issues are not submerged or overwhelmed. In strategic terms, any attempt to increase the attention given by the "mainstream" to gender issues in human rights must therefore also be accompanied by steps to strengthen the existing "women's rights," rights institutions and to lessen their marginalization. The difference is also reflected in the way NGOs work.

"Some international women's rights NGOs such as Women Law and Development International (WLDI) and the International Women's Rights Action Watch (IWRAW) have laboured to move out of the marginalized area and into mainstream UN human rights work... regional women's rights organizations and southern-based NGOs such as Women in Law and Development Africa (WILDAF), Asia Pacific Women Law and Development (APWLD)... are still campaigning to get their 'women's human rights' message heard by the mainstream human rights organizations on their continents."[15]

Some of the older institutions such as trade unions and cooperatives have always used the language of rights. Being representative bodies, most of their "procedures" and rules are based on elections, on voting and therefore on rights of the members. The reasons these institutions

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[15] *Alice Miller,* Realizing Women's Human Rights: Non-Governmental Organizations and the United Nations Treaty Bodies, *in M. K Meyer and E. Prugl, Eds., Gender Politics in Global Governance, Pg 161-176, 1999*

like cooperatives and trade unions need to be seen with greater interest in the landscape of globalization and liberalization is not only because of their representative nature which engages itself in rights (even if women are not yet visibly present in the current scenario of these institutions) but because in the context of large corporations, large scale financial institutions coming in to play in the fields of India, the only possible source of countervailing power is to build alternative economic organizations, federate them.

The supra-national authority of Rights has begun to create self-consciousness in the developing countries. Women and their claims are especially caught in this self-consciousness of States. They want to belong to a universal framework; the countries want tethering in "tradition" and "culture".

An interconnected theme, which has also come in for comment is a way of viewing these issues as a struggle between **'traditional' and 'modern'** and that feminist and human rights discourses are on the side of modernity and that traditions almost always oppresses women. This false binary tends to marginalize the voices, identities and relationships of those women who find aspects of local culture a source of strength. The significance of the collectivities with which these women identify is not well accommodated in either feminist or human rights models. The assumed binaries of modern-liberative against traditional-repressive are 'motivated caricatures' and they overlook equally exploitative modern practices such as cosmetic surgery, sex tours and other forms of commercialized sexuality. This outlook also means that there are less chances of working culturally relevant solutions, instead of a standardized set of rights based on an individualist construction of human rights. Often the solutions and models offered by 'modern' global structures and cultural prototypes have ambivalent implications for women. In the world today there are many major global players, such as capital markets, the multi-nationals, the world bank who are already invading on sovereignty—their accountability mechanises are outside the purview of the country's legal arrangements. These agencies usually bring their own legal and chartered accountancy firms to provide

those services and claim supra-national. These are major encroachments on national sovereignty. When governments find Women's Rights activists, invoking a global civil society they feel one more super authority is coming to impinge on them[16].

Some of the issues which intrude because of their appeal to the "universalism" over and above "culture" are related to women. The age of marriage and consent; forced marriages, female genital mutilation (FGM) and honour killings. The UN has tried to negotiate some of these issues. Taking together the age of consent (which was lower for girls than for boys) and factors related to coerced marriage, and tradition derived customs like pre-puberty marriage; and the fact that many marriages were not recorded; the CSW, after several year's of discussion, drafted the international convention on the question. As a result of its work, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages was adopted by the UN General Assembly on November 7, 1962.

Substantively, the term **human rights** is used to refer to those that are guarantees contained in the **"general" or "mainstream"** instruments, in particular the two International Covenants and the European Convention (as well as the American Convention and the African Charter). Focusing on the "mainstream" in contrast to the "women's rights" bodies has its problems: for instance, talking about the mainstream and recognizing its dominant role reinforces its conception of itself as the centre and the marginalization of those that it defines as on the margins. Nonetheless, the practice relating to the major civil and political rights catalogues is in many respects a **privileged and powerful discourse**, reinforced by a considerable allocation of institutional resources and the reality is that these institutions have the prestige, resources and perhaps the power to bring about change. Therefore it was pointed out that the whole human rights system needs

[16] *Devaki Jain: "Women and child rights in the context of globalization", Speech delivered at the Roundtable on 'Building bridges for equality – mobilizing actions' for the human rights of children and women organised by UNICEF / Society for International Development (SID) / Bernard van Leer Foundation, New York, 14 – 15 June, 2001.*

to be imbued with a feminist understanding as otherwise there would gross neglect of women's issues. For example, the failure to be aware of the possibility of violations against women and the fact that women will often be reluctant to talk about them, particularly to male interviewers, can mean that women may not be able to make certain claims (say to refugee status). This also points to the need for other appropriate measures, like formulated medical or other programs to address the results of gender-specific violations which may not be perceived.

8.The Problematique of Individual Rights

No other theme reflects the problem of women's need for individual rights as does the quest for reproductive rights. The effective expression of reproductive rights is dependent on a broader acceptance of the language of rights, in a broader set of areas such as - the right to natural resources, the right to protest, the right to leadership and the right to information. The even broader framework of political rights, of democracy is a necessary condition for making any affirmation of reproductive rights a reality.

Furthermore, these individual rights provide a crucial lever for women in general and poor women in particular where they are oppressed by traditional and cultural discrimination and violence. For all women, empowerment is related to economic rights, such as the right to ownership of assets, the right to access credit on her own, and the right to choose a partner; and without realization of these rights women will remain severely disadvantaged. Expanding the concept of reproductive health to include the concept of social and economic security for women introduces the notions of development rights and the rights of livelihood. Again, ground swell movements are adopting this language as it links them to constitutional and judicial mechanisms which seem to have more potential to provide justice than the government or even civil society.[17]

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[17] *Devaki Jain,* CH 5- Enabling Reduction of Poverty and Inequality in South Asia, *in Population and Poverty – Achieving Equity, Equality and Sustainability, UNFPA, New York, June 2003.*

The stress on the rights of the individual has also raised questions as to whether it elevates the norms that emphasizes autonomy and aggressive individualism and, if so, whether this is problematic. There is also a poser that it may be beneficial to shift the attention somewhat to rights, which emphasize community and communal values above individual rights and whether it is relevant in many contexts to posit one over the other. Nalini Nayak in a monograph on natural resources and the right of the fish workers stresses the importance of community rights.

"Communities or other groupings maybe cohesive enough, or have internal governance mechanisms, to prevent individuals within community from racing among themselves for the community's share."

Therefore we straightaway come to an important difference which is normally echoed and heard amongst those who are working in the developing countries with the underprivileged and the deprived, namely community as the basic human organization. Feminists, especially from the Third World have argued that rather than positing the individual aspects of the civil and political human rights, as opposed to the collective aspects of the social and economic human rights, the two can be approached as an integrated and mutually interdependent whole. This broad approach then encompasses a whole array of human rights in the development processes - the civil and political rights including the right to participation, the right to freedom, the right to self-determination and the right to equality and social, cultural and economic rights such as the right to health, the right to food, right to livelihood, the right to information. The so-called "solidarity" rights in terms of the right to development and the right to environment are also encompassed in this perspective.

In fighting for or claiming rights, new coalitions are being formed across issues, such as fish workers, home-based workers, child rights, natural resource, dalits, adivasis (indigenous peoples),[18] etc. Such

[18] *Human Rights Round table at the National Human Rights Commission on socio economic rights, Singamma Sreenivasan Foundation and NHRC, New Delhi; 2002.*

coalitions argue for the indivisibility of human rights and show that the effective affirmation of reproductive rights is dependent on a broader acceptance of the language of rights, including, among others, the right to natural resources, the right to protest, the right to leadership and to information. It is difficult to claim a specific right on its own. For instance, the most deprived, for whom food on any given day is not a certainty, not only require the basic economic right to food but also the political right to claim it. This situation applies particularly to women who may, in practice, have very constrained political rights preventing them from accessing provision for other basic needs to which they are entitled; in that sense, social rights are embedded in the political framework and one cannot be accessed without the other.

9. Conclusion

The framework is described because it is also the argument of this paper and broadly the women's movement today that the best safeguard for the exercise of rights by any subordinate or disadvantaged group is the existing of the larger framework of democracy. Of all the subordinate or disadvantaged groups, it is my submission that women *most acutely need space to protest, deviate, affirm their* "agency", their "autonomy". I say this because whatever other types of enabling environment is provided since much of women's subordination is located within the households and often within religious and other such traditional structures of power, the good old freedoms of expression, freedom of association and freedom to resist with access to independent judicial structures is crucial.

Several questions have been asked, as from the ground level such as: How do you implement the rights approach? What do you tell the service providers? How and where will the violated get redressal? We suggest, in the constitutionally mandated Local Self Governments (LSGs). If the social development package in the 11th Schedule of the Constitutional Amendment is handed over with finance, and if all other mandates follow, then the elected councils can be held

responsible for provisioning of services. They can be held accountable via the democratic institutional processes. Women have a voice there. Women's committees can design the project at the local level; they can exercise their agency by making the system respond to their requirements, as a right.[19]

The rights framework, for enabling development to land with justice, can be tethered on one hand to the Constitution of India, which offers a platform which is already being used by those fighting against food deprivation, livelihood withdrawal, corruption in government delivery mechanisms; and on the other to the Constitutionally mandated agencies, namely the local self-government bodies, both rural and urban.

Right now, they are being put in place, as required by the Amendments (73rd and 74th), and as required by the 12th Finance Commission. These local self-government bodies have potential for affirming rights of some of the excluded, such as women and the scheduled castes through the reservation of seats, they have the potential for transforming social relations, including the hierarchies of gender relations, through the political process of bringing women into formal governance in the public space.

Thus the Indian landscape, offers an opportunity to design and implement on the ground, in all approximately about three hundred thousand (300,000)village panchayats in India, a policy, a programme or project which links the themes – "Development and Human Rights". It could provide the institutional and legal framework for such an effort.

The Indian experience[20] with HRE, viewed broadly, has more than one trajectory. While there is no doubt that the current momentum owes to the perceived obligations of the Indian state under the action

[19] *Devaki Jain and V.S. Elizabeth, Enabling Population Stabilisation Through Women's Leadership In Local Self Government:* A proposal for the department's new scheme, *Department of Family Welfare, Ministry of Health and Family Welfare, Government of India, 17-18 February 2003, New Delhi*

[20] *U.N. Doc. A/59/525/Rev.1, March 2005.*

plan of the UN HRE decade and the Human Rights Protection Act of 1994,[21] this situation was preceded by two voluntary initiatives. First was the need felt by the civil liberties and human rights action groups within civil society in terms of disseminating human rights perspectives within the rank and file of the organizations, which lead to organizing numerous human rights literacy sessions.[22] Even though those sessions were not 'public' sessions, since the objective was to disseminate the rights literacy to largely people associated with the work of those organizations, it could be viewed as a pre-cursor to the current phase of initiatives. The second pre-cursor was the higher education initiatives in human rights supported by voluntary foundations from the North.[23]

While it is important to recount the pre-cursors, the substantive progress in HRE could however be made only after the current initiatives of the Indian Government beginning with mid-1990s. The major initiatives from the Indian Government side could be viewed at two levels: first, the pro-active and significant initiatives of the National Human Rights Commission under Section 12 (h) of the Human Rights Protection Act; and, second, the substantive ripple effects of some of those interventions such as the responses of the University Grants Commission (UGC).

The initiatives of the NHRC are of various kinds, ranging from actively engaging and advising various apex educational agencies such as the University Grants Commission to focus human rights education

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[21] *Section 12 of the Human Rights Protection Act specifies the functions of the NHRC, and sub-section (h) reads, " [to] spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means".*

[22] *Though rarely happened in high public visibility, these modest but important initiatives happened in organisations like the Peoples Union for Civil Liberties and the Andhra Pradesh Civil Liberties Committee and such similar groups across the country on a scale which cannot be considered small by any standard. It is therefore not surprising that one of the early initiatives to deliberate on human rights education was organised by PUCL and the Indian Social Institute, New Delhi, in association with the National Human Rights Commission as early as 1994. See,* Human Rights Education. *ed. R. M. Pal, New Delhi: ISI, 1995.*

[23] *Unfortunately there is no clear data as to the extent of such interventions. However, on more impressionis tic terms agencies such as the Ford Foundation helped initiating human rights education programmes, particularly in law schools such as the National Law School of India University in Bangalore, whose date precedes the current initiatives of the Indian Government.*

in a big way at the college and university levels, and the National Council for Educational Research and Training to focus on human rights teaching at the school level, and National Council for Teacher Education to focus on teacher training materials, to organizing national level consultations on human rights education with a view to bring various stakeholders into a dialogue process, to actively supporting human rights education, both regular as well as continuing education processes, particularly the later for the Judicial and Police service personnel, to setting example by actively contributing to establishing endowment for human rights studies.[24]

There are many sides to the ripple effects of these initiatives of the NHRC. Most significant of them is the developments at the higher education level, with the UGC responding substantively. The UGC response could be summarized at three levels. First, it has actively encouraged the universities and colleges in India to work for introduction of human rights courses by providing incentives to such efforts.[25] Though exact figures are not available, broad estimates suggest that there are nearly a hundred universities and colleges which seem to have taken advantage of the invitation. This indicates a clear push towards bringing human rights into higher education curriculum. The second is, the establishment of a Curriculum Development Committee (CDC) on human rights, which after two years of deliberation produced a comprehensive report, which includes 'model curriculum' for introducing human rights courses.[26] This is a substantive move towards professionalizing human rights education without loosing on the values

[24] *Though it is a one-time contribution, it is worth mentioning in a paper reflecting on trajectories of human rights education in India, that the NHRC gave an endowment to institute a Chair on Human Rights Studies at the National Law School of India University, Bangalore. The importance of such an initiative is at least of two fold. That it informs the seriousness with which the Commission views human rights education and research, and secondly paving the way for such similar contributions of endowments from other interested foundations. See for some other details of NHRC educational initiatives, Virendra Dayal, "Evolution of the National Human Rights Commission"* Journal of the NHRC, India, *2002, 67-68.*

[25] *During the previous plan period, the UGC has invited applications from universities, deemed universities and colleges to start new human rights courses at three levels: Masters, Post-Graduate Diploma and Certificate, each level carrying a set of financial incentives.*

[26] *The CDC comprised of 17 members drawn from various walks of life related to human rights theory and practice. The committee met during June 2000 and December 2001 and finally prepared its report in early 2002.*

dimension. The third and by no means less significant response is the introduction of human rights specialization in the UGC National Educational Test (NET), which adds on to the existing incentive structures to motivate and enthuse young and aspiring students to take up human rights as value-based professional option.

The effect does not confine to UGC alone, though by far that is the most significant and systematic one. Before embarking upon an analysis of the UGC interventions in promoting HRE, to which we shall return soon, it is important to map the other developments as well. The other government initiatives include: the efforts of NCERT in generating materials and debate about the introduction of human rights and citizenship education at the school level including evolving a model curriculum; the contributions of few state level human rights commissions to the education process;[27] and, a general sense of thrust given to human rights literacy in many government establishments.[28]

In such a scenario it is quite natural that even organizations of civil society would participate in the HRE initiatives. By far there is no study on the extent of voluntary or civil society initiatives in HRE, but again can be inferred from some of the experiences of institutions and individuals engaged in HRE processes. What seems to be reasonably clear is that there are widespread HRE initiatives undertaken by voluntary and civil society organizations. The nature of interventions range from organizing awareness workshops, conducting 'training' programmes for specially identified groups such as journalists, lawyers in small towns, social activists or even simply citizenry at large. Few organizations such as the Indian Social Institute have embarked on conducting a regular stream of

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[27] *See for example,* Annual Report 2001-02, *Maharashtra State Human Rights Commission, Chapter 8.*

[28] *Once again, there is no hard data to support the last point, except in the form of few individual/ institutional experiences which could be extrapolated, to a limited extent, to make a general point. For example, NLSIU in Bangalore has over the last few years regularly associated with conducting human rights literacy programmes for Foreman trainees in the Foreman Training Institute. Through our discussions with the establishment we understood that it was a decision at the higher levels of the organisation to make human rights literacy a compulsory part of the regular curriculum for the trainees.*

programmes for social activists. The significant growth of the 'human rights sector'[29] over the last two decades has also contributed to more frequent HRE interventions within civil society.

10. A Perspective on Challenges to HRE

This brings us to a crucial question of analyzing the developments in HRE initiatives in India located in the larger international landscape, mapped in the preceding section. How can we provide a constructive critique and analyze the developments in HRE in India so far? What kind of indicators should be the basis of such an exercise? One oblivious basis is to reflect on them in the light of the aims and objectives of the UN HRE decade mentioned in the beginning. Another possible way is to take stock of the available situation and provide a critique that could help rethink the core questions in the light of concerns that are close to Indian realities. We do not suggest that each method is mutually exclusive; rather they undoubtedly have a clear overlap between them. The primary difference between them however is the emphasis.

There is not much literature on HRE practices in India.[30] Even the available literature is either a work-in-progress, hence not fully formed, or personal reflections of teachers and activists and thus largely based on personal impressions. We however feel that there is no harm in making a beginning in the light of available reflections and personal experiences to provide a critique of HRE trajectories in India with a view to help identify core areas of challenges that require to be

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[29] *While it is common nowadays to refer the growth of professional voluntary organisations (eg. NGOs) specialising in human rights activity as 'human rights sector' it is not entirely free from controversy. For our purpose it refers to that part of civil society (NGOs) engaged in human rights activity which is different from the 'voluntary' social action groups dealing with human rights issues (eg. PUCL). One of the major implications of the rise of the human rights sector is need to professionalise human rights activity.*

[30] *There are two known studies, both still at the analysis stage. The first one is a study being conducted by the Human Rights Programme of the Hyderabad Central University under a Distance Education Council grant, and the second one is being conducted by the National Institute of Human Rights, NLSIU, Bangalore under a grant from the NHRC. Some early findings of the former study were published in, G. Sudarshanam and G. Haragopal, "Human Rights Education: Statusquoist or Transformative",* Indian Journal of Human Rights, *7(1&2) 2003, 151-168. Besides these there are few rudimentary reflections. For example, A. Raghu Ram, "Human Rights Education in India: Issues and Challenges",* Indian Journal of Human Rights, *6(1&2) 2002, 166-169.*

addressed, first to realize the substantive spirit of the aims and objective of the HRE decade and the follow up World programme on Human Rights Education, and second, highlighting issues that could help HRE initiatives context sensitive and meaningful to Indian circumstances.

Human Rights Education in India: Concepts and Concerns

G. Haragopal & G. Sudarshanam

The 21st Century, unlike the 20th Century, begins with a bang, a bang that is likely to influence the entire course of development of the Century. The tragic part of the story is that while the humanity sits on huge wealth–physical and civilizational- to make everybody's life comfortable, if not decent, it is encountering unprecedented chronic violence, brutality and terrorism unleashed by the world-wide unrest on one hand, and the state repression on the other. Added to that are those sections of the people who are struggling and asserting for transforming the world peacefully, if possible and violently, if necessary. There is a spiral of violence, counter violence, counter-counter violence. There is structural violence and those who are challenging it. The forces working for peace, social harmony, economic justice and enlargement of democratic space are weak, mute and hesitant. It is this historical complexity that calls for positive and conscious intervention of peace loving, democratic minded people willing to strive for a better future for the humanity. It is in this context and these concerns that provided the backdrop for declaration of 'UN Decade of Human Rights Education (1995-2004)'.

India is one of those societies among the developing countries, which committed itself to the UN declaration and took the initiative to encourage and support human rights education. As a part of this commitment, it has set up National Human Rights Commission to monitor the human rights standards and promote human rights education. The other national institutions - NCERT, UGC and the

Colleges and Universities were approached to promote human rights education. Initially there was considerable enthusiasm in the form of discussions, seminars, workshops, conferences, regional level debates and active academic support to these programmes. The enthusiasm over the decade could not be sustained, while the commitment in some degree or the other remained. This is the stage when one can take a stock of the situation, discern the trends and directions and draw the lessons from experience to decide about the future of human rights education both at the global and national levels.

What Constitutes Human Rights Education

The Human Rights Education has four important dimensions: moral, legal-rational, contextual and transformative. The moral presupposes that human beings are capable of higher consciousness in terms of concerns for the fellow beings. This social behaviour is manifest in the sacrifices and the sufferings that some of the human beings make for the well-being of others. This evidence questions the neo-liberal assumption that universally human beings are driven by the self interest. The human being, as Albert Einstein puts it, has two dimensions "Man is, at one and the same time, a solitary being and a social being. As a solitary being, he attempts to protect his own existence and that of those who are closest to him, to satisfy his personal desires, and to develop his innate abilities. As a social being, he seeks to gain the recognition and affection of his fellow human beings, to share in their pleasures, to comfort them in their sorrows, and to improve their conditions of life. Only the existence of these varied, frequently conflicting, strivings accounts for the special character of a man, and their specific combination determines the extent to which an individual can achieve an inner equilibrium and can contribute to the well-being of society." The moral would emphasize on the social nature of human being and seek to inculcate the values which promote social concerns, harmony, peace, living together and deemphasize the acquisitive, egoistic, self-centeredness of the individual human being. The moral would envisage a world, in Thomas Paine's words, with "comforts, happiness, protection and security."

The second dimension of human rights education relates to the legal-rational domain. In fact this has come to occupy a large space of human rights education to a point that human rights has come to be equated with legal rights. It is necessary to recognize that in the developing societies like India, which have not gone through European types of democratic revolution, legal rights education is essential. The legal rights in one sense like moral is a standard setting exercise. In developed societies, social and political struggles preceded the making of law, while in developing societies law is simultaneously a means and an end. It is a means to set ends and it is the means to realize those ends.

In most of the developing countries, the ruling elite are not able to distinguish the difference between the rule of law and the rule by law. Rule of law is a civilizational product. It is an advancement of the society in terms of its governance. For the rule of law sets objective universal standards arrived at by continuous human struggles. Equality before and equal protection of law are based on a very laudable postulate. The impersonal law in a way is an attempt to raise the social behaviour of individual from their very subjective passions to objective norms. As the social relations get mediated through normative concerns, a large part of the tensions that the society experiences and encounters could be avoided. The state power that is grounded on the rule of law is considered to be civilized precisely for these reasons.

In most of the developing countries the rule of law has come not as part of its natural social evolution but got transplanted from the European experience who not only experienced industrial revolution but political and social revolutions. In countries like India, the notion of rule of law had its origins in the colonial rule. It partly got fortified in the course of freedom struggle. However, freedom struggle also gave rise to repressive laws ranging from preventive detention to Rowlat Act. Given the traditional, hierarchical, inegalitarian feudal socio-economic structure and the caste system which Dr. Ambedkar calls as graded inequalities, rule of law is not only radical but revolutionary. It is for these reasons that liberal democratic theory and practice become important in human rights education.

It is necessary that the security forces and the law enforcing agencies who are engaged in conflict ridden situations, understand the lager dimensions and implications of their actions. They use force and quite often excessive force to handle break down in established social order. In such situations their sole concern tends to be to bring back the order but quite often not observe the law. Most of the documentation by human rights groups in India suggest that it is more of a law vs order and not law and order. With the result, interventions of security forces in a number of instances led to the aggravation of the situation and not amelioration. That a social breakdown should be handled with utmost restraint, economy in using of the force with due respect and regard to the limits that the law imposes on use of force is forgotten. The respect for rule of law in crisis is critical to the protection and promotion of human rights. It is not out of place to cite the observation of a senior Army officer, who after completion of a course in human rights said that "if only he attended a course of this nature twenty years back a number of human lives would have been saved"—this is pregnant with the potentialities that human rights education is capable of.

The third dimension of human rights education is exploring and expanding the concrete socio-economic context and the elements that promote or impede human rights culture. The human rights education should look at the economic structure, production processes, market mechanisms, forces of globalization, distribution of structure of economic opportunities and possibilities for improvement of capacities and capabilities of individuals and social groups. This has come to be known as Rights Approach to Development or Freedom as Development. It should also critically examine all the public policy initiatives such as land reforms, anti-poverty programmes, employment guarantee schemes, compulsory primary education, so on and so forth, which aim at restructuring of the economic system and opportunity spread.

Another part of this dimension is the entire social and cultural systems of a given society. The social institutions and cultural consciousness

largely determine the individual and social behaviour starting with the family to the larger religious systems. All these institutions have built-in democratic and undemocratic elements. The democratic elements stimulate collective living, social harmony, individual-collective equilibrium, decency in public conduct. There are the undemocratic elements which divide the human beings, trigger hatred, promote pride and prejudice and desensitize the human sensibilities. Einstein very rightly suggests "I have now reached the point where I may indicate briefly what to me constitutes **the essence of the crisis of our time. It concerns the relationship of the individual to society.** The individual has become more conscious than ever of his dependence upon society. But he does not experience this dependence as a positive asset, as an organic tie, as a protective force, but rather as a threat to his natural rights, or even to his economic existence. Moreover, his position in society is such that the egotistical drives of his make-up are constantly being accentuated, while his social drives, which are by nature weaker, progressively deteriorate. All human beings, whatever their position in society, are suffering from this process of deterioration. Unknowingly prisoners of their own egotism, they feel insecure, lonely, and deprived of their naïve, simple, and unsophisticated enjoyment of life. "**Man can find meaning in life, short and perilous as it is, only through devoting himself to society.**" Human rights education to be effective, should be able to address this historical and civilizational process.

Human rights education therefore cannot be confined or restricted to mere legal rights. It should go beyond the legal framework and include the social and economic system and processes and implications both to human nature and social relations.

There is the fourth dimension, which is crucial to human rights education. This dimension relates to the people's movements and struggles for dignity, self-respect, freedom, justice and equality. At the present juncture of Indian society oppressed human being is a human rights activist in his or her own way. For that matter every oppressed social groups - be it women, dalits, peasants, tribals, minorities – all of them are craving for greater dignity. Therefore, they are questioning

the dominator and all forms of dominance through mild assertion to wild protests. These several ongoing movements herald the arrival of new values, ways of life and birth of new institutions. For all of those who are not human rights sensitive, these movements appear as law and order problems. Human rights education can put the entire phenomenon in its proper perspective.

There is this whole controversy of human duties education. There are sizeable sections of the intelligentsia who maintain that 'over emphasis' on human rights education makes the individual more rights conscious and therefore neglect of his duties and responsibilities. They argue that it would lead to irresponsible social behaviour. These apprehensions are natural in a society like India where the individuals, groups and masses at large have been burdened for centuries with only duties, without corresponding rights. Hence, the fear that any rights' consciousness will lead to the negation of duties. But the inverse relation between the rights and duties has to be recognized in its historical context. Infact this juxtaposition of rights and duties in an iniquitous and hierarchical society could only mean perpetuation of the existing stranglehold of social relations.

The debate on human duties education should be carried from a human rights perspective. In human rights one should understand that the origins of rights lie more in the right and wrongs matrix and not rights and duties cobwebs. For there cannot be a right without a duty. One cannot have the right to freedom of speech unless he or she realizes that his or her right could last only, if only the other enjoys the same right in the same degree. One cannot enjoy pay or income unless one does the job that he or she is paid for. If a set of people, could it be teachers, government officials, professionals enjoy the income but not as fruits of their own direct labour, sooner or later the production systems would get crippled. That one has to work for what he or she is paid for does not call for duties education, nor is that because of absence of that type of education. They are the results of failure of supervisory levels, lack of interpersonal harmony, absence of joy in the work that one is engaged in. The inefficiency and non-performance is for a variety of reasons

and attributing it to rights consciousness is completely a misplaced perception.

Let us look at the problems from a different vantage point. An agricultural labourer, construction worker, a cycle rickshaw puller, a house wife who labour so hard do it neither because of duties consciousness nor rights sensitivity. Given such social categories what should be the emphasis of human rights education to these sections of the society? In such cases rights education becomes important as they have to grow more conscious of their dignity and self-respect. The whole controversy may be at some level relevant to the middle classes. The overall feeling that the middle classes in India got a greater share in the social wealth than what they contributed may be to some extent valid. If one raises this question about the rich, the entire debate will acquire altogether different dimensions.

The rights and duties education can be designed in such a way that whenever the relations are unequal, iniquitous, the privileged could be informed of his or her obligations and the underprivileged of their rights. The government employees or the industrial workers could be sensitized about the rural poor, pauperised and marginalized sections. So is the case with family: the male could be sensitized about his duties towards woman and female could be sensitized about her rights. The upper castes have to be told their responsibilities towards the dalits and dalits of their rights. The state of its duties and the citizens of his or her rights. This inverse structuring of rights and duties education could be one way of creating an overall rights and duties consciousness in a transitional society. There are some of these specificities one has to keep in mind while designing and developing courses in human rights, duties education.

Approaches to Human Rights Education

Human rights education has to grapple with three important concerns: one, clarification of contemporary civilizational dilemmas; two, inter-generational transmission of experience; three, acceleration of the process of transformation. The contemporary civilization faces several dilemmas

arising from different contradictions. These contradictions at an individual level are located in selflessness vs. selfishness, at institutional level at individual vs. collective or state power vs. democratic culture. The development models have come to increasingly presuppose that self-interest alone can be the propeller of faster development of the productive forces. The crisis of the socialist world gave impetus to this wide spread belief. Despite the crisis, the potentialities and possibilities of nobility inherent in human nature will have to be rediscovered and realized. This can be made possible by not only recounting and resurrecting the historical memory about the positive achievements and advancements of a given society but also transmitting those values to coming generations. The vision for the future should be based both on the positive understanding of the past and immense faith in human nobility to build the future. The indifference to past achievements in such domains and lack of vision for the future not only negates the past but cripples societal capacity to move to higher realms of social life. A critical reflection of the past heightens the consciousness, which in turn, can create necessary climate for not only democratic governance but a democratic way of life. This effort has to be continuously made at the individual, group, national and international levels. Human rights education in such sense can be a catalyst.

Human rights education can have three different thrusts: one, incrementalist; two, reformative; and three, transformative. These thrusts are not necessarily mutually exclusive. Yet they can have varied emphasis. The curriculum, however, depends upon the specific emphasis.

Incrementalists thrust is one of the widely acceptable approaches to education in general and human rights education in particular. The basic underlying assumption of this thrust is that it takes the socio-economic system as given. It can broadly be characterized as equilibrium-centric. This approach allows marginal changes. This generally does not give the ability to the learner to convert information into practice or action. If the learners happen to be children, they memorize the list of rights and reproduce them in the examination. In such cases most of the learners do not care to remember human rights taught in the class room beyond the examination hall not to

talk of being influenced to the point of upholding them in real life. There is ample evidence in the fact that the students of law and of political science, who study the rights as a part of their academic courses, hardly possess any human rights consciousness. This suggests that human rights education should go beyond the informationist or incrementalist stage.

Reformist approach, unlike the incremental, goes a few steps forward, although in qualitative terms it would be closer to incrementalism. Reformist thrust seeks to influence the consciousness of the learner. It recognizes the need for change either because of compulsions of socio-political situation or egalitarian vision of the individual and elite groups. They support changes for orderly and peaceful transformation. This approach deemphasizes ritualistic reproduction of information. The question of rights is presented in its historical context. It discusses the people's movements and sacrifices in the cause of rights. The learner is made sensitive to historical process. In this approach an attempt is also made to equip the learner with the critical capability to analyze and understand the world around and the problems affecting the world. Such an approach receives encouragement and support of international agencies like UNESCO.

The UNESCO document on human rights education observes, "the school among other agencies of society, has an obligation to play its part fully and effectively in developing understanding of the principles of human rights and in shaping the attitudes and behaviour of future citizens in accordance with them". It adds, "education for human rights is conceived not only as an end in itself but also as a means of developing human qualities and creating the conditions which will enable people to live peacefully together in a world of closely inter-related nations". The UNESCO maintains that the syllabus on human rights education should cover "the history of social revolutions and independence movements and breakdown from colonization". It adds "struggle for human rights through ages or of movements for social welfare and justice will enable pupils to appreciate size of the formidable task". This thrust, UNESCO document hopes "will provide inspiration

and a sense of pride in human accomplishment".

The UNESCO like many other international agencies takes a cautious approach. They strive to make their approach as universally acceptable as possible. They would like to be as non-controversial as they can. Notwithstanding this limitation, their interest in human welfare and world peace are fairly well known. It is within that broad frame they operate. It is because of such an approach they emphasize on reformistic thrust.

The third approach, which can broadly be called transformative or humanistic, emphasizes on transformation of the individual, group, society, state and global order. These are all structurally interconnected. It believes that this transformation can be achieved by providing not only a critical understanding of the past but also the contemporary socio-economic context. It focuses its attention on the injustices and inequalities. It takes an open position in favour of the disadvantaged and suffering millions. It aims at making the learner sensitive to this suffering and see that the human consciousness deepens and gets grounded in the concrete reality.

The transformative approach, unlike the equilibrium-centric approach, will have altogether different premises. In this approach the system is not treated as given. It believes that a given system is not static, but in motion and pregnant with different historical possibilities. The conscious human intervention in this whole project is both possible and desirable. It depends on how one makes use of the potential for change and a change towards a more humane society. In other words, the emanicipatory process can be accelerated through conscientization. The only hazard that cannot be avoided in such an approach is the disequilibrium which can upset some of the entrenched socio-economic relations. This is the 'price' that transformative approach would 'inflict' on a given society. Human Rights Education with a transformative thrust should accelerate such change at one level and prepare all the social groups including the privileged for this change. Whether a society or certain sections of the society would be willing

to respond to such initiatives needs a deeper analysis. This could be done by critically looking at the strategy and processes of Human Rights Education and responses of different social groups to such education.

State of Human Rights Education in India

The existing status of Human Rights Education in conventional universities and colleges lacks intensity and comprehensive strategy of transformation. At the undergraduate level, generally, Human Rights Education is under the umbrella of law faculty as a limited component. Only the National Law School University, Bangalore, offers a full paper on Human Rights at the level of L.L.B., and a full-fledged diploma course through distance mode. In the conventional departments of Political Science, it forms a part of the course on constitutional development and international politics. In some universities, it forms a part of the curricula of Sociology, Economics and Modern History.

During the decade, the Department of Political Science of Aligarh Muslim University, School of Legal Studies of Cochin University, Department of Sociology of Andhra University have started two years Master's Course in Human Rights. The Department of Politics and Civics of University of Mumbai, Law Department of Nagpur University, Political Science Department of Jamia Milia Islamia and Human Rights Department of Sourashtra University, and NALSAR Law University in Hyderabad have started P.G. Diploma in Human Rights. The latest to join this effort is Shri Ramanand Tirth University at Nanded in Marathwada region of Maharashtra.

While the above courses are being offered through conventional mode, there are certain departments of universities offering Human Rights Education through distance mode. The Department of Political Science, University of Hyderabad and the National Law School of India University, Bangalore have been offering P.G. Diploma in Human Rights through distance mode. The Department of Human Rights and Social Development, Sri Venkateshwara University in Tirupati is offering P.G.

Diploma in Human Rights as evening programme. Dr. B.R Ambedkar Open University, Hyderabad, IGNOU, New Delhi have also launched these programmes. Being Open Universities both of them offer these courses through distance mode.

An analysis of content of the courses indicates that the legal rights and the rights ratified at international level continue to provide the base for Human Rights Education. These two dimensions while have a potential to deal with the questions of freedom and justice, their inherent potential to cause change of far-reaching nature needs to be looked into.

An attempt in this direction to our knowledge is made in the Human Rights Programme of the University of Hyderabad where the emphasis is laid on attitudinal change, which may, in turn, contribute to larger transformation. In pursuit of this objective the course is so designed that it goes beyond the legal rights. It presents five major approaches or thrust in human rights. These approaches include liberal, feminist, third world, Indian and Marxist. The nuances of each thrust are sought to be presented so as to sensitize the learner to major world-views and enable him or her to opt for one of the value frameworks. These approaches, it is hoped, will contribute to the broadening of the horizon and deepen human concerns and hopefully work for those values.

The P.G. Diploma in Human Rights offered by the University consists of six major courses, of which one is on philosophical foundations, explaining various concepts and theories of human rights. One course covers epoch making historical events, paving the path for launching of human rights movements and debates. The third course is on global experience of human rights covering human rights situation in different countries. Two courses relate to India covering the constitutional and legal aspects and the socio-economic context of human rights with emphasis on emerging issues and challenges. The last one is a Project Report in which the participants are made to select a topic of their interest, conduct research and prepare the report. Thus, the course provides a comprehensive exposure to various theoretical and empirical dimensions of human rights at global, national and local levels.

Impact of Human Rights Education: Perceptions of Learners[1]

In this part an attempt is made to find out the impact of human rights courses on learners. For this purpose a survey was done on the learners at the University of Hyderabad. The survey was conducted on a sample of 136 students of conventional mode who have studied human rights course as a part of their regular P.G. programme in Political Science and 169 students of distance mode who were the participants of one year P.G. Diploma in Human Rights. While P.G. students belong to four different batches of M.A. programme in Political Science, the P.G. Diploma students belong to six batches who have passed out the diploma between 1998 and 2003. Apart from PG Diploma (distance education) students of University of Hyderabad, a modest survey was also conducted on 14 students of PG Diploma in Human Rights from S.V. University, Tirupati and 24 students of PG Diploma in Human Rights from National Law School, Bangalore. Thus the total number of respondents from the three Universities is 207. Their perceptions were collected with the help of survey method.

Learners' Perceptions in the Regular Masters' Programme

Out of the 136 students who have studied human rights courses as a part of their regular M.A. programme in Political Science, 36 percent are female and 64 percent are males. All of them are in the age group of 20 to 25 years. A large number of the respondents come from middle and upper middle class background. The parents of about one-third of the respondents are in the government service or in the teaching profession. About one-fourth of them come from agricultural background. Parents of twelve percent respondents include employees in private sector. The parents of rest of the students are professionals such as advocates, engineers, doctors and college teachers. Some of the parents are in All India Services. Parents of a few students are retired employees or working as labourers.

[1] *This data was also presented in one of our earlier papers. The revised data is included in this paper for wider debate.*

This shows that a majority of the students come from a better economic background.

When asked about the impact of the course on them in terms of the change in their behaviour and understanding of social issues, an overwhelming majority said that it has had a positive impact on them. When further probed about the influence of the course, responses are instructing. A section of them stated that the course widened their understanding and 'sensitized them to social issues', 'got a frame-work to analyze social issues', 'they can see things in human rights perspective'. Another section acknowledged a change in their attitude particularly towards the women, dalits and reservation issues. A few others felt that the course sharpened their moral sensibilities and now they recognize the dignity of all human beings. A small percentage of the students said that their comprehension of the state violence and the police underwent a change. A couple of students said that their future plans and activities got re-shaped. However, a few learners felt that the course did not make any difference to them.

The above responses indicate broadly three patterns, one pattern where the learners felt that they now have a frame-work to analyze and understand the issues through a perspective. There is no clue in these responses, whether increase in the analytical abilities would lead to change in the attitudes and outlook. The impact of higher abilities in understanding the phenomenon on attitudinal formation is not clear. This would at best help them in avoiding confusion, which is very common in the understanding of human rights.

The second pattern of responses relate to a change in the attitudes. This attitudinal change includes change towards women, dalits and the issue of reservations. They admitted that they held more conservative or undemocratic views earlier on these issues. This can as well lead to 'incremental' democratization. This is a welcome change, although it is quite molecular in its content and character.

The third pattern of responses is more promising where the learners maintained that it shaped their future course of activities, which, in turn, may turn them into catalysts of change.

The most puzzling response came from one student who rejected all the view points. The course seems to have changed his attitude but in reverse direction. The student wrote a long answer and argued that India needs authoritarian and fascist regime at this point of time. He remarked "what is wrong with fascism?" and rejected the idea of liberty and freedom. He emphasized that fascism alone would protect the unity of India. That a student of human rights should come out with this type of response is a sad reflection on the larger context and the outside influences at one level and limitations of human rights education in changing certain very strong individual attitudes at another level.

Of these three responses, the first two responses are broadly equilibrium-centric, indicating that even attempts with a transformative thrust could end up with equilibrium-centric outcome. The question of transformation of attitudes remains unanswered.

When the students were asked to suggest certain measures for improving the human rights course, they came out with wide ranging suggestions. About one-fifth of them suggested the necessity of field study and field exposure and audio-visual presentation of issues as an important input for enhancing the effectiveness of the course. The other suggestions included case study presentations in the class rooms, study of current human rights violations, teaching human rights right from the school level, more emphasis on women child, and dalit rights.

Learners' Perception in Distance Mode

The second category of respondents belong to the distance mode. With regards to P.G. Diploma students of University of Hyderabad, a total of 670 students have joined the P.G. Diploma since its

inception in 1997 to 2003. The gender and caste background of the learners shows that an overwhelming number of them are males coming from upper caste urban background. A very few of them come from the Scheduled Castes and the Scheduled Tribes. Most of them belong to young and middle age groups. They are highly qualified as most of them are Post-Graduates or from professional background such as law, medicine, and engineering. Some of them hold research degrees such as M. Phil and Ph.D. Occupation wise roughly ten percent of them are from law enforcing agencies and armed forces. Some of them are IPS officers and senior army officers. About sixteen percent come from government service. Nearly ten percent of them are advocates and judges. A sizeable number of them belong to teaching profession or employees in the private and NGO sector. A significant section of the students include either unemployed people or retired personnel from the government or private service. Territorial distribution of students indicates that two -thirds of them come from Andhra Pradesh, particularly from Hyderabad and other Telangana districts. From the remaining students most of them come from southern states of Kerala, Karnataka and Tamil Nadu. Quite a number of participants also come from Orissa, Delhi, Madhya Pradesh and West Bengal. There are also a few participants from the states of Assam, Haryana, Goa, Gujarat, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Manipur, Meghalaya, Punjab, Tripura, Uttar Pradesh, Uttaranchal and Union Territories of Chandigarh and Pondicherry.

An analysis of the reason for joining the course suggests that they are a highly motivated group as they joined the course to know and learn about human rights. The data also indicates that a majority of them joined the course to broaden their understanding of human beings and their problems. Some of them stated that they joined the course to get senstised about human rights. They see human rights education as a capacity building exercise. Others joined the course to advocate the cause of human rights, to develop a career out of the course, to know the human rights situation in different

states in India and different parts of the world.

When enquired whether the said purpose is realized by studying the course, a majority of the respondents answered in the affirmative. While a few of them felt that the purpose is not achieved, little less than one fifth of them said that it is achieved to some extent. It is impressive to note that two thirds of them felt that human rights course has the capacity to change the attitudes of the learners.

When asked what aspects of the course were appealing, more than one third said that it is the comprehensive coverage of all aspects of human rights. A large number liked theoretical foundations, followed by global scenario. Some of them liked the course on socio-economic context of human rights, violations of human rights in India, civil liberties movements, protection of rights of S.Cs, S.Ts, women, etc. Some of them did not like historical aspects and lessons repetitive in nature and the statistical and economic details in some lessons. This aversion to history and the hard empirical data can be a mental block which the pedagogy is not able to handle.

When enquired about the impact of the course on them, the responses were interesting. More than one-fifth of them felt that it enlightened them about human rights situation in the world and gave a fresh knowledge, new ideas and deeper understanding of human rights. Another sixteen percent felt that it gave them a new perspective in understanding the unfolding experience. The course enabled them to think about social issues and question some of the day-to-day events of life. More than one-fifth said that the course enabled them to become active in human rights activities such as publishing essays on human rights, joining human rights activism and practicing human rights in their day-to-day life. Some of the respondents such as practicing advocates and government officials felt that the course enabled them to improve their professional capabilities. They say that now they are in a better position to perform their jobs particularly in protecting the interest of the disadvantaged. About one-fifth felt that it was a good programme

and has had a positive impact on them. Some respondents stated that they are yet to assess the impact of the programme.

The respondents have also come forward with many suggestions to improve the diploma programme. About one-fifth of them from the earlier batches suggested project work involving field study, which was later implemented. They felt that human rights students should have exposure to field situation. A considerable number of them suggested that the students have to be involved in human rights protection activity. A network has to be built involving all human rights students to promote human rights awareness. A group of respondents felt that the political leaders, bureaucrats, police and the victims of human rights violations have to be invited to interact with the students of human rights. Some have suggested interactive method of learning instead of lecture method during contact classes. Others suggested the need to include more details relating to legal system, Indian tradition, case studies and documentation on human rights and more information on global situation. Some suggested involvement of students in seminars on human rights and encouraging them to write articles on human rights issues.

An analysis of responses from the students of both conventional and distance mode indicate that the human rights education particularly at higher level has a lot of potential to inculcate the culture of human rights and sensitize to the values of democratic life with justice and equality. The human concerns, the study indicates, can be buttressed through such education. There are people with concern for others, particularly women, poor, tribals, scheduled castes, etc. This enquiry has to be carried further so as to see whether the participants, in their everyday life, are practicing the spirit of rights. It also needs to be probed as to what difference such individual changes mean to the over all democratic content and character of the society. Although, the overall strategy of human rights education may aim at qualitative change, the evidence suggests that the impact is mild, incremental and at best reformistic. It is

not clear whether it is the limitation of the strategy or the preparedness of the learners. These are the issues, which are intrinsic to all the endeavours in human rights education, particularly in transitional societies like India.

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Appendix-A

Opinion of M.A. (Regular) students on Human Rights Course

Note: *1. All Numbers in the bracket indicate percentiles.*
2. All percentiles are approximate numbers.

Table No. 1
Gender of the students

Sl. No.	Gender	98-99	99-00	00-01	02-03	Total No.
1	Female	13 (43.34)	11 (27.5)	15 (46.8)	10 (29.4)	49 (36)
2	Male	17 (56.66)	29 (72.5)	17 (25)	24 (70.6)	87 (64)
3	Total	30 (100)	40 (100)	32 (100)	34 (100)	136 (100)

Table No. 2
Parents' occupation

Sl. No.	Occupation	98-99	99-00	00-01	02-03	Total No.
1	Advocate/engineers/ doctors	NA	4 (10)	1 (2.95)	3 (9.37)	8 (7.54)
2	Agriculture	NA	10 (25)	7 (20.6)	11 (34.37)	28 (26.41)
3	All India services	NA	2 (5)	—	3 (9.37)	5 (4.71)
4	Business/private organization	NA	6 (15)	6 (17.6)	1 (3.12)	13 (12.26)

Sl. No.	Occupation	98-99	99-00	00-01	02-03	Total No.
5	Government service	NA	11 (27.5)	10 (29.4)	5 (15.62)	26 (24.52)
6	Priest	NA	1 (2.5)	—	—	1 (0.94)
7	Labourer (Cooli)	NA	1 (2.5)	—	—	1 (0.94)
8	Police	NA	2 (5.0)	—	1 (3.12)	3 (2.83)
9	College/University Teacher	NA	—	3 (8.85)	3 (9.37)	6 (5.66)
10	School Teacher	NA	—	1 (2.95)	—	1 (0.94)
11	Retired employee	NA	2 (5.0)	4 (11.8)	2	8 (7.54)
12	Mother unemployed and father passed away	NA	—	1 (2.95)	1 (3.12)	2 (1.88)
13	Information not given	NA	1 (2.5)	—	2 (6.25)	3 (2.83)
	Total		40 (100)	32 (100)	34 (100)	106 (100)

Table No. 3
Perspectives liked by students

Sl. No.	Category	98-99	99-00	00-01	02-03	Total No.
1	Ambedkar's perspective of Human Rights	NA	6 (15)	—	—	6 (5.66)
2	Marxist perspective	NA	12 (30)	—	3 (8.82)	15 (14.15)
3	Feminist perspective	NA	3 (7.5)	—	2 (5.88)	5 (4.71)
4	Gandhian perspective	NA	1 (2.5)	—	3 (8.82)	4 (3.77)
5	Indian (Gandhian & Ambedkar) perspective	NA	9 (22.5)	—	1 (2.94)	10 (9.43)
6	Liberal perspective	NA	7 (17.5)	—	7 (20.58)	14 (13.20)
7	All are good	NA	1 (2.5)	22 (68.75)	14 (41.17)	37 (34.90)
8	Not answered	NA	1 (2.5)	10 (31.25)	4 (11.76)	15 (14.15)
	Total		40 (100)	32 (100)	34 (100)	106 (100)

Table No. 4
Impact of the course on the students

Sl. No.	Category	98-99	99-00	00-01	02-03	Total No.
1	Positive impact	30 (100)	32 (80)	24 (75.00)	30 (88.20)	116 (85.3)
2	Partial impact	—	1 (2.5)	5 (15.60)	3 (8.85)	9 (6.6)
3	No impact/ Not answered	—	7 (17.5)	3 (9.4)	1 (2.95)	11 (8.1)
	Total	30 (100)	40 (100)	32 (100)	34 (100)	136 (100)

Table No. 5
Suggestions for improvement

Sl. No.	Suggestions	99-00	98-99	00-01	02-03	Total No.
1	Case studies should be discussed in the class and outsiders should be allowed to listen the classes	NA	2 (6.66)	—	NA	2 (3.22)
2	Course is very good and no need for further improvement	NA	2 (6.66)	3 (9.37)	NA	5 (8.06)
3	Current cases of Human Rights violation should be discussed in the class	NA	1 (3.33)	—	NA	1 (1.61)
4	Human Rights should be taught from school level to improve understanding towards life	NA	2 (6.66)	—	NA	2 (3.22)
5	Human Rights teaching should be more humane and should eradicate barriers between human beings	NA	2 (6.66)	—	NA	2 (3.22)

Sl. No.	Suggestions	99-00	98-99	00-01	02-03	Total No.
6	Human Rights should be included in all disciplines like Law and taught at UG level	NA	1 (3.33)	1 (3.12)	NA	2 (3.22)
7	Need field exposure, audio visuals and debates in the class	NA	5 (16.66)	7 (21.87)	NA	12 (19.35)
8	Problems of women and girl children should be discussed in the class	NA	2 (6.66)	—	NA	2 (3.22)
9	Students should be encouraged to work for gaining knowledge	NA	1 (3.33)	—	NA	1 (1.61)
10	Teaching should involve more current examples of Human Rights	NA	—	1 (3.12)	NA	1 (1.61)
11	Need a separate chapter on Human Rights situation of North-East	NA	—	2 (6.25)	NA	2 (3.22)
12	Need teachers with field experience	NA	—	1 (3.12)	NA	1 (1.61)
13	Need more topics on dalit and women's rights and their violation	NA	—	2 (6.25)	NA	2 (3.22)
14	Need more Human Rights papers in MA	NA	—	1 (3.12)	NA	1 (1.61)
15	Suggestions not given/ not answered/ Don't know/ Can't say	NA	12 (40.00)	14 (43.75)	NA	26 (41.93)
	Total		30 (100)	32 (100)		62 (100)

Appendix - B

Profile of the students of P.G. Diploma in Human Rights
(Distance Mode)

Note: *1. All Numbers in the bracket indicate percentiles.*
2. All percentiles are approximate numbers.

Table No. 1
Gender of the P. G. Diploma students (Batch Wise)

Gender	1997	1998	1999	2000	2001	2002	2003	Total
Male	105 (83.3)	78 (76.5)	61 (77.2)	78 (75)	63 (69.2)	69 (78.4)	66 (82.5)	520 (77.6)
Female	21 (16.7)	24 (23.5)	18 (22.8)	26 (25)	28 (30.8)	19 (21.6)	14 (17.5)	150 (22.4)
Total	126 (100)	102 (100)	79 (100)	104 (100)	91 (100)	88 (100)	80 (100)	670 (100)

Table No. 2
Caste Background of the P.G. Diploma Students

Category	1997	1998	1999	2000	2001	2002	2003	Total
Scheduled Castes	11 (8.7)	5 (4.9)	6 (7.6)	8 (7.7)	9 (9.9)	8 (9.1)	11 (13.75)	58 (8.7)
Scheduled Tribes	1 (0.8)	0 (0.0)	0 (0.0)	1 (1.0)	2 (2.2)	0 (0.0)	5 (6.25)	9 (1.3)
Others	114 (90.5)	97 (95.1)	73 (92.4)	95 (91.3)	80 (87.9)	80 (90.9)	64 (80)	603 (90.0)
Total	126 (100)	102 (100)	79 (100)	104 (100)	91 (100)	88 (100)	80 (100)	670 (100)

Table No. 3
Age Group of the P.G. Diploma Students

Age Group	1997	1998	1999	2000	2001	2002	2003	Total
25 and below	13 (10.3)	21 (20.6)	7 (8.8)	30 (28.8)	18 (19.8)	12 (13.6)	20 (25.00)	121 (18.05)
26 to 35 years	57 (45.2)	41 (40.2)	30 (38)	36 (34.5)	42 (46.1)	34 (38.6)	29 (36.25)	269 (40.15)
36 to 45 years	33 (26.2)	25 (24.5)	21 (26.6)	22 (21.1)	19 (20.9)	29 (33.0)	19 (23.75)	168 (25.10)
46 to 55 years	21 (16.7)	14 (13.7)	18 (22.8)	15 (14.6)	11 (12.1)	9 (10.2)	11 (13.75)	99 (14.80)
56 to 65 years	2 (1.6)	1 (1.0)	3 (3.8)	1 (1.0)	1 (1.1)	4 (4.6)	1 (1.25)	13 (1.9)
Total	126 (100)	102 (100)	79 (100)	104 (100)	91 (100)	88 (100)	80 (100)	670 (100)

Table No. 4
Educational Qualifications of the P.G. Diploma Students

Education	1997	1998	1999	2000	2001	2002	2003	Total
Graduation	37 (29.4)	23 (22.5)	18 (22.8)	38 (36.5)	19 (20.9)	44 (50.0)	41 (51.25)	220 (32.8)
Professional Courses (B.E., B. Ed., MBBS, LLB, etc)	33 (26.2)	28 (27.4)	32 (40.5)	24 (23.1)	35 (38.4)	21 (23.9)	4 (5.0)	177 (26.4)
Post Graduation	47 (37.3)	44 (43.2)	21 (26.6)	36 (34.6)	23 (25.3)	20 (22.7)	33 (41.25)	224 (33.4)
Research Degree (M. Phil., Ph.D.)	9 (7.1)	7 (6.9)	8 (10.1)	6 (5.8)	14 (15.4)	3 (3.4)	2 (2.5)	49 (7.4)
Total	126 (100)	102 (100)	79 (100)	104 (100)	91 (100)	88 (100)	80 (100)	670 (100)

Table No. 5
Occupation of the P.G. Diploma Students

Occupation	1997	1998	1999	2000	2001	2002	2003	Total
IPS	1 (0.8)	3 (2.94)	3 (3.8)	5 (4.8)	1 (1.1)	— —	— —	13 (1.95)
Other Police Officers	4 (3.20)	1 (0.98)	5 (6.3)	6 (5.7)	2 (2.2)	11 (12.5)	15 (18.75)	44 (6.55)
Defence/ Paramilitary	6 (4.75)	6 (5.88)	5 (6.3)	4 ()3.8	1 (1.1)	2 (2.3)	3 (3.75)	27 (4.22)
Other Government Officials	30 (23.80)	15 (14.70)	11 (13.9)	17 (16.3)	13 (14.3)	14 (15.9)	11 (13.75)	111 (16.55)
School Teachers	9 (7.10)	7 (6.86)	5 (6.3)	3 (2.9)	3 (3.3)	4 (4.55)	3 (3.75)	34 (5.05)
College Teachers	11 (8.70)	13 (12.74)	8 (10.1)	4 (3.8)	9 (9.9)	3 (3.4)	3 (3.75)	51 (7.55)
Doctors/ Medical Officers	4 (3.20)	3 (2.94)	1 (1.3)	3 (2.9)	1 (1.1)	1 (1.1)	— —	13 (1.95)
Advocates/ Judges	12 (9.50)	4 (3.90)	11 (13.9)	8 (7.7)	11 (12.1)	13 (14.8)	6 (7.5)	65 (9.7)
NGOs/Social Service	7 (5.55)	7 (6.86)	4 (5.1)	4 (3.8)	5 (5.45)	9 (9.9)	2 (2.5)	38 (5.7)
Private Organization employees, Journalists, Engineers, etc.	4 (3.2)	6 (5.88)	5 (6.3)	5 (4.8)	4 (4.4)	9 (10.2)	4 (5.0)	37 (5.5)
Retired, unemployed, students and others	38 (30.15)	37 (36.3)	21 (26.6)	45 (43.3)	41 (45.05)	22 (25)	33 (41.25)	237 (35.4)
Total	126 (100)	102 (100)	79 (100)	104 (100)	91 (100)	88 (100)	80 (100)	670 (100)

Table No. 6
State-wise Distribution of the P.G. Diploma Students

State	1997	1998	1999	2000	2001	2002	2003	Total
Andhra Pradesh	98 (77.77)	75 (73.52)	60 (75.94)	70 (67.3)	58 (63.73)	63 (71.59)	58 (72.5)	482 (71.94)
Arunachal Pradesh	—	1 (0.98)	—	—	—	—	—	1 (0.14)
Assam	—	—	—	—	1 (1.09)	2 (2.27)	—	3 (0.59)
Bihar	—	—	1 (1.26)	1 (0.96)	1 (1.09)	1 (1.13)	—	4 (0.59)
Chandigarh	—	1 (0.98)	—	1 (0.96)	—	—	1 (1.25)	3 (0.44)
Delhi	1 (0.8)	7 (6.86)	2 (2.53)	6 (5.76)	1 (1.09)	—	2 (2.5)	19 (2.83)
Goa	—	1 (0.98)	—	—	—	—	—	1 (0.14)
Gujarat	—	—	—	—	—	—	1 (1.25)	1 (0.14)
Haryana	—	—	1 (1.26)	—	1 (1.09)	—	1 (1.25)	3 (0.44)
Himachal Pradesh	—	—	—	1 (0.96)	—	—	—	1 (0.14)
Jammu and Kashmir	—	—	—	—	1 (1.09)	—	—	1 (0.14)
Jharkhand	—	—	—	—	—	1 (1.13)	—	1 (0.14)
Karnataka	3 (2.4)	2 (1.96)	2 (2.53)	4 (3.84)	7 (7:69)	3 (3.4)	1 (1.25)	22 (3.28)

State	1997	1998	1999	2000	2001	2002	2003	Total
Kerala	10 (7.93)	3 (2.94)	3 (3.79)	4 (3.84)	6 (6.59)	4 (4.54)	5 (6.25)	35 (5.22)
Madhya Pradesh	—	—	1 (1.26)	1 (0.96)	—	—	—	2 (0.29)
Maharashtra	7 (5.55)	4 (3.92)	—	2 (1.92)	2 (2.19)	—	1 (1.25)	16 (2.38)
Manipur	—	—	1 (1.26)	—	—	—	—	1 (0.14)
Meghalaya	—	—	—	—	—	—	1 (1.25)	1 (0.14)
Orissa	1 (0.8)	4 (3.92)	3 (3.79)	1 (0.96)	5 (5.49)	4 (4.54)	3 (3.75)	21 (3.13)
Pondicherry	—	—	—	—	—	1 (1.13)	—	1 (0.14)
Punjab	1 (0.8)	—	1 (1.26)	—	1 (1.09)	—	2 (2.5)	5 (0.74)
Rajasthan	—	—	—	1 (0.96)	1 (1.09)	—	—	2 (0.29)
Tamil Nadu	5 (3.96)	2 (1.96)	3 (3.79)	5 (5.49)	4 (4.39)	6 (6.81)	2 (2.5)	27 (4.02)
Tripura	—	—	—	—	1 (1.09)	—	—	1 (0.14)
Uttar Pradesh	—	—	1 (1.26)	2 (1.92)	—	2 (2.27)	1 (1.25)	6 (0.89)
Uttaranchal	—	—	—	—	—	—	1 (1.25)	1 (0.14)
West Bengal	—	2 (1.96)	—	5 (4.8)	—	2 (2.27)	—	9 (1.34)
Total	126 (100)	102 (100)	79 (100)	104 (100)	91 (100)	88 (100)	80 (100)	670 (100)

Table No. 7
Distribution of the P.G. Diploma Students in different regions of Andhra Pradesh

Region	1997	1998	1999	2000	2001	2002	2003	Total
Hyderabad	66 (67.34)	42 (56.00)	35 (58.33)	46 (65.71)	32 (55.2)	28 (44.44)	34 (58.62)	283 (58.7)
Telangana	15 (15.32)	16 (21.33)	10 (17.64)	16 (22.85)	14 (24.13)	11 (17.46)	12 (20.68)	94 (19.5)
Coastal Andhra	16 (16.32)	13 (17.33)	14 (23.33)	5 (7.14)	9 (15.5)	13 (20.6)	11 (19.00)	81 (16.8)
Rayalaseema	1 (1.02)	4 (5.34)	1 (1.7)	3 (4.3)	3 (5.17)	11 (17.5)	1 (1.7)	24 (5.0)
Total	98 (100)	75 (100)	60 (100)	70 (100)	58 (100)	63 (100)	58 (100)	482 (100)

Appendix - C

Perceptions of the Respondents among the students of P.G. Diploma in Human Rights (Distance Mode)

University of Hyderabad, S.V. University Tirupati and National Law School of India, Bangalore

Note: *1. All Numbers in the bracket indicate percentiles.*
2. All percentiles are approximate numbers.

Table No. 1
Purpose of joining the course

Sl. No.	Purpose	Total No.	Percentage
1	For professional and career development	21	10.14
2	Out of academic interest	17	8.21
3	To get sensitized about Human Rights consciousness	40	19.32
4	To work for Human Rights and out of own interest	25	12.07
5	To get broad knowledge and awareness of Human Rights and for deep theoretical perspective	73	35.26
6	To become an activist of Human Rights	18	8.69
7	To know the situation of Human Rights in different states and nations, to know about NHRC, UNDHR etc.	08	3.86
8	Not clear	05	2.41
9	Total	207	100

Table No. 2
Whether the purpose of joining the course is achieved

Sl. No.	Category	Total No.	Percentage
1	Yes	40	69.63
2	No	06	2.89
3	To some extent	39	18.84
4	Can't say/should wait and see	16	7.72
5	Information not given	06	2.89
6	Total	207	100

Table No. 3
Most liked aspects of the course

Sl. No.	Category	Total No.	Percentage
1	Fundamental rights and rights of women and children	16	7.72
2	Global scenario	19	9.17
3	Human Rights in India and socio economic context	21	10.14
4	Most of them	68	32.05
5	New social movements and Human Rights in India	07	3.38
6	Theoretical, historical and philosophical foundations of Human Rights	23	11.11
7	Others (comprehensive and exhaustive material)	28	13.52
8	Violation of Human Rights in India	03	1.44
9	Not answered	22	10.62
10	Total	207	100

Table No. 4
In your opinion which aspects of the course can be deleted?

Sl. No.	Category	Total No.	Percentage
1	Add more/ do not delete	20	9.66
2	Historical aspects	11	5.31
3	Language rights	03	1.44
4	None	84	0.57
5	Repeated aspects	09	4.34
6	Statistical data	04	1.93
7	Substandard topics can be deleted	05	2.41
8	Others (philosophical foundations)	16	7.72
9	Not answered	51	4.63
10	No comments	04	1.93
11	Total	207	100

Table No. 5
Impact of the course on the respondents

Sl. No.	Category	Total No.	Percentage
1	Changed the life	11	5.31
2	Developed deep understanding and got enlightened about Human Rights	46	22.22
3	Got new dimensions and broadened thinking	35	16.90
4	Good and positive impact	37	17.87

Sl. No.	Category	Total No.	Percentage
5	Improved working capability, got sensitized about HR violence	20	9.66
6	Made me more humane, want to be an activist and help the needy	45	21.73
7	No impact, not effective	02	0.96
8	Yet to assess the impact	07	3.38
9	Not answered	04	1.93
10	Total	207	100

Table No. 6
Suggestions for improvement

Sl. No.	Suggestion	Total No.	Percentage
1	Admission should be restricted to social work students only	3	1.44
2	Case studies and video documentation on HR violation should be a part of teaching	11	5.31
3	Course work should be interaction oriented and field work is needed	39	18.84
4	Emphasis on current Indian HR is needed	06	2.89
5	Increase the syllabus and duration of the course	11	5.31
6	Involve students in more seminars and article writing	13	6.28
7	Legal aspects, HR for disabled and HR counseling should be added to the course work	15	7.24

Sl. No.	Suggestion	Total No.	Percentage
8	More information on current global HR is needed	06	2.89
9	Reduce duration of course	09	4.34
10	Practical involvement of HR students in future activities is needed	19	9.17
11	Program should be residential	04	1.93
12	Real field persons should teach in the class	16	7.72
13	Others	24	11.59
14	No need to make any changes	31	14.97
15	Total	207	100

IMPORTANT STATEMENTS/DECISIONS/ OPINIONS OF THE COMMISSION

1. Strict Liability of the State - Protection of Rights of Victims of Electrocution

Unfortunately in our country, hundreds of people die every year due to electrocution. In most of these cases, the victims are innocent children. An electrocution death leaves behind a shattered family. It has also been seen that in most of such cases, the victims belong to the lower strata of the society and his/her death breaks the family emotionally, as well financially. The plea for compensation in such cases is often met with stiff resistance by way of stereo type pleas raised in their defence by the Electricity Transmission Companies. The most common defence in such cases is that there had been no negligence on their part and the transmission line has snapped due to storm or gale. View from human rights perspective, such a defence on the part of electricity transmission is not tenable and it is desirable that principle of strict liability should be applied to such cases.

The "Strict Liability" or the "absolute liability" has come into vogue in modern law of torts. It means liability without fault or to say without intention or negligence. Ordinarily under the common law, a person is liable only for the harm caused to another due to his intention or negligence. One is not liable if somebody else has been harmed due to an inevitable accident. If we look back, the principle of strict liability, it can be traced back to the Rylands v. Fletcher (1866) LR1 EX 265.

The doctrine of "strict liability" has its origin in English Common

Law when it was propounded in the celebrated case of Rylands v. Fletcher (Supra), Blackburn J., the author of the said rule had observed thus in the said decision:

"The rule of law is that the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape".

The strict liability as laid down in Rylands v. Fletcher is subject to certain qualification which though take away a great deal of its absolute character, but still makes a person liable for no fault of his.

The rule of strict liability has been approved and followed in many subsequent decisions in England. A recent decision in recognition of the said doctrine is rendered by the House of Lords in Cambridge Water Co. Ltd. v. Eastern Counties Leather Plc. (1994(1) All England Law Reports (HL) 53). The said principle gained approval in India, and decisions of the High Courts are a legion to that effect. A Constitution Bench of the Apex Court in Charan Lal Sahu v. Union of India (1990(1) SCC 613) and a Division Bench in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai (1987 (3) SCC 234) had followed with approval the principle in Rylands v. Fletcher. By referring to the above two decisions a two Judge Bench of the Apex Court has reiterated the same principle in Kaushnuma Begum v. New India Assurance Co. Ltd. (2001 (2) SCC 9).

In M.C. Mehta v. Union of India (1987 (1) SCC 395 the Apex Court has gone even beyond the rule of strict liability by holding that enunciated in Rylands v. Fletcher

"where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and

absolutely liable to compensate those who are affected by the accident, such liability is not subject to any of the exceptions to the principle of strict liability under the rule in Rylands v. Fletcher."

The Indian Courts with their dynamic interpretation of law have been able to extend the existing principles and brought the cases of electrocution within the purview of the strict liability. In this regard, the Courts have also taken into the account the principle of social justice and even in the absence of any apparent fault on the part of the Electricity Transmission Company, have held that the compensation is liable to be granted to the next of kin of such helpless victims in order to apply balm on their wounds. In this respect, an argument can also be raised that ultimately the Electricity Transmission Company owned by the State itself, pay the compensation out of the funds, which ultimately belongs to the tax payers. But this argument has no force because in such cases, infact it is the responsibility of the whole community to pay compensation to such victims and share the misfortunes, as it shares in wealth and fruits of labour of its members.

Following the similar proposition, the Apex Court in M.P. Electricity Board v. Shail Kumari and others AIR 2002 S.C. 551, while dealing with an action brought by the widow and minor son of the deceased, Joginder Singh who died due to electrocution observed as under:-

"The responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of the electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the roads as users of such road would be under peril. It is no defence on the part of the management of the

board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road, the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of 'strict liability' where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

The observation made by the Privy Council in North Western Utility Ltd. v. London Guarantee and Accident Company Ltd. (1936 Appeal Cases 108) and Quebic Railway, Light Heat and Power Company Ltd. v. Vandry and Others [1920 Law Reports Appeal Cases 662] are also worth noting. In these cases, it was concluded that the risk involved in the operation undertaken by the defendant was so great that a high degree care was expected of him since the defendant ought to have appreciated the possibility of such a leakage. The defence that the cables were disrupted on account of a violent wind and high tension current found its ways through the low tension

cable into the premises of the respondent was held to be not a justifiable defence.

Subsequently, the Apex Court in Parvati Devi & Others v. Commissioner of Police, Delhi and Others (2000) 3 S.C. cases 754 awarded compensation to the LRs of a victim died due to electrocution despite the fact that the appellants could not produce relevant material indicating the negligence of any particular officer of the authority. It was held that once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent. Similarly, in HSEB & Others Vs. Ramnath & Others (2004) (5) Supreme Court cases 793. Apex Court observed as under:-

"The appellants are carrying on a business which is inherently dangerous. If a person were to come into contact with a high-tension wire, he is bound to receive serious injury and/or die. As they are carrying on a business which is inherently dangerous, the appellants would have to ensure that no injury results from their activities. If they find that unauthorized constructions have been put up close to their wires it is their duty to ensure that that construction is got demolished by moving the appropriate authorities and if necessary, by moving a court of law. Otherwise, they would take the consequences of their inaction. If there are complaints that these wires are drooping and almost touching houses, they have to ensure that the required distance is kept between the houses and the wires, even though the houses be unauthorized. In this case we do not find any disputed question of fact.

The Protection of Human Rights Act, 1993 by virtue of 18 Sub Section (3) empowers the Commission to recommend to the concerned Government or Authority for grant of immediate interim relief to the victim or to the members of the family. The Commission receives number of complaints regarding death due to electrocution by coming into contact with live transmission wire hanging low or falling on the ground. The Commission taking its dynamic and

humanitarian approach has granted immediate interim relief in such cases, by rejecting the mechanical pleas of the Electricity Transmission Companies. The Commission in case No. 122/1/2000-2001 after discussing in detail the principle of strict liability and considering the reply to the show cause notice u/s 18 Sub Section (3) observed as under:-

"A State professing to be a welfare State is expected to ensure a liberal construction of a beneficent and benevolent legislation like Section 18(3) of the Protection of Human Rights Act, 1993, to promote the philosophy of the Constitution and the Statute. The Commission has no doubt that not only the Government of Andhra Pradesh, but also the instrumentalities of the State like A.P. Southern Power Distribution Company Ltd., are ally of those values. The Commission, therefore, expected a response from the Corporation, in a way which accords with the message and philosophy of law and the obligations of a Welfare State.

Payment of Rs. 20,000/- for the loss of a human life is not only grossly inadequate, but even borders on adding insult to injury. Loss of human life, by factors other than natural cause of death, is not capable of being calculated in terms of rupees. The object of granting "immediate interim relief" u/s 18(3) of the Act for violation of Constitutional human right – right to life – is only in the nature of helping the next of kin, in their hour of distress, by applying balm to their wounds. Grant of "interim relief" is only a palliative for the act of instrumentalities of the State, which result in infringement of the fundamental right of the citizen to life. Grant of 'relief' is only a step to enable the State and its instrumentalities to repair the damage done to the victims' rights. We must emphasize that this Commission which was set up by the Parliament "for better protection of human rights" has been empowered under the aforesaid provision to grant relief of monetary compensation for contravention of the guaranteed basic and indefeasible rights of the citizen. It is a remedy in public law proceedings and is aimed not only to civilize public power but also to assure the citizen that they live under a legal system which aims to

protect their interests and preserve their rights. "Immediate interim relief" is in the nature of making monetary amends, in public law, for the wrong done due to breach of public duty of not protecting the indefeasible fundamental rights of the citizen.

At this stage we would also like to bring to the notice of the Chairman-cum-Managing Director, APSPDCL that even in cases of motor vehicle accident deaths under Motor Vehicles Act, 1988, the Legislative in its supreme wisdom has now fixed a much higher amount of Rs. 50,000/- as compensation to next of kin of the deceased victim and Rs. 25,000/- to the victim who suffers permanent disability as "no fault liability", i.e. without any proof of negligence on the part of motor vehicle driver. In that light also, the amount of payment of compensation of Rs. 20,000/- for an adult and Rs. 10,000/- for the minor victim in the event of death by electrocution provided under the Rules of the Transmission Company, therefore, sounds rather unrealistic and warrants a fresh look and an upwards appropriate revision, keeping in view the present day cost of living.

We, therefore, request the Chairman-cum-Managing Director, APSPDCL to examine the matter personally with a humane approach, overlooking the technicalities and legalities and not only grant adequate relief to the next of kin of the deceased in this cases but also rationalize the rules for grant of compensation in cases of electrocution accidents in the future."

Subsequently, in several other cases also, the Commission by bringing the principle of strict liability to the notice of authorities, has ensured that reasonable compensation by way of interim relief is given to the unfortunate victims of electrocution. The mechanical defence of the Electricity Transmission Company that there is no fault or negligence on their part has been negated by the Commission.

Besides granting immediate interim relief in such cases, the Commission may also consider of passing certain suitable directions

to the Electricity Transmission Company, like introduction of latest technology in the Electricty Transmission so that in the event of snapping of the transmission line, there should be automatic circuit breakdown. The Electricity Transmission Companies should work in this direction so that the lives of hundreds of victims can be saved. The Electricity Transmission Company may also be directed to divert some fixed amount towards the necessary precautions, so as to avert such type of accidents. The authorities should be made aware that they are under a duty to carry out appropriate measures so as to prevent such mishaps.

2. Guidelines for Protection of Human Rights of Persons with Mental Illness Facing Trial

The Commission has from time to time suggested improvements/issued guidelines for the safeguard of the rights of mentally ill persons in prisons. It intervened in the case of one under-trial prisoner Charanjeet Singh who had continued to remain in judicial custody for 20 years, without facing trial on account of unsoundness of mind. In accordance with the provisions of Chapter XXV of the Code of Criminal Procedure, his trial stood deferred till he was capable of understanding the nature of charges against him to defend himself properly.

Deeply concerned about the need to protect the human rights of the under-trial prisoner, the Commission, filed an application before the Delhi High Court under section 482 Cr.P.C. seeking the quashing of the trial in view of the inordinate delay in the case. The High Court allowed the intervention application. As a result of the initiatives by the Commission, offers were made by the VIMHANS for extending medical facilities and treatment free of cost and by the Help Age India to take over the patient and accommodate him in their half way home or old-age home after the VIMHANS certified that the condition of the patient was stable. Accordingly, orders for shifting the patient to VIMHANS were pronounced by the High Court on 31st July, 2003.

For the sake of the protection of human rights of the mentally ill prisoner, and in the light of the directions by the High Court, the Commission moved a Criminal Writ Petition No. 1278/04 before the

High Court of Delhi and prayed for quashing of the trial of Charanjeet Singh whose condition had deteriorated despite prolonged treatment at various hospitals/institutions.

During the course of hearing the High Court requested the Commission to suggest guidelines to ameliorate the hardships faced by accused persons of unsound mind, and to ensure that their human rights are respected. The Commission accordingly submitted draft guidelines to be followed by all officials concerned, which are as follows:

1) Psychological or psychiatric counselling should be provided to prisoners as required in order to prevent mental illness and/or to ensure early detection. Collaborations for this purpose should be made with local psychiatric and medical institutions as well as with NGOs.

2) Central and District jails should have facilities for preliminary treatment of mental disorder. Sub-jails should take inmates with mental illness to visiting psychiatric facilities. All jails should be formally affiliated to a mental hospital.

3) Every central and district prison should have the services of a qualified psychiatrist who should be assisted by a psychologist and a psychiatric social worker.

4) Not a single mentally ill person who is not accused with committing a crime should be kept in or sent to prison. Such people should be taken for observation to the nearest psychiatric centre, or if that is not available to the Primary Health Centre.

5) If an undertrial or a convict undergoing sentence becomes mentally ill while in prison, the State has an affirmative responsibility to the undertrial or convict. The State must provide adequate medical support. As such an appropriate facilities should be provided in State-assisted hospitals for undertrials that become mentally ill in prison. The person should be placed under observation of a

psychiatrist who will diagnose, treat and manage the person. In case such places are not available, the State must pay for the same medical care in a private hospital. In either case care must be provided until recovery of the undertrial/convict.

6) When a convict has been admitted to a hospital for psychiatric care, upon completion of the period of his prison sentence, his status in all records of the prison and hospital should be recorded as that of a free person and he should continue to receive treatment as a free person.

7) Mentally ill undertrials should be sent to the nearest prison having the services of a psychiatric and attached to a hospital. They should be hospitalized as necessary. Each such undertrial should be attended to by a psychiatrist who will send a periodic report to the Judge/ Magistrate through the Superintendent of the prison regarding the condition of the individual and his fitness to stand trial. When the undertrial recovers from mental illness, the psychiatrist shall certify him as 'fit to stand trial'.

8) All those in jail with mental illness and under observation of a psychiatrist should be kept in one barrack.

9) If a mentally ill person, after standing trial following recovery from the mental illness is declared guilty of the crime, he should undergo term in the prison. Such prisoners, after recovery should not be kept in the prison hospital but should remain in the association barracks with the normal inmates. The prison psychiatrist will, however, continue to periodically examine him for reviewing his treatment and suggesting him other activities.

10) The State has a responsibility for the mental and physical health of those it imprisons. While some of the recommendations below may appear to be of a general nature, they would help prevent people becoming mentally ill after entering jail. Each jail and detention centre, therefore, should ensure that it provides the following:

(i) An open environment, lawns, kitchen garden and flower gardens, Daily programmes for prisoners should include physical and mental activities that reduce stress and depression including organised sport and meditation.

(ii) A humane staff that is not unduly harsh;

(a) Officers of the institution shall not, in their relations with the prisoners use force except in self-defence or in cases of attempted escape, or active to passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(b) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(c) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

(iii) Effective grievance redressal mechanisms;

(a) Every prisoner on admission shall be provided with written information about the regulation governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and shall such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(b) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

(c) Every prisoner shall have the opportunity each weekday of

making requests or complaints to the director of the institution or the officer authorized to represent him.

(d) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority, or other proper authorities through approved channels.

(e) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

(iv) Encouragement to receive visitors and maintain correspondence, interview facilities; access to the more important items of the news by any means authorized by the administration; access for foreign nationals to their diplomatic representatives.

(v) Overseeing bodies including members from civil society to ensure the absence of corruption and abuse of power in jails.

11) Regarding those undertrials whose trial has been suspended for even a single day due to mental illness, report should be sent to the relevant District and Sessions Judge as well as the Magistrate on a quarterly basis i.e. every three months.

12) As soon as it comes to the notice of the trial court that an undertrial is mentally unsound and cannot understand the nature of proceedings against him, the trial court must follow the procedure under Chapter 25 CrPC and ensure strict compliance of Mental Health Act, 1987, relating to progress report of undertrial. In this regard the trial court must ask for periodic report of the progress of the undertrials as detailed by the proforma.

13) The Delhi Judicial Academy could include short-term capsule course to sensitize judicial officers likely to deal with Mental Health

Act, 1987. These short-term courses could be institutionalized and provide to each batch of judicial officer.

14) When the trial of a mentally ill person is suspended for a period longer than 50% of the possible sentence (subject to a maximum of three years) the matter should be reported to the Registrar of the High Court of Delhi to be put up to the Hon'ble Chief Justice for information and appropriate action. A copy of this report should be sent to the NHRC. Such reports should be made on a six-monthly basis.

15) The State Government must strengthen legal aid services; they should extend beyond representation before magistrate when the case is taken up. Given the record of mentally ill persons not being produced for years before the court, preventive legal aid is required to check the abuse of the law and dumping the mentally ill in prisons. Rejection by the family means that no one would be approached to provide help to the jailed person. Legal aid, in the person of duty counsel at police stations, can help enforce procedures and screen out the vagrant mentally ill from the criminal justice process even at the point of entry. Duty counsel in courts can ensure that no mentally ill person is unrepresented.

16) The State must assume responsibility also for those persons who have been discharged from prison and hospital and no longer require full time care for mental illness, but are unable to take care of themselves.

According to Help Age India, the Department of Social Welfare, Government of the National Capital Territory of Delhi plans to establish some additional old age homes. Ideally, some of these would be earmarked for older persons, who have been subjected to social injustice e.g. those like Mr. Charanjeet Singh who have suffered unnecessary incarceration. The Government's running of such establishments has left much to be desired due to bureaucratic management, an attachment to rules and procedures rather than

sensitive provisions of support; the state of existing old age homes run by the Government in Delhi makes this clear.

17) Those in the above category of persons should not be sent to Homes that treat them as sub-human, but rather provided with humane, community-based alternatives where full time care is required. Semi-independent, protected community houses would need to be established where such people could be rehabilitated and gainfully employed in some income generating activities with the objective of helping them lead as normal a life within society.

A number of government schemes already exist to provide community-based rehabilitation and should be implemented. However, appropriate medical care must be provided with periodic visits by qualified psychiatrists. Such homes should be run by grass root NGOs and overseen and financed by the Government.

18) At the same time there should be a shift in focus from institutionalizing vulnerable people (such as the old and mentally ill) if it is possible for the person to be taken care of at home, institutional support of families should be provided in order to make the rehabilitation more successful.

The High Court, while observing that it had become clear that the undertrial prisoner cannot be tried as there was no chance of reversal of his deteriorating mental and physical condition and no scope of improvement in his condition, quashed the charge-sheet against Shri Charanjeet Singh.

The High Court commended the role played by the Commission in taking up the case of desolate and destitute person Charanjeet Singh as well as the framing of the guidelines to be followed in such cases. It appreciated the positive response by the Government of NCT of Delhi and directed the State Government to prepare necessary schemes for rehabilitation of released mentally ill persons, taking into account the guidelines suggested by the Commission and also to take steps for

establishment of half way homes for such destitute people. The High Court also directed the Delhi Judicial Academy for organizing short term capsule courses to sensitize Judicial Officers likely to deal with the mental health cases, as suggested by the Commission in Guideline No. 13. The court also directed that a copy of their Order containing the NHRC guidelines be circulated to concerned Sessions Judges, Additional Sessions Judges, Additional Sessions Judges and Metropolitan Magistrates so that they pass appropriated orders in such cases keeping in view Guideline Nos. 14 and 15 suggested by the NHRC.

REPORT

Human Rights Education and Awareness Programmes Undertaken by NHRC

The National Human Rights Commission has expressly been mandated to promote Human Rights literacy and awareness vide section 12(h) of the Protection of Human Rights Act, 1993. The promotion of human rights literacy in a society as complex and textured as ours is a task that is, at once, both daunting and crucially important. It is also a task that calls for great perseverance, for it requires deep and lasting commitment. Indeed, there is no easy way to create a culture of human rights; all sections of society have a role to play and an ideal to sustain, if the cause of human rights is to take root and flourish against the cruel odds of social injustice and inequality, the problems of poverty and the fanatical destructiveness of terrorism. The Commission has been serving this encompassing purpose within its best means. In a sense, the entire range of activities of the Commission are aimed at creating an environment in which rights can be better promoted and protected. The decisions taken by the Commission in respect of complaints, the programmes and projects undertaken, seminars and workshops held and its publications and discourses, all aim to create a culture of human rights in the country.

UN Decade of HR Education and the National Action Plan

The period 1995-2004 was declared as the United Nations Decade for Human Rights Education by the United Nations. The responsibility of drawing up the National Action Plan of Human Rights Education rested on the Government of India. The National Human Rights

Commission pursued with the Government to develop a National Action Plan for Human Rights Education. The National Action Plan was finalized and circulated by the Government in 2001. The Action Plan groups activities under two broad categories:

i) strategies for raising mass awareness and;
ii) strategies for promoting social empowerment through attitudinal change and the sensitizing of specific target groups, such as the police, security forces, students, judicial officers and others through education and training.

Upon receiving the action plan the Commission observed that even though most of the UN Decade for Human Rights Education has already passed, the responsibility to persevere with a coherent programme for human rights education remains. The Commission therefore, urged the Government of India to give this subject the importance it deserves, an importance that is stressed in various Human Rights instruments, including the Universal Declaration of Human Rights in its Article 26(2).

As per the information available with the Commission, action has been taken by the Government to introduce human rights courses in Universities as well as preparation of resource material kit for Human Rights Education. 35 Universities/Colleges have introduced Certificate, Diploma and PG courses on Human Rights with the financial assistance from the University Grants Commission. Programmes on human rights were being telecast through 'Gyan Darshan' on Doordarshan.

With regard to the mass awareness programme, the National Action Plan identified Doordarshan and AIR as nodal agencies.

The Commission pursued the matter with the Ministry of Information and Broadcasting to contemplate actions listed in the Action Plan. The Secretary General of the Commission had a meeting with the Secretary, Information and Broadcasting to discuss the areas of cooperation to promote human rights awareness through various

media units of Information and Broadcasting Ministry. A number of action points emerged for joint co-operation which include more coverage to human rights issues in Doordarshan news programmes, preparing Radio and TV spots linkaging societal issues and problems with human rights; developing hand books of human rights for media persons; posters on human rights issues, besides others. A group has been set up consisting of officers from NHRC and representatives of Doordarshan, AIR, DAVP and PIB to workout the issues to be considered and the steps to be taken jointly by the Ministry and NHRC on short term and long term basis for spreading the human rights awareness.

The National Institute of Human Rights (NIHR) was set up in the National Law School of India University (NLSIU), Bangalore through an MOU signed in September, 1999. The NHRC established a Chair on Human Rights at the NIHR and created an endowment in order to meet the expenses relating to the Chair.

The Karnataka Women's Information and Resource Centre (KWIRC), with assistance from the NHRC has prepared a set of ten dossiers for the University level. These dossiers have been re-written and abridged for school level and for grass root level organizations. The school level dossier under the title "Human Rights Education for Beginners" has been published by NHRC.

The dossiers for the University level will be discussed with the authors in a Round Table to be organized by KWIRC in collaboration with NHRC in January 2006.

Model Human Rights Courses and Curricula

In order to develop a scheme for the human rights education, the Commission requested the UGC to constitute a Standing Committee. Acting on this the UGC constituted a Standing Committee in 1997. The Standing Committee prepared the Approach Paper in 1998 dealing with several options including the need for basic courses for students of all disciplines. The Approach Paper suggested, besides other

things, introduction of Diploma and Certificate Courses aimed at various target groups and emphasized the need for research, extension education and field action projects. The UGC thus formulated a scheme for providing financial assistance for organizing seminars, symposia and workshops to Universities and Colleges and conducting various courses.

After the expiry of the 2-year term of the Standing Committee constituted by the UGC, the Commission again urged the UGC to reconstitute the Standing Committee to carry forward the tasks undertaken. The University Grants Commission has reconstituted the Standing Committee with the purpose to advise the UGC regarding implementation/monitoring and other related issues of Human Rights Education Scheme.

Pursuant to the Commission's request, the University Grants Commission, in 2000, constituted a Curriculum Development Committee on Human Rights and Duties Education under the chairmanship of Justice Shri V.S. Malimath, former Member of the National Human Rights Commission to frame a model curriculum for courses on Human Rights at Certificate/Diploma/Degree and Post Graduate levels.

The UGC Model Curriculum seeks to serve as a base and to facilitate the whole exercise of updating the curriculum and has been circulated to the universities.

Curriculum Development in Schools

On the request of the NHRC, the Government of India informed that the Ministry of Human Resource Development has taken action on re-orientation of syllabus, so as to introduce elements of human rights in school education. With a view to assess the level of Human Rights Education at the school level, an in-house study was taken to prepare a Status Paper on Human Rights Education at school level. The textbooks prescribed for schools brought out by the NCERT and the SCERT were analyzed with regard to the human rights component being taught in

schools with possible suggestions to enhance the quality of human rights education in schools.

The study revealed that Human Rights Education is not taught as a separate subject. However, the NCERT and the SCERT, Delhi have integrated human rights concepts in various subjects from the primary level to the higher secondary level. The study also revealed that a wide range of issues related to human rights are covered in the school curriculum. The focus needs to be on the methodology of imparting the concepts to the students and an analysis of the perception and understanding of the human rights issues by the students.

The Commission, in collaboration with the NCERT, brought out a Source Book on Human Rights. Its purpose is to make available Human Rights information to teachers and students, policy makers and curriculum developers and other personnel involved in formulating and implementing educational programmes.

The Commission, in collaboration with the National Council for Teacher Education has brought out a Handbook for sensitizing teachers and teacher educators on "Discrimination Based on Sex, Caste, Religion and Disability". The handbook aims at creating awareness among teacher educators to foster the need for inherent equality by consciously keeping away prejudices based on sex, caste, religion and disability while handling teaching-learning situations.

Rights Education for Youth

With a view to spreading an awareness of human rights issues among university students, the Commission conducts internship programmes during summer and winter vacations every year.

During the internship, the students are apprised of the working of the Commission. They are also made aware of the provisions of the Constitution and the main institutions and international instruments relevant to an understanding of human rights. The interns are provided an opportunity to interact with NGOs working in the field of human

rights and are also taken to field visits. In addition, the students are assigned research topics to work on.

Human Rights Training for Civil Servants

One of the main endeavours of the Commission is to promote citizen's increasing and persistent demand for dignity, respect, justice and prevent violations of their human rights by public servants.

It was felt that training programmes when properly structured and conducted can have salutary effect on public servants, to improve the quality of response and change their mindset to human rights culture and thus able to face the variegated compulsive situations with confidence.

The Commission, during its twelve year old existence has been groping with large number of Human Rights issues, primarily emerging from the complaints received relating to issues like Child Rights, Women Rights, Bonded Labour, Child Labour, Custodial Management, Custodial Violence, Custodial Deaths, Alleged atrocities by Police, Pitiable condition in Prisons, Persons with Disability, Mentally ill, Refugees, Shortcomings in the Criminal Justice System, Terrorism and Insurgency, Rape and Torture.

The Commission took a conscious decision to create a Training Division in September, 2003 to achieve the spelt out objectives and broad based training strategies were evolved to bring out discernible impact on different sections of the society for a better today, a better tomorrow, in terms of human rights promotion and protection. In-house Induction and Post Induction courses are conducted, to give exposure to the officers and staff to human rights values and ethos of the Commission. Similarly, training programmes/workshops, seminars and programmes for civil servants, police officers, prison officials, judicial officers and NGOs are organized.

Police and Law Enforcement Officers

Training Programme on 'Human Rights Investigation, Interviewing

Skills and Custody Management' in collaboration with the British Council was conducted for the Delhi Police officers, in the rank of ACPs, SHOs and Addl. SHOs, who are required to be in constant touch with the public generally under the glare of constant scrutiny of media and civil society. The training exposure were aimed at enabling these police officers to abide and carry out their onerous responsibilities with confidence and in consonance with human rights norms, as required by the Constitution and laws of the land.

Recently, the Commission collaborated with the Commonwealth Human Rights Initiative (CHRI) a prominent NGO, to run a four-day 'Human Rights Sensitization Course', for police officers of Chattisgarh working in police stations and the State Human Rights Commission. The workshop was held in February, 2004, at Raipur, Chattisgarh. The aim was to sensitize the police officers working at the cutting edge level to learn about the core human rights issues being dealt by them and develop knowledge and skills to promote and protect human rights of citizens in their work sphere.

Human Rights Training for Judiciary, Educators and Activists

Human rights training for judiciary, educators and activists has been carried out to help them contribute constructively towards the protection of human rights and acquire skills and professional knowledge in their sphere of work. Two sensitization programmes were conducted by the NIHR, NLSIU, Bangalore for the judicial officers of Karnataka and Andhra Pradesh during 1999-2000 under the small grants scheme of the Australian High Commission, New Delhi operated through the NHRC. Based on the material compiled and discussions held in the workshops, a Handbook on Human Rights for Judicial Officers was prepared and published.

Para Military and Armed Forces

The para-military and armed forces are often called upon to maintain

peace and law and order in areas affected by terrorism or insurgency. Pursuant to the Commission's efforts, the subject of human rights is now included in all of their training courses at all levels.

To encourage interaction and experience-sharing between personnel of para-military forces and the Commission, holding of an annual debate competition, both in Hindi and English, was started in 1998. With every passing year this debate competition has been attracting growing and enthusiastic participation of the personnel of para-military forces, competing in both languages.

Human rights education is also included in training courses for para military and armed forces so as to create better awareness among officers and staff on human rights.

Promoting Good Custodial Practices

The Commission, in partnership with the British Council and Shubodaya Centre for Rehabilitation of Victims of Torture & Violence (SCRAC), an NGO, had undertaken a project on 'Promoting Good Custodial Practices'. The project aimed to create co-operation and links, which currently do not exist, between a range of different agencies including human rights activists, doctors, lawyers and the police in order to reduce torture and increase awareness of legal rights and remedies available for torture victims.

The Media and Legal Issues of Freedom of the Press

The Commission has shared a special relationship with the media. Based on reciprocity in highlighting issues of human rights, the Commission has found a key ally in the media in generating public awareness. The Commission has frequently taken cognizance of human rights violations on the basis of media reports. It has benefitted substantially from the editorials, letters and articles that feature in the media. The media has indeed acted as a watchdog for the Commission on many an occasion. The diverse opinions across the country and the world find a voice through the media and it is this, which has prompted the Commission on a daily basis to scan 24 newspapers —regional,

national and international, besides some of the prominent news magazines.

Monthly Newsletter, Journals & Website

The Commission brings out Monthly newsletters, Annual Journals in English and Hindi, Annual reports, Year calendar and a number of other publications, including reports, manuals, handbooks, information kits, posters both in Hindi and English. These publications are an endeavour to catalyse new thinking in respect of protection of human rights and the promotion of human dignity in the country. A list of such publication are available in the NHRC website www.nhrc.nic.in. Eight booklets in the "Know Your Rights" series were released in 2004 for wide dissemination on issues relating to:

- National Human Rights Commission
- International Human Rights Conventions
- Sexual Harassment of Women at the Work Place
- Manual Scavenging
- Human Rights and HIV/AIDS
- Bonded Labour
- Child Labour
- Rights of Persons with Disabilities

These are published in Tamil, Telugu, Malayalam and Kannada as well. Publishing the booklets in Hindi and other Indian languages has been taken up.

More recently, the Commission also brought out a Manual on "Human Rights Disability and Law". The manual is aimed at sensitizing and educating lawyers, NGOs, academics, human rights activists and the general public, not only in their work but also in their interactions as well.

To recap, in the course of the past twelve years of its existence, the Commission has specifically taken a number of steps to further human rights sensitization, education and awareness. These include:

- Setting up the National Institute of Human Rights at the National

Law School of India University, Bangalore and creating a chair with an endowment.

- Facilitating the Indian Law Institute, Delhi for starting a post graduate diploma course in Human Rights Law by granting financial assistance.

- Taking up a collaborative project in partnership with the Canadian Human Rights Commission and the Indira Gandhi National Open University for the protection of human rights of persons with disabilities.

- Working with the Ministry of Human Resource Development, National Council for Educational Research and Training (NCERT) and the National Council for Teacher Education (NCTE) to prepare materials for education at all levels of schooling. The NCTE under the aegis of NHRC prepared a handbook on Discrimination Based on Sex, Caste, Religion and Disability for sensitizing teachers and teacher educators.

- Creation of a Training Division with the objective of sensitizing governmental and non-governmental agencies about the understanding of human rights and the relationship between respect for such rights and humane governance.

- Conducting and co-operating on courses on human rights in the Training Institutes for public servants, the police, para-military forces and army, the judiciary, and the civil society.

- Conducting internship programmes, with a view to spreading awareness of human rights issues among university students during summer and winter vacations every year.

- Spreading human rights literacy through publications and visual media.

- Publishing a monthly newsletter in English and Hindi, for disseminating information on NHRC's programmes and priorities to human rights activists, members of the legal fraternity, administrators, representatives of NGOs, research scholars and students both within the country and well beyond.

- Facilitating the sharing of ideas, experience and information on human rights issuses both national and international, by bringing out an annual journal in English. A separate annual journal in hindi is also being published from 2004.

- Interacting with the media on a variety of human rights issues through press notes and media briefings from time to time. A wider coverage by the media on human rights matters has contributed immensely to a heightened understanding in the country of the importance of respecting human rights.

- Publishing informative and educative materials on human rights issues including mental health, HIV/AIDS, caste discrimination, primary health and nutrition, disability, trafficking in women and children among others. A handbook on Human Rights for Judicial Officers has been published, which seeks to address the needs of judicial officers at the district level.

- Co-operation with the public broadcasters in India to disseminate and propagate the cause of human rights in India.

- Providing a range of information on the activities, policies and programmes of NHRC to the internet users through its Website. All major decisions /deliberations can be accessed on the NHRC website **www.nhrc.nic.in**. The website also features the Complaint Management System which provides the facility of accessing the status of a complaint registered before the Commission.

- Participation of the Chairperson, Members and Senior Officers of NHRC in numerous seminars, workshops and the like, organized

by a range of institutions and organizations both governmental and non-governmental, across the length and breadth of the country.

- Encouraging and supporting the efforts of non-governmental organizations, as their role is of central importance to the better rotection of human rights in the country.

- Providing financial assistance to a number of voluntary organizations to organize seminars, workshops, symposia, camps etc. for educating the people of their human rights.

- Encouraging original writings on human rights issues, in Hindi, as well as the translation of notable works on human rights from other Indian languages into Hindi, by instituting an award scheme in 1998.

Having said this all and immensely satisfied at its endeavours, the Commission is nevertheless aware that respect for the human rights of all, and the realization of such rights, require a continuous effort to evolve a culture that is sensitive to the basic needs of every human being. Human rights education is a long term and continuing process by which all people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies.

BOOK REVIEW

1. Rhetoric vs. Reality: Essays on Human Rights, Justice and Democratic Values: *Justice V. R. Krishna Iyer*

Dictionaries define "conscience" as "that part of you that judges the morality of your own actions and makes you feel guilty about bad things that you have done or things you feel responsible for"[1]. A "social conscience" is defined as a conscience that "worries about people who are poor, ill, old, etc. and motivates the person to help them".[2]

By this standard, Justice Krishna Iyer is indeed entitled to be considered the "conscience of India". For years, Justice Iyer has been the most respected voice judging the morality of the actions of contemporary Indian society across a wide range of issues. His words, bathed in truth, rarely fail to make our society feel guilty about social evils. Justice Iyer is also the "social conscience" of India. His voice consistently represents the concern of our society about those who are poor, ill and old and motivates each of us to reach out and help.

Rhetoric vs. Reality is a clarion call by Justice Iyer for renewed judicial activism to convert the rhetoric of rights into reality. It is also a call for the development of a new humanist jurisprudence responsive to the interests of the poor.

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[1] *Cambridge Advanced Learners' Dictionary*
[2] *id.*

The book is a collection of fourteen fascinating essays, rich in ideas and, as is to be expected from the writings of Justice Iyer, also rich in linguistic creativity.

In these essays, Justice Iyer extensively catalogs the human suffering of poor and socially excluded people in our country in a number of areas as they face new threats from globalization, liberalization and privatization (a phenomenon that Justice Iyer calls, in his customary picturesque language, a "Gattostrophe").

Justice Iyer documents the failure of the State to address the problems of the poor and guarantee them their Constitutional due — whether through legislative and executive action or as a result of conventional litigation. Justice Iyer identifies a number of limitations that impede the effectiveness of legislative, executive or conventional judicial responses to advance justice.

In this light, Justice Iyer calls for enhanced, renewed and creative judicial activism. He also sketches the main elements of a new jurisprudence needed to effectively combat injustice.

In the first essay ("To Resist Evil and Promote Good"), Justice Iyer expresses deep concern about where humanity currently finds itself and the direction in which it is headed: "Multinational corporations (MNCs), with no body to be burned, no soul to be damned and no code to control, occupy global economic space and control the State Controllates with clout and criminal maneuvers, a new worldwide economic authoritarianism which makes no bones about environmental pollution, ecological destruction, human rights violations, export of weapons comes alive leaving huge human masses in a pitiful state of privation."[3] Justice Iyer writes about the "vulgarity and violence of fast life and lustful consumerism" and says "if we do not arrest the hedonist extravaganza our age will pay the penalty".

Justice Iyer says, "there was never a time when we needed more a

[3] *Rhetoric and Reality, at 19-20*

clear assertion of social purpose, construction of a legal structure and operation of public ethics and public law than now."[4]

Justice Iyer contends, however, that the law is unable to stem this tide. "Today, even national and international laws, with all their draconian sanctions, are the vanishing point of jurisprudence since might is right and worse, by the power of making "the worse appear the better reason", convinces people worldwide that might *ought* to be right. The small person seeking justice through law against the far more influential opponent finds the judicial seal `untouchable' and `unapproachable'."[5]

Yet, it is essential that "law must.... play the role of enlightening and disciplining the world community" . Justice Iyer says that human justice is to be achieved through human law although he recognizes that "law alone cannot make justice a reality without the revolutional locomotive of a conscientised political will catalyzing peoples everywhere into a new programme of action."[6]

In the face of this failure of law to safeguard the world as a "fit place for man, woman and child to live in peace, harmony and happiness"[7], Justice Iyer calls for a new global humanist jurisprudence based on what he calls "the Manifesto of the Human Person".[8]

Justice Iyer says that the Manifesto is a "vision and a mission to push humanity forward from despair to hope, from alienation to togetherness, from privation to liberation."[9] The central concern of Justice Iyer is the "right to life in dignity"[10].

What Justice Iyer advocates is "a universal rule of law and justice geared

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[4] *id., at 19*
[5] *id., at 21*
[6] *id.,at 33*
[7] *id., at 19*
[8] *id., at 12*
[9] *id., at 35*
[10] *id., at 35*

to the goals of fundamental freedoms and moral imperatives."[11] Law would be "*dharma*, a beautiful blend of right and justice based on norms and values which the consensus of the world community will broadly observe as the moral standard which holds together people in their mutual relations."[12] Law would be rooted in universal compassion, human divinity and moral spiritual foundations, free from bigotry, fundamental fanaticism and intolerant, aggressive fixation and personality cults."[13] Peace would be an integral part of the new vision as would be international human rights and humanitarian law. There would be effective sanctions against violations and codes and courts with worldwide jurisdictions. While mentioning some of the values and principles that would guide the Manifesto, Justice Iyer leaves the challenge of preparing a "blueprint" of the Manifesto as a "challenge to future jurists and philosophers of law activised by a higher vision of human destiny."[14]

Justice Iyer's discussion of the role of law in the context of globalization, liberalization and privatization is one of the two most extensive essays in the collection (the other being on minority rights). Justice Iyer's concerns about the impact of these phenomena on socially excluded people are indeed well taken. Equally, his concern about the need to use law as an instrument of justice in this context is unexceptionable.

The challenge would be to ensure that Justice Iyer's vision of a humane society is reconciled with the economic growth needed for poverty alleviation and a more prosperous future for common people (i.e. people without privilege).

This is a challenge that we have no choice but to meet because growth without a humane society is as unacceptable as economic stagnation, continued poverty and the consequent inability to provide common people access to the benefits of modern technology — such a society can hardly aspire to be humane.

[11] *id., at 39*
[12] *id.,at 29*
[13] *id.,at 29*
[14] *id., at 29*

The second essay ('No Globashima, Please') deals with the threat of nuclear weapons. Justice Iyer takes a strong position against nuclear weapons. Justice Iyer quotes Nehru in support of his contention that India should not possess nuclear arms, although it is less clear whether Nehru would have taken the same position in the reality of today's world as he did several years ago. In this essay Justice Iyer also deals with the globalization of finance.

The next ten essays deal with a range of national issues in which no institution is spared the severe scrutiny of Justice Iyer.

On the political front, Justice Iyer discusses candidly how political parties are today failing to stand up for the right principles, thereby threatening democracy (Chapter 3).

Two essays are devoted to the legislature. In Chapter 4 Justice Iyer argues that parliament should not be disrupted. Chapter 5 explores the delicate relationship between the legislature and the judiciary. In this essay — which has great contemporary relevance as legislators are raising their voices against judicial activism — Justice Iyer unequivocally asserts that the judiciary has every right to review the functioning of the legislature and its privileges. He points out that India should not follow the example of the British parliament on this issue because of material differences between the constitutional scheme in India and that in Britain. Justice Iyer warns, "We must be wary of borrowing from such a nidus (sic) with a history incompatible with our story of swaraj."[15]

Three essays deal with the administration of justice. One essay (Chapter 6) is on judicial accountability and judicial independence. Another essay (Chapter 8) deals with judicial appointments and a third (Chapter 9) with contempt of court. These are undoubtedly complex issues in which there has to be a delicate balancing of judicial independence and authority with the power and influence over the judicial process of institutions and people outside the judiciary (for example, through the executive appointing

[15] *id., at 69*

judges or through allowing a broader range of criticism of judicial functioning without the fear of contempt proceedings).

In all three essays, Justice Iyer takes a customary liberal and statesmanlike approach. He argues in favour of stronger mechanisms for judicial accountability while strongly upholding judicial independence. He argues against the current judicial trend of the collegium of judges playing a crucial role in judicial appointments by advocating a larger role for the executive in judicial appointments (although he does not discuss the poor experience the country has had on several occasions when the executive had virtually untrammeled power of judicial appointment).

Two further essays (Chapters 7 and 11) are on the role of courts. In one essay (Chapter 7), Justice Iyer makes a forceful argument in favour of judges being proactive agents of justice through judicial activism.

In this essay Justice Iyer emphasizes the importance of effective judicial remedies in a functioning democracy: "Once we accept the proposition that in a democratic society the court system plays a crucial role in seeing that neither licence nor absolutism becomes dominant, the difficult tasks of the court vividly stare us in the face."[16]

He argues that "the judicial process, in its functional fulfillment, must be at once a shield and a sword in defending the have-nots when injustice afflicts them."[17]

In memorable words, Justice Iyer defines the mandate of a court as follows: "The highest is not above the law, the humblest is not beneath the law. The true conception of the administration of justice is that the lowly concern of the least person is of the highest consideration to the state and the court."[18]

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[16] *id., at 90.*
[17] *id., at 92*
[18] *id., at 91*

Commending judicial legislation, Justice Iyer says that "no brave and honest judge shirks the duty or fears the peril."[19] Justice Iyer declares that "the rule of life must legitimize the rule of law" through "result-oriented credibility".[20]

Justice Iyer points out that the "great divide between the individualistic colonial legal system and the value-laden jurisprudence of the socially sensitive Constitution must be grasped if we are to apprehend the prospects of judicial development which has manifested itself as social action litigation and public interest litigation in India."[21]

In an essay on a similar theme (Chapter 11, "The Crisis of Contradiction between the Elite and the Constitution: Can the Judicial Robes Resolve it?"), Justice Iyer says that the "daily misery, economic bankruptcy, social alienation and cultural degeneracy" of the "vast masses" is in "flagrant contradiction of the dream of the founding fathers who inscribed the high values of humanism and compassion, et al, in the Preamble itself."[22]. Justice Iyer expresses concern about "Gattastrophe which, in effect, legitimizes foreign occupation of Indian economic and cultural space."[23]

Justice Iyer says that "the eloquent text" of the Constitution cannot, "by itself, alter the pathetic state of the populace when elite, anti-socialist cabals corner power."[24] In this situation, "how can the rule of law transform the rule of life"?[25] Justice Iyer calls for creative judicial strategies to address this challenge.

How have courts responded to this challenge? Justice Iyer says that "courts, with vast judicial power to deliver speedy, easy and effective relief to the masses, have disappointed the weaker sections, what with skewed

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[19] *id., at 91*
[20] *id., at 93*
[21] *id., at 92 and at 139*
[22] *id., at 120*
[23] *id. at 122*
[24] *id., at 120*
[25] *id. at 120*

interpretations, log jams of dockets, expensiveness of litigation and confusing spirals in forensic hierarchy."[26] He adds, "in relation to common people, the judicial process has virtually collapsed, although public interest litigation, as a new benign, democratic phenomenon holds out some hope of keeping the Indian indigent as part of the judicature's national constituency. The pharmocopia of judicial remedies needs radical replenishment if the rule of law is to serve the rile of life."[27]

In this context — in a sentence that is perhaps at the heart and soul of this volume — Justice Iyer says, "*Judicial activism is a Constitutional command* and the court's constituency is the people, 100 cores strong. It follows that the values of the Constitution shall be enforced by the forensic process, regardless of plurality of vote of the party in power and its policies."[28]

The two remaining essays deal with gender equality and women's rights (Chapter 12) and minority rights (Chapter 13). In the first of these, Justice Iyer argues that, notwithstanding constitutional and statutory guarantees, gender equality remains unrealized. In the second, Justice Iyer makes a forceful call for pluralism, secularism and the strongest possible protection of minority rights.

A significant thread that runs through the essays is Justice Iyer's emphasis on indigenous jurisprudence.

Justice Iyer says, "Certain quintessential imperatives must enlighten our judgement on any question of Constitutional law. The first consideration is that we [must] interpret our Constitution not on an anglophilic basis, but a [purely] Indian perspective must govern our construction which affects the life and liberty of every member of our Republic. Any ruling must therefore be rooted in Indian vintage semantics, not in British jural-regal sanguinary viccisitudes."[29]

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[26] *id., at 126*
[27] *id., at 127*
[28] *id., at 124*
[29] *id., at 67*

On another occasion Justice Iyer notes that "British experience has created a dualism which makes law a jungle."[30]

Justice Iyer also asks, "Why should the Houses of our Sovereign Republic cling colonially to the laws of our royal masters of yesteryears? We have a written Constitution and a Sovereign Republic with its own national ethos and ideas."[31]

Pointing out that the "judge is but an umpire" in the "anglophilic institutional vision", Justice Iyer says "the better boxer, not [the party with greater justice on her side] wins the game."[32]

Also, at the core of his Manifesto of the Human Person is *dharma*[33].

Reading this collection of fourteen essays is much like reading a (much read) holy book — the author is not new; and the contents are very familiar. Yet, because the spiritual truths in the holy book are so far removed from our daily lives, we need to repeatedly read it so as to constantly remind ourselves about them.

Like distant spiritual truths, the plight of millions of our countrymen and women is also unfortunately far removed from the lives of most of those who would read a book such as this, written in English.

Reading **Rhetoric and Reality** should therefore be mandatory for each of us — not because the author or content is new, but because by reading this book we will always remind ourselves — and never forget — the plight of our fellow citizens.

-Review by Dr. G. Mohan Gopal
Former Director, National Law School of India, Bangalore;
Visiting Professor, National Judicial Academy, Bhopal.

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[30] *id., at 75*
[31] *id., at 76*
[32] *id., at 140*
[33] *id., at 29*

2. Constitutionalism, Human Rights and the Rule of Law, *eds.*: Essays in Honour of Soli J. Sorabjee: *Mool Chand Sharma and Raju Ramachandran*

This book is a valuable collection of short articles published in honour of Soli J Sorabjee on the occasion of his 75th birthday. Apart from messages from the President Dr.A.P.J.Abdul Kalam, the Vice-President Shri Bairon Singh Shekawat and the Chief Justice of India Justice R.C.Lahoti, twenty five eminent people in the field of law have contributed to this book. Judges, Professors of Law and political leaders from the United Kingdom, Australia, Bangladesh and India have paid rich tributes to Soli J.Sorabjee through their contributions.

The former President of India Shri K.R.Narayanan had brought in the historic developments, constitutional provisions, judicial decisions as well as opinions of commentators on the 'Presidents' Role and Responsibility in the Constitution'. Former Chief Justice of India Shri Y.V.Chandrachud, while re-calling the contributions of many leaders, judges and Attorney Generals, dwelved on the protection of human rights of different groups under the Indian Constitution. It is heartening to note the views expressed by a teacher of his students like Soli J Sorabjee. Another former Chief Justice of India Shri M.N.Venkatachalaiah has equally paid rich tributes by recalling the contributions of Soli J Sorabjee in upholding constitutionalism.

Rt.Hon.The Lord Woolf had praised the work of Soli J Sorabjee both in legal as well as to human rights fields and succinctly summed up the legal developments taking place in the United Kingdom in relation to

judicial independence in the absence of separation of powers, changing role of Lord Chancellor and other significant changes to the British Constitution in his article on 'A New Constitutional Consensus in the United Kingdom'. Lord Cooke of Thorndon in his article 'How like an Angel' had duly acknowledged the contributions of Soli Sorabjee and highlighted the myth of parliamentary sovereignty. He went on to compare the same under the Indian Constitution and the core clash between the judiciary and the power of the Parliament. His detailed references to various decisions of the Indian Supreme Court and others in India and U.K is really worth reading. One might get wonderful insights into the comparative study of the Indian and British Constitutional Law.

Justice Michael Kirby of the Australian High Court has beautifully described Soli Sorabjee as the faithful guardian of the Rule of Law and went on in detail to comparatively analyze the judicial trend in deciding one of the most contemporary issues of terrorism facing the world today. His analysis includes the South African, American, English, Israeli and Australian judicial decisions on terrorism. Judge Albie Sachs of South Africa's Constitutional Court recalled the excellent work done by the Indian Supreme Court in the specific areas of Public Interest Litigation, judicial independence and protection of the weaker sections under the Indian Constitutional developments. Apart from citing a few paragraphs from his judgement, he reiterated South Africa's International obligations in criminal justice administration. It is also heartening to note the impact of Indian Supreme Court's decisions that are articulated to form part of South African jurisprudence. In the second half of his essay on the question of scandalizing the courts, he concludes by pointing out to Chief Justice Gajendragadkar, that judiciary should observe restraint, dignity and decorum in their judicial conduct. Justice Leila Seth, while recalling her long association with Soli Sorabjee reiterated the importance and relevance of Uniform Civil Code.

Mr. Anthony Lester's article on 'The Bangalore Principles' is worth reading, the outcome of the Commonwealth Judicial colloquium. Law Teachers, researchers and law students would be happy to read this article that is specifically focused on the relationship between the Constitution,

judiciary and human rights, which is reflected in full measure in 'The Bangalore Principles'. Most important among 'The Bangalore Principles' is the idea of South Asian Charter of Human Rights. Along with this, the SUVA statement on the principles of Judicial Independence and Access to Justice is also mentioned in this article.

The article on 'Fair Trial or Free Press?: Law's Response to Trial by Media' by Justice M.Jagannadha Rao brings out the expertise he has as the Chairman of the Law Commission. A comparative perspective from various countries on the issues is worth reading. Dr.Kamal Hossain's essay is equally comparative in its perspective, but on the expanding role of judiciary in South Asia in which he briefly analyzes the developments in India, Pakistan, Bangladesh and Sri Lanka, particularly in the protection of Human Rights.

From among the academics, Professor Jeffrey Jowell's essay reflects the contemporary developments in the United Kingdom as well as the implications of 'Belmarsh' decision by the House of Lords. Dr. Madhava Menon's essay on 'Media Reporting of Crime and Fair Trial Guarantee' highlights the judicial trend in India, existence of market driven press and the norms of journalistic conduct.

The contemporary issues in International Humanitarian Law are reflected in the essay of Dato'Param Cumaraswamy. He has highlighted the contemporary relevance of IHL by referring to ICJ's decision on Israel's occupied territory, the developments in U.S through the Supreme Courts decision on Guamtanamo Bay detainees and the role played by International Criminal Court. Granville Austin's brief note highlights the importance of Articles 14 and 21 of the Indian Constitution and the failure of the executive branch of the government. Whatever the courts interpret, the onus is on the executive to prevent violation of these rights under articles 14 and 21, he opines.

Goolam E Vahanvati's essay on 'Rule of Law: the Sieges Within' is a well articulated piece, raising more fundamental questions and by briefly responding to them in the light of the functioning of Executive, Legislative and Judicial branches of the government. T.R.Andhyarujina's 'The

President choice of the Prime Minister in a Hung Parliament' explains the problem in a multi party democracy. Yet for critical readers, it might also indicate the failure on the legislatures in India to develop constitutional conventions, rather than relying upon British Conventions or practices based upon them. Shri C.S.Vaidyanathan's brief article captures the judicial opinion in the appointment of Judges to higher judiciary, the legislative initiative and the need for judicial independence. Ms. Stephanie T Kleine Ahlbrandt's article gives an overview of the Nigerian Human Rights Commission and historical background for the continued violations of Human Rights there. Mr.C.R.Irani's brief essay on 'Lest We Forget' highlights the problems within India and partisan governmental response.

Aharon Barak's article on 'Activism and Self-Restraint' brings the definitions in context, desirability of either activism or self-restraint in the protection of the Constitution and its values. In this, he also identifies the role of a judge in bridging the gap between law and society as well as his ability to balance between these two. Arvind P Datav's article on 'Criticism of the Judiciary and Contempt of Court' beautifully captures different approaches and the need to keep the national motto by 'Truth shall always Prevail'. Ms.Rajini Kumar's brief essay highlights the essence of good education.

Dr.Mool Chand Sharma's article on 'Constitutional Democracy and Access to Justice' is a well researched article and highlights the judicial trend, public interest litigation and judicial activism. It is a pleasure reading this article, particularly in the context of lecturing on Constitutional Law or Judicial Process. The book concludes with Raju Ramachandran's Afterword paying rich tributes to Soli Sorabjee, like every author did.

On the whole, this volume makes readings on the legal developments a pleasure. This book is a welcome addition to the writings on law and specially on law, legal systems and rule of law, to which Mr. Soli J Sorabjee has made a very significant contribution.

-Review by Prof. Ranbir Singh
Director, National Academy of Legal Studies and Research University, NALSAR, Hyderabad.

CONTRIBUTORS

P.P. Rao, Senior Advocate, Supreme Court of India

Justice (Smt.) Sujata V. Manohar, Former Member, NHRC and a retired Supreme Court Judge

Prof. Ranbir Singh, Vice Chancellor, NALSAR University of Law, Hyderabad

Gen. (Retd.) V.P. Malik, Former Chief of Army Staff

Dr. Devaki Jain, Trustee, Singamma Sreenivasan Foundation, Bangalore

Sitharamam Kakarala, Senior Fellow, Centre for the Study of Culture and Society, Bangalore

Prof. G. Hargopal, Professor of Political Science and Dean School of Social Science, University of Hyderabad

Prof. G. Sundershanam, Professor of Political Science, University of Hyderabad

Dr. G. Mohan Gopal, Former Director of National Law School of India University, Bangalore and Visiting Professor, National Judicial Academy, Bhopal