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Dr. Justice Shivaraj V. Patil
Acting Chairperson

PREFACE

Spreading Human Rights literacy among various sections of society and promoting awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means is one of the mandatory functions of the of the National Human Rights Commission of India. The Commission right from its inception has been making efforts in this regard by undertaking activities like training programmes, seminars, workshops, newsletter, printing of books, etc. The Commission is conscious to interact with all the sections of the society so as to make them aware of the issues relating to Human Rights. The publication of a Journal of Human Rights is one such endeavour of the Commission.

Human Rights by their very nature, constitute the minimum that is necessary for an individual to live in a civil and political society as a free individual with dignity and respect; to realize his full potential; and also as a member of the society. Denial of these rights would create handicap to the individual from developing his talents and for making his maximum contribution for the strength and growth of the nation.

Human dignity is the spine and principle concern of Human Rights. Emphasis on human dignity is enshrined in the U.N. Charter, the Universal Declaration of Human Rights, several Covenants and the Constitution of India. There are multi-dimensional challenges and critical issues pertaining to Human Rights, human development and governance. Quest and concern of international community for human development has received considerable impetus from the Millennium Development Goals flowing from Millennium Declaration.

Eminent persons have contributed their articles for the current issue of Journal 2006. These articles are of great quality and utility. The topics covered are (i) Indian Democracy-Economic, Social and Cultural

Rights (ii) Neglect of Economic, Social and Cultural Rights-A Threat to Human Rights (iii) Right to Development as a Human Rights in the context of Millennium Development Goals (iv) Re-look at the Criminal Justice System-Essential for Protection of Human Rights (v) The ABC of National Human Rights Institutions (vi) Knowledge for Empowerment (vii) Poverty and Disability: Arguments for an Inclusive Policy (viii) Sensitization – Key to Protection of Human Rights.

It also includes various Important recommendations, Statements and interventions brought out by the Commission.

I hope that the Journal will facilitate further in spreading awareness of Human Rights and in raising debates and discussions leading to positive action on important issues relating to Human Rights.

Dr. Justice Shivaraj V. Patil
24 November, 2006

INDIAN DEMOCRACY ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Soli J. Sorabjee

There are various definitions of democracy. Etymologically democracy means the power of the people. Government of the people, by the people, for the people, is the sovereign definition of democracy. What kind of democracy is envisaged by our Constitution which the people gave unto themselves?

There are, *inter alia*, two unmistakable features of our constitutional democracy. Part III which guarantees certain enforceable fundamental rights and Part IV which sets out Directive Principles of State Policy. Article 37 states that the Directive principles 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.

Fundamental rights in Part III of the Constitution broadly correspond to the International Covenant on Civil and Political Rights 1966 [ICCPR]. Directive principles broadly conform to the International Covenant on Social, Economic and Cultural Rights of 1966 [ICESR].

At one stage the judicial thinking was that fundamental rights had primacy over directive principles, which were considered to be subordinate to fundamental rights. Subsequent judicial thinking was that fundamental rights and directive principles complement each other and together they form the core and conscience of our Constitution. The present judicial trend is that in determining the reasonableness of restrictions imposed on the fundamental rights the court can take into consideration the relevant directive principle. A seven judge Bench of the Supreme Court by majority in the case of *State of Gujarat* vs. *Mirzapur Moti Kureshi Kassab Jamat* [2005 (8) SCC 534] held that "for judging reasonability of restrictions imposed on fundamental rights, relevant

considerations are not only those as stated in Article 19 itself or in Part III: directive principles stated in Part IV are also relevant – Implementation of directive principles is within the expression 'restriction in the interests of the general public' in Article 19(6) – A restriction placed on any fundamental right, aimed at securing one or more of the directive principles will be held as reasonable, and hence intra vires, subject to two limitations: (1) that it does not run in clear conflict with the fundamental right, and (2) it has been enacted within the legislative competence of enacting legislature under Part XI Chapter I".

At the international level the heated controversy fuelled by the Cold War era about the primacy of civil and political rights on the one hand or economic and social rights on the other has been set at rest. The Vienna Declaration at the World Conference on Human Rights in June 1993 has categorically accepted that all human rights – be they civil or political or economic, social or cultural – are universal, indivisible interdependent and interrelated. The European Social Charter 1961 (revised charter 1996) and Protocols; the American Convention on Human Rights, 1969 (effective from 1978); the African Charter of Human Rights and Peoples' Rights, 1981 (effective from 1986) and the South African Constitution, 1996 deal with Civil, Political and Economic, Social and Cultural Rights covering the whole gamut of rights.

Directive principles in substance articulate the goals which a truly welfare State aims to achieve. They are intended to ensure distribute justice for removal of inequalities and disabilities and to achieve a fair division of wealth amongst members of the society. Directive principles comprise of social and economic rights such as right to health, the right to shelter, right to a living wage, right to food, right to work, protection and improvement of environment and safeguarding of forests and wild life and so on. Our Supreme Court has, by judicial craftsmanship, incorporated some directive principles in fundamental rights and thus expanded their scope and ambit.

A striking instance of expansive judicial interpretation is the Supreme Court's decision in *Francis Coralie.* The Court ruled that the

expression "life" in Article 21 does not connote merely physical or animal existence but embraces something more. "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head".

Based on this expansive interpretation the Supreme Court has appreciably contributed to environmental protection. It has ruled that the right to live with human dignity encompasses within its ambit, the protection and preservation of an environment free from pollution of air and water. It has ruled that hygienic environment is an integral facet of right to healthy life and accordingly right to health and sanitation fall within the ambit of Article 21. The Supreme Court has 'shifted' several economic and social rights from Part IV to Part III.

For example:

(i) the right to compulsory primary education which is referred to in Art. 13(2)(a) of the ICESCR [J.P. Unikrishnan vs. State of AP, AIR 1993 SC 2178].

(ii) The right to health which is referred to in Art. 12(1)(a) of the ICESCR [State of Punjab vs. Mohinder Singh Chawla, AIR 1997 SC 1225]

(iii) The right to shelter which is referred to in Art. 11(1) of the ICESCR [UP Awas Avam Vikas Parishad vs. Friends Co-operative Housing Society Ltd., AIR 1996 SC 114]

(iv) The right to food which is again referred to in Art. 11(1) of the ICESCR [Madhu Kishwar vs. State of Bihar, 1996(5) SCC 125]

(v) equal pay for equal work which is referred to in Art.7(a)(1) of the ICESCR [Randhir vs. Union of India, AIR 1982 SC 879]

(vi) Right to legal aid [Madhav vs. State of Maharashtra, AIR 1978 SC 1548]

The right to sustainable development has been declared by the UN General Assembly as an inalienable human right. Development is defined as a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population in development and in the fair distribution of benefits therefrom.

The National Commission to Review the Working of the Constitution [NCRWC] in its report recommended that certain socio-economic rights be included in Part III of the Constitution as fundamental rights. For example, every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation. Gandhiji had once said that freedom for him would mean the availability of safe drinking water to every person in every village of India. The NCRWC recommended that the following rights be incorporated in the fundamental rights part namely, every person shall have the right (a) to safe drinking water; (b) to an environment that is not harmful to one's health or well-being; and (c) to have the environment protected, for the benefit of present and future generations so as to (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Two directive principles need special attention. The first is Article 39(b) which provides that the State should direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Next is Article 39(c) which mandates that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

These directive principles along with other directive principles make it clear that social justice which is reflected in the Preamble to our Constitution is the signature tune of our Constitution.

Excessive disparities of income and wealth are incompatible with social justice and democracy. To many the taste of democracy is bitter because its fullness is denied to them. "We can have democracy or we

can have concentration of wealth in the hands of a few. We cannot have both". This was not said by a die-hard Marxist but the great American judge and jurist Louis Brandeis.

The apprehension often expressed about the impact of enforcement of economic and social rights on the State's resources is exaggerated. It can be met by initially making a few social and economic rights enforceable in preference to the maximalist approach of covering all such rights. Article 2(1) of ICESCR is phrased in extremely cautious terms. "Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant...". Besides, lack of resources in a country may not be an everlasting problem. States are expected to ensure progressively the availability of resources that should enable them to implement more rights and in a better manner than in the past.

Difficulties are expressed about making social and economic rights justiciable. The South African Constitution 1996 in its Bill of Rights contains certain socio-economic rights including the right to food, health care and housing. These rights are enforceable through Courts. However, the South African Constitution wherever it refers to these rights provides that the enforcement of these rights will depend upon the availability of resources.

Yakoob J of the South African High Court in his judgment in *Government of Republic of South Africa* vs. *Irene Groot* [judgment dated 04.10.2000] dealt extensively with enforcement of the right to shelter and gave a declaratory order that the State has to meet its obligation under Section 26(2) of the South African Constitution which 'includes the obligation to devise, fund, implement and supervise measures to provide relief to those in desperate need'. The learned Judge also gave directions to the South African Human Rights Commission under Section 184(1)(c) of the South African Constitution 'to monitor and report compliance by the State, of its section 26 obligations'.

Securing economic and social justice and elimination of vast disparities in wealth and income are the moral imperatives for any democracy. Regrettably the sordid phenomenon of concentration of wealth in the hands of a few families and industrial houses whilst the majority of our people can hardly eke out a decent existence still persists. Motor cars like Lamborghini and Rolls Royce each valued at between rupees 2 and 4 crores have been imported and have been rapidly picked up by some persons overflowing with unbounded wealth. This state of affairs makes a mockery of democracy.

It is distressing that social justice is still a distant dream and will continue to elude us if there is non-implementation of social, economics and cultural rights by the State. And without social justice democracy cannot be a reality; it is a fashionable myth.

Our endeavour should be to impart to our democracy fullness, vitality and comprehensiveness so that its fruits and benefits are shared and enjoyed by the vast majority of the people of India.

NEGLECT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS – A THREAT TO HUMAN RIGHTS*

Dr. Justice A.S. Anand

Human rights, which inhere in every human being by virtue of his birth as a member of the human family are demands to protect our only common identity as human beings. No compromise with violations of the same is permissible in any civilized society. These rights, which are non-negotiable, non-alienable, indivisible and recognize an essential worth of a human being and acknowledge the dignity inhering in all human beings, irrespective of their race, sex or economic level of living, are ethical norms for the treatment of individuals. Human Rights are, thus, certain rights which have come to be recognized as basic conditions of civilized living for full development of a human being.

In democratic societies fundamental human rights and freedoms are put under the guarantee of law and therefore, their protection becomes an obligation of those who are entrusted with the task of their protection. These rights are broadly classified into **civil and political rights** on the one hand and **economic, social and cultural rights** on the other.

The classification of these rights is, however, more dialectical than real. While the former are more in the nature of injunction against the authority of the State from encroaching upon the inalienable freedoms of an individual, the latter are demands on the State to provide positive conditions to capacitate the individual to exercise the former. The object of both sets of rights is, to make an individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither full development of the human personality can be achieved nor true democracy can be said to exist. Unfortunately, protection of social, economic and cultural rights compared to protection of civil and

* Based on the address delivered at the Indian Law Institute (Chennai Chapter), Chennai on 26th Nov, 2005

political rights, at both national and international level has been poor and irregular.

As I have just said that protection and promotion of Human Rights is basic for civilized existence, therefore, the Theme of this seminar "Neglect of Economic, Social and Cultural Rights – a Threat to Human Rights" assumes great relevance and significance. Millions of people in this country live in a state of abject poverty, without food, shelter, employment, health care and education. According to a UN Report, "1/5th of the population in a developing country, like ours, are hungry every night; 1/4th do not have access to basic amenities like drinking water; and 1/3rd live in a state of acute poverty".

According to the Human Development Report 2005:

- Every hour 1,200 children die. One crore children every year do not live to see their fifth birthday;
- More than 100 crore people (the size of India's population), survive on less than one dollar a day
- 250 crore people (about 40 per cent of the world's population) live on less than two dollars a day.
- The world's richest 500 individuals have a combined income greater than 40 crore of the world's poorest.
- As many as 250 crore people account for less than 5 per cent of the world's income.

The Human Development Report estimates a cost of $300 billion for lifting 100 crore people above the extreme poverty line. This amount represents just 1.6 percent of the income of the richest 10 percent of the world's population.

As human rights and fundamental freedoms are indivisible and interdependent, equal attention and urgent consideration needs to be given to the implementation, promotion and protection of economic, social and cultural rights as otherwise their neglect shall pose a great threat to Human Rights.

In 1948 when the Universal Declaration of Human Rights was adopted as "a common standard of achievement of all peoples and nations" there were reservations by many State Governments. Virtually all States shielded behind Article 2(7) of the UN Charter in arguing that human rights matter were strictly an internal matter of the States concerned. This view today, mercifully, receives very little credence from the International community which accepts universality of human rights all over.

Due to reservations of State governments, the Universal Declaration of Human Rights was **not** presented to the General Assembly as a treaty for ratification which would be binding upon the signatory nations, but an instrument to be endorsed as "a statement of goals and aspirations – a vision of the world as the International community wanted it to become". The Declaration was adopted by an affirmative vote of 48 member States and 8 abstentions. A UN Commission on Human Rights was set up. The Commission's mandate was confined to the drafting of new treaties and other legal instruments.

The Universal Declaration of Human Rights adopted by the General Assembly on 10th December, 1948, was followed by two Covenants – International Convention on Economic, Social and Cultural Rights (ICESCR) and International Convention on Civil and Political Rights (ICCPR) in 1966. India signed the International Convention on Economic, Social and Cultural Rights in 1979. However, in spite of the Universal Declaration and the two Covenants, widespread violation of human rights continues to occur almost daily everywhere. There is, therefore, some sting but more than a grain of truth in the cynic's taunt that the only thing universal about human rights is their universal violation.

The Preamble to the 1966 Covenant on Civil and Political Rights speaks of 'the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedom.'

The enjoyment of certain Economic, Social and Cultural rights, set out in articles 26 to 28 of the Universal Declaration of Human Rights and elaborated in the International Covenant on Economic, Social and

Cultural Rights as well as in a number of international conventions adopted by specialized agencies and other intergovernmental organizations, cannot be adequately ensured merely by the enforcement of existing laws or the passage of new ones but can only be achieved progressively through gradual improvement of the Economic, Social, and Cultural situations in which people live.

The UN Committee on Economic, Social and Cultural Rights (CESCR) is taking a robust attitude towards the practical implementation of these rights under the ICESCR. This was recognized by the United Nations in 1986 when it acknowledged the right to development as a human right. The right to development as formulated in the 1986 U.N. Declaration is a synthesis of the two sets of rights. The developments both in the capitalist and in the communist world till date have also demonstrated the validity of this holistic approach to human rights and the futility of insisting on one set of rights and ignoring the other. The distinction long made between civil and political rights on the one hand and the economic, social and cultural rights on the other was finally put to rest by the Vienna Declaration and Programme of Action which affirms that 'All human rights are universal, indivisible and interdependent and interrelated'. This declaration, however, will amount to a little more than an aspiration so long as economic, social and cultural rights, unlike civil and political rights, are considered non-justiciable and thus not enforceable.

At the domestic level, while Economic, Social and Cultural rights are acknowledged in an increasing number of constitutions, they are usually stated to be non-justiciable. With over a fifth of the world's population continuing to suffer from hunger, poverty and illiteracy, there is today an urgent need to seek means by which these rights can be enforced when states fail to comply with the obligations they have voluntarily undertaken.

Millions of people in this country live in a state of abject poverty, without food, shelter, employment, health care and education.

According to UNDP Report of 2003, Indian society is highly inequitable society where richest 10% consumes 33.5% of resources

and poorest 10% gets only 3.5% of resource. Around 233 million people are chronically hungry. Official figures state that in the country 26% people are living Below Poverty Line. However, in the Alternative Economic Survey 2000-01 based on the National Sample Organisation Survey, it is shown that the number of people living below poverty line in the rural areas has increased from 35% in 1990 to 45.3% in 1998.

Around 51% of the population does not have sustainable access to affordable essential drugs. Infant Mortality rate is 68 per 1000; under 5 child mortality rate is 93 per 1000; 26% children are under weight; and 24% of the population is undernourished. Maternal mortality ratio is 440 per 1,00,000 and 72% of the population does not have access to improved sanitation (UNDP Report 2003).

In his, perhaps the last speech before the Constituent Assembly, Dr. B.R. Ambedkar – the architect of India's Constitution – prophetically warned that India was

"going to enter into a life of contradiction. In politics we will be recognizing the principle of one man, one vote, one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to defy the principle of one man, one vote, and one value. How long shall we continue to live this life of contradiction? How long shall we continue to deny equality in our social and economic life? If we continue to deny if for long, we shall do so by putting our political democracy at peril. We must remove this contradiction at the earliest possible moment or else those who suffer inequality will blow up the structure of political democracy which this Assembly has so laboriously built up."

The Constitution of India is a store-house of social justice but the concept of social justice is flexible, dynamic and relative. Its form varies from place to place and from time to time. Social justice is a generous concept which assures to every member of the society a fair deal. Any remedial injury, injustice, inadequacy or disability suffered by a member, for which he is not directly responsible falls within the liberal connotation of social justice. Thus, social justice is the basis of the

progressive stability of society and the right to life and liberty, as explained and expanded under Article 21 of the Constitution of India, is a part of social justice. Social justice to be meaningful and purposeful must be rooted in the acceptance of human dignity of every man. The whole scheme of the Constitution of India is aimed at to secure justice-social and economic. The seeds of socio-economic justice were sown by the freedom fighters during the freedom struggle, because they were convinced that political freedom is not and cannot be an end in itself. The political freedom has no significance or meaning to the teeming millions of this country who suffer from poverty and all social evils flowing from it unless the socio-economic content of history is assured to them.

The expression 'Socio-Economic Justice' is not a constitutional rhetoric or political claptrap meant for heroic sloganeering. It is the conscience and soul force of the supreme law of the land. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state.

In the Constitution of India, the civil and political rights are incorporated as Fundamental Rights and are made enforceable. The economic, social and cultural rights are enshrined as the Directive Principles of the State Policy and though not enforceable, are made fundamental in the governance of the State. In a way, the Fundamental Rights and the Directive Principles of State Policy are the product of human rights movement in the country. Roughly they represent, two streams in the evolution of human rights, which divide civil and political rights on the one hand and social, economic and cultural rights on the other. Justiciability is, essentially speaking, the basis of division between them. While fundamental rights are justiciable, directive principles are not.

The distinction, between the two sets of rights has, however, to be viewed from the historical context of the time when the Constitution was framed. Perhaps, in the backdrop of the then social-economic conditions of the Indian society, after about two hundred years of

colonial subjugation, the framers of the Constitution evolved two sets of rights.

Perhaps, it was on account of realizing practical difficulties in the enforcement of directive principles by the courts, that the founding fathers settled for their judicial non-enforceability but made them "fundamental" in the governance of the country. Thus, the directive principles cannot, in any way be considered less important than fundamental rights. The resolve of the Preamble is elaborately repeated in the directive principles which, among others, specifically require, the State to minimize the inequalities in income and to eliminate inequalities in status, facilities and opportunities. The directive principles require the state to take special care of education and economic interests particularly of the vulnerable sections of the society.

The primacy between the fundamental rights and the directive principles, which are also sometimes described as the primary and the secondary rights respectively, has been a matter of considerable debate in the courts. The law which has come to be developed in this country on the subject today, seeks to harmonise the Fundamental Rights with the Directive Principles and, thereby synthesise the civil and political rights with the economic, social and cultural rights. The courts have been reading Fundamental Rights into the Directive Principles and expanding civil and political rights to include in them the economic, social and cultural rights and construing the two set of rights harmoniously. The development of human rights jurisprudence in the country is basically based on the Supreme Court expanding the concept of "right to life and liberty" under Article 21 so as to make the enjoyment of social, economic and cultural rights a reality.

Dr.B.R. Ambedkar, Chairman of the Constitution Drafting Committee, interpreting the nature of Directive Principles, opined that they would be the guiding principles of governance. However, the Government of India, as statistics tell us, never whole-heartedly pursued the implementation of Directive Principles. The government dilly-dallied implementation of each principle generally citing the reasons of resource crunch. Thanks to the judiciary, the Directive Principles started getting

importance when the Judiciary stepped in and interpreted the underlying principles of Directive Principles. The distinction between civil and political rights and the economic, social and cultural rights has been narrowed by judicial interpretations. Realising that the Fundamental Right to live with dignity was not possible without proper realization of economic, social and cultural rights, the court did not favour the concept of treating the Fundamental Rights as superior to the Directive Principles.

In State of Kerala vs. M. Thomas [1976 (2) SCC 310] the Supreme Court commented that the Fundamental Rights and the Directive Principles were complementary.

In the case of Francis Coralie Mullin vs. the Administrator, Union Territory of Delhi[1981 2 SCR 516], the Supreme Court declared:

"The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."

The courts in India have also related healthcare, food security and elementary education with the Right to Life by expanding Article 21 of the Constitution, thus making these rights justifiable.

Following the judgment of the Supreme Court in Unni Krishnan v. State of AP [1993 (1) SCC 645] the Union Parliament adopted 86th Constitutional Amendment whereby elementary education has been made fundamental right in the Constitution.

Similarly in Bandhua Mukti Morcha v. Union of India in 1984 the Supreme Court held that the 'right to life' must include the right to health for the enjoyment of the human life with dignity. Thus, it is seen that the law which has come to be developed in this country on the subject today seeks to harmonise the fundamental rights with the directive principles and, thereby, synthesise the civil and political rights and the economic, social and cultural rights. The inter-dependence of both set of rights is essential for full development of human personality.

We must accept that indivisibility and inter-related nature of the two sets of rights is now a reality.

With the growth of consumerism and the destruction of natural environment, the threat not only to the quality of life but also to life itself is becoming more and more real, when, therefore, cases are brought to the notice of courts, it becomes their imperative duty to take suitable action by balancing the need of the society for economic growth with the right of the people to lead life in a healthy environment. The Courts can and indeed are obliged to give both preventive and corrective directions to safeguard the environment and ecology and thereby human life.

The mandate of Article 37 of the constitution is that even though directive principles are not justiciable or enforceable by the courts, the same are "fundamental in the governance of the country" and it shall be the "duty" of the State to apply these principles.

The achievement of the Courts in promoting human rights would largely depend upon their success in synthesizing the civil and political rights with the economic, social and cultural rights by evolving a systematic approach whereby economic, social and cultural rights are assured to the have-nots to enable them to exercise their civil and political rights equally effectively with the haves. Unless, such synthesizing and systematic approach is adopted, there will always remain in the society, a sizeable deprived section – and this section forms the increasing majority in all developing countries. The neglect of Economic, Social and Cultural Rights also gives rise to conflicts which are threatening the democratic societies worldwide. It cannot be denied that disillusionment with a society where there is exploitation and massive inequalities and whose systems fail to provide any hope for justice are fertile breeding grounds for conflicts, which more often than not thrives in environments where human rights and more particularly Economic, Social and Cultural Rights are denied by the State and political rights are violated with impunity both by the State and the non-State actors. Systemic denial of Economic, Social and Cultural Rights, like right to food, health, education etc. are caustic factors of conflict and even terrorism. The

importance of promoting Economic, Social and Cultural Rights to contain such conflicts must, therefore, be realized and appreciated. The protection and promotion of Economic, Social and Cultural Rights must go hand in hand with protection of Civil and Political Rights for giving human rights a true meaning.

Poverty, itself is the biggest violation of human rights. If hunger persists, peace cannot prevail. In this connection, I would like to point out that one factor which contributes to causing despair and anger among the underprivileged and economically disadvantaged segments of the society arises from the failure of the State to properly execute the poverty alleviation schemes and programmes. The large grants meant for poverty alleviation schemes are often 'misused' or 'diverted' – due to maladministration, non-accountability, lack of transparency or corruption. It needs to be emphasized that corruption weakens the very foundations of the administrative and legal framework and disrupts the Rule of Law, thereby giving rise to lawlessness and thereby create imbalance.

Having said all this, let me also point out that realization of the fact that both the sets of rights are essential for the full development of man does not, however, detract from the reality that the assurance of civil and political rights generally does not involve taxing of the resources of the State whereas the procurement of economic, social and cultural rights involves outlays of the resources, the extent of which depends upon the size of the deprived sections of the society. It is easier for every society to ensure civil and political rights, the capacity of each society to secure economic, social and cultural rights varies depending among others, upon its population, its resources, its level of economic development, the efficacy of its economic structure and the efficiency of its administrative machinery. Depending upon the economic organization of the society and the extent of the economic and social inequalities prevailing in it, the nature and degree of the conflict between the rights of the haves and the have-nots also varies. To secure economic, social and cultural rights for the have-nots and to ensure that the existing inequalities do not empower the haves to dominate the have-nots in the exercise of their civil and political rights, a balanced approach is

necessary. In the developing countries in particular, where economic and social inequalities are galore, the courts are constantly called upon to resolve this conflict between the rights of a tiny section of the haves with those of the vast majority of the have-nots. The State, thus, has to adopt an appropriate approach for promoting human rights – an approach which seeks to harmonize and promote the rights of all.

Till the Government does the needful, let the courts, within the bounds of law, use their creativity and implement the spirit of the covenants through purposive approach while interpreting the statutes including the Suprema Lex. This can be done in the exercise of the public law jurisdiction of the courts – one of the essential attribute of which is to civilise and discipline public power for the betterment of the society.

Since the directive principles have been mandated to be "fundamental" in the governance of the country, it is obligatory on the States and its officials to not only protect and promote social, economic and cultural rights but also to ensure that their protection is a reality and not merely a pious hope or an illusion. This will be a guarantee to the society for "hope" of a "better tomorrow". It is primarily through the directive principles that fundamental rights shall be protected and become meaningful. Together the two sets of rights will create a free and just society and usher in general welfare – avoiding conflicts both internally and beyond which pose a threat to Human Rights. When both set of rights are linked together, much can be done to promote human rights. It can then be said that Human Rights have been made a focal point for without that good governance would remain a distant dream.

THE RIGHT TO DEVELOPMENT AS A HUMAN RIGHT IN THE CONTEXT OF THE MILLENNIUM DEVELOPMENT GOALS

Virendra Dayal

Mantra or Nonsense?

The "right to development" was long invoked as a political mantra, particularly by those who wished to sound radical, in the fond hope that the chanting of the mantra would shame the rich in the North to acquiesce in this right, and part with some their excessive wealth for the greater good of the greater number. In an equal and opposite reaction, opponents of the right to development, and there were many in the developed countries, derided the right as "nonsense on stilts", echoing, a century and a half after its time, Jeremy Bentham's dismissive description of "natural and imprescriptible rights". Neither side furthered a true understanding of the right to development or of the issues involved in its realization.

In reality, the 1986 Declaration on the Right to Development, as it finally emerged, is a remarkably subtle, path-breaking document, with a unique vision of entitlements, duties, mutual reciprocities and obligations. It is neither mantra nor nonsense. It takes some effort to understand. The Declaration was adopted by the General Assembly of the United Nations after ten years of hard negotiations and, then too, after a divisive vote.

It took seven more years, the waning of the Cold War and the 1993 World Conference on Human Rights to be able to reaffirm, by consensus, that the right to development was a "universal and inalienable right and an integral part of fundamental human rights" and that the right "must be implemented and realized". Even so, to clarify what needed to be done, the World Conference considered it essential to "urge" a Working Group, established earlier by the UN Commission on Human Rights to "formulate promptly" "comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and

recommend ways and means towards the realization of the right to development by all States".

Thirteen years later, that Working Group is still hard at work, reinforced by a High-Level Task Force, giving a somewhat unusual meaning to the word "promptly". Further, for six years, an Independent Expert of eminence, Dr Arjun Sengupta, assisted the UN Commission on Human Rights to arrive at a better understanding of the meaning and implications of this right.

All of this suggests that, in this article, it is essential at the start to deal briefly with the circumstances in which the Declaration on the Right to Development evolved, and thereafter, to outline its principal concepts. That should help the right to acquire a semblance of meaning and clarity for the lay reader, and facilitate an examination of the right to development, as a human right, in the context of the Millennium Development Goals (MDGs).

Evolution of the Right to Development: Parallel, Complementary and Converging Ideas

The 1960's and '70's were a period of growing disillusionment with prevailing developmental policies, both at the national and international levels. By the 1980's, it was evident that poverty was growing and that there was an increasing concentration of wealth and power in the hands of the few. The effort of developing countries to propound a New International Economic Order, while successful in terms of the gathering of votes for the passage of resolutions, made little substantial difference to the facts on the ground, pointing to the obvious limitation of rhetorical triumphs.

In these circumstances, it was not surprising that, both among the development-community and among the human rights-community there was a parallel search for a new way forward, a search that, in time, showed increasing signs of being complementary and, on occasion, of converging.

Within the development-community, or more appropriately, the more philosophical wing of it, the powerful intellectual and moral weight

of Amartya Sen and Mahbub-ul-Haq transformed the way in which development was to be viewed and measured. Development was no longer to be considered a mere matter of "growth"-important though that was- measurable essentially through economic and financial indicators. Instead, the purpose of development had to be re-defined: it was to enrich the lives and freedoms of people. The human development approach, which has since been propounded through successive reports of the United Nations Development Programme (UNDP), was thus concerned, in Sen's view, with enhancing the capabilities that people had reason to value, with the widening of the choices open to them, with the expansion of their freedoms. According to this approach, human rights were not, as had sometimes been argued, a reward for development. Rather, they were critical to achieving it. And the rights to be exercised were not only civil and political but, no less, economic, social and cultural.

Concurrently, within the human-rights community, and spinning-off from the debate on the New International Economic Order, there was an increasing desire to reclaim the original vision of the United Nations Charter and the 1948 Universal Declaration of Human Rights, which had been splintered by the Cold War and the perpetual war of words between the South and the North.

The Charter, in its very first article, had established respect for human rights and fundamental freedoms as one of the primary vehicles for achieving the purposes of the

Organization. It had gone on to place Member States and the United Nations under an obligation to promote "universal respect for, and observance of human rights and fundamental freedoms", and "to take joint and separate action" to achieve this end. Under the Universal Declaration, human rights were based on the "inherent dignity" of every human person, "without distinction of any kind". This, in turn, called for a "spirit of brotherhood" between human beings and a spirit of solidarity between nations. It also called for a social "order", both domestic and international, in which human rights could " be fully realized". Most notably, the Universal Declaration clearly recognized

the unity, inter-dependence and indivisibility of all rights and expressly expounded the view that everybody was equally entitled "to all the rights and freedoms set forth in that Declaration", Articles 1 to 21 of which related to civil and political rights and Articles 22 to 28 to economic, social and cultural rights. That unity of rights had been fractured in the 50's and 60's, leading to the adoption of two separate Covenants in 1966, one on Civil and Political Rights, the other on Economic, Social and Cultural Rights.

The debate on the right to development picked-up on these themes, seeking to revive the unity, inter-dependence and indivisibility of all rights, on the one hand, and the duty and obligation of individuals and States to act with solidarity, on the other. As the debate progressed, it was clear that the human rights-community was increasingly being inspired by the "new thinking" that was evolving, in parallel, in the development-community. And that the latter, for their part, in elaborating the human development approach, were finding that their arguments were greatly strengthened by drawing on the power, and legal strength, of human rights concepts. Together, the combination of these two perspectives opened a vista of progress that neither could provide alone.

By the time the new Millennium dawned, the complementary character of human rights and human development was thus firmly established. Born of the Millennium Declaration, adopted at the UN Millennium Summit in September 1999, each of the eight Millennium Development Goals was thus directly linked to the economic, social and cultural rights enumerated in the Universal Declaration (articles 22, 24, 25, 26) and other human rights instruments (see annexure 1). By 2000, the Human Development Report opened with the stirring words, "Human rights and human development share a common vision and a common purpose—to secure the freedom, well-being and dignity of all people everywhere", with Amartya Sen, who wrote Chapter 1, observing " Human development and human rights are close enough in motivation and concern to be compatible and congruous, and they are different enough in strategy and design to supplement each other

fruitfully". The 2003 Human Development Report went a step further: it opened with the thought "The Millennium Development Goals, human development and human rights share a common motivation".

In the sections that follow, it thus becomes essential to outline the principal concepts of the right to development; to be clear about the purpose and scope of the eight MDGs and their respective targets (see annexure 2 for their text); and then to see how far the right to development, as a human right, is indeed reflected in the MDGs and congruent with those Goals.

The Principal Concepts of the Right to Development

The Declaration on the Right to Development has 16 preambular paragraphs and 10 Articles, but the commentaries on it could now fill a library. What, in essence, is the right to development and what are the component rights that it includes?

- First, the right to development is an "inalienable human right" (Art 1). Every human being has this right. It is a right that cannot be taken away.

- Second, by virtue of that right, "every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized"(Arts 1). The right to development thus includes a right to participation for all, "individually and collectively"(Art 2), and the full realization of all rights, which are of equal importance. This implies a process of development that is democratic, decentralized, inclusive, transparent, accountable and comprehensive. It cannot be a process that is "top-down" or conceived or implemented without the fullest degree of popular participation at all levels.

- Third, the "human person", whether viewed as an individual being, or as a member of a collectively, is to be the central subject of development and its principal beneficiary (Art 2). This approach,

as indicated earlier, represents a radical departure from past thinking on matters of development.

- Fourth, the right to development includes the right to the "fair distribution of the benefits" of development (Preamble). In other words, it calls for respect for the principles of equity and justice that under-pin the entire philosophy of human rights. Distributive justice has to guide the process of development, both within and between States, otherwise the right to development gets misconstrued and the process of development gets warped.

- Fifth, the right to development includes the right to non-discrimination—another cardinal human rights principle. Development must be for all, "without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status" (Preamble).

- Sixth, the human right to development also implies the full realization of the right of peoples to self-determination, "subject to the relevant provisions of both International Covenants on Human Rights", and this includes "the exercise of their inalienable right to full sovereignty over all their natural wealth and resources"(Art1). It also means that all peoples should be able to formulate their own policies without external interference or threats.

- Seventh, the right to development asserts that "All human rights and fundamental freedoms are indivisible and inter-dependent" and that "equal attention and urgent consideration should be given to the implementation, promotion, and protection of civil, political, economic, social and cultural rights"(Art 6). This implies the right to be protected against "trade-offs" that, otherwise, could negatively affect the capacity to realize all of these rights. Any development strategy that directly involves the denial of fundamental human rights, in whatever name or cause it may be undertaken, would thus constitute a serious violation of the right to development.

Given the complex nature of the right to development, and the range of the component rights included in it, the question next arises: What precisely is the nature of the duties and obligations envisaged in the Declaration on the Right to Development?

The answer to that question is of more than theoretical importance for, generally speaking, rights are considered to be entitlements that require correlated duties. In other words, for a right to have real meaning, it should be possible to identify those who would have the duty to fulfill, or enable the fulfillment, of that right. In the 2000 Human Development Report and in his Development as Freedom, Amartya Sen explores this correlation in terms of Immanuel Kant's distinction between "perfect" and "imperfect" duties. "Perfect duties" link rights perfectly to pre-specified exact duties of clearly identified agents. "Imperfect duties" are more general in nature and "non-compulsive". While it can be presumed that the performance of "perfect duties" would help a great deal towards the fulfillment of rights, Sen asks " But why cannot there be unfulfilled rights?" And he concludes, " Often, rights are unfulfilled precisely because of the failure of duty bearers to perform their duties". This observation is particularly germane to the perils inherent in the development process, and to the consideration of the right to development as a human right, especially when the matter is examined in the context of the Millennium Development Goals.

A reading of the Declaration on the Right to Development makes clear that it imposes several duties upon States, starting with the over-arching duty to assume "the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development" (Art 3). This duty, in turn, includes several component duties:

- To respect the Charter of the United Nations (Art 2).
- To "cooperate with each other in ensuring development and eliminating obstacles to development" (Art 3).
- To take steps, "individually and collectively", to formulate international development policies to facilitate "the full realization

of the right to development" As a "complement" to the efforts of developing countries, effective international cooperation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development" (Art 4).

- To take "resolute steps" to eliminate "massive and flagrant" violations of the human rights of "peoples and human beings" (Art 5).
- To take steps to "eliminate obstacles to development resulting from the failure to observe civil and political rights, as well as economic, social and cultural rights" (Art 6).
- To promote and maintain international peace and security and to achieve disarmament so as to ensure that the resources released are used for "comprehensive development, in particular that of the developing countries" (Art 7).
- To undertake, at the national level, all necessary measures for the realization of the right to development and "to ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income". There is an additional duty "to ensure that women have an active role" in the process and that "Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices" (Art 8).
- To take steps to ensure the " full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels" (Art 10).

All of these duties—some devolving on developing countries, others on developed countries, and yet others on both sets of countries—constitute, in effect, a "compact" between the two, requiring the fulfillment of reciprocal duties in order to ensure the implementation of the right to development and all of the component rights included in it.

Thus, for developing countries, the duty to " eliminate obstacles" to development would mean, inter alia, showing greater diligence in promoting and protecting all human rights-particularly the rights of women, children and other vulnerable groups, not squandering precious resources on weaponry, ensuring better access—on a non-discriminatory basis—to basic facilities, undertaking necessary reforms to eradicate societal injustices, ensuring that globalization and privatization do not add to the disparities of income and opportunity . For developed countries, "eliminating obstacles" would mean the duty, inter alia, to move with greater diligence towards increasing their official development assistance towards the long-targeted range of 0.7% of their GNP, abstaining from imposing unilateral sanctions or other coercive measures, restraining from imposing unwarranted "conditionalities" in their aid programmes, removing bottle-necks and subsidies that subvert fair trade with developing countries, acting concertedly to remove the crippling debt-burden where it exists, granting greater access to capital and technology, dealing with the curious phenomenon of the "reverse" transfer of resources from South to North and, not least, cutting back on armaments and letting the "peace dividend" be used for development. It would also mean allocating adequate resources to international organizations engaged in multilateral cooperation for activities aimed at furthering development in accordance with the Declaration.

The duties, however, are not exclusively those of States, even if the latter have the "primary responsibility" to fulfill the right to development. A careful reading of the Declaration makes clear that all those involved in a development process that is truly participatory have duties to perform: individuals and collectivities (who, under Art 2, have an express duty to their communities), institutions of governance—from the village-level upwards, international organizations—including those involved with finance, debt and trade- the World Bank, IMF and WTO. The right to development requires that the latter, too, should be infused with the "new thinking" that makes "the human person the central subject of development" and the right to development itself an "inalienable human right".

In his authoritative article On the Theory and Practice of the Right to Development, published by Human Rights Quarterly (The Johns Hopkins University Press, 2002), Arjun Sengupta, the Independent Expert of the UN Commission on Human Rights, sums-up this matter in the following terms: "Recognizing the right to development as a human right raises the status of that right to one with universal applicability and inviolability. It also specifies a norm of action for the people, the institution or the state and international community on which the claim for that right is made. It confers on that right a first priority claim to national and international resources and capacities and, furthermore, obliges the state and the international community, as well as other agencies of society, including individuals, to implement this right."

To Sengupta, the right to development also necessarily means a right to a particular "process of development" in which all human rights and fundamental freedoms can be fully realized. He has presented this process as "a right to outcomes that would constitute an improved realization of the different human rights and, at the same time, as a right to a process of realizing outcomes," facilitated by the concerned duty holders through policies and interventions that themselves conformed to internationally recognized human rights norms, standards and principles.

Clearly, therefore, the right to development involves duties that go far beyond the Kantian concept of "imprecise duties". Indeed, it can plausibly be argued that the duties are as "precise" and demanding as they can be in a Declaration of this kind. Given the realities of the world, however, the right remains essentially "non-compulsive" in character. And the jury is still out on whether the various duty holders are doing all that they can, or should do, to honour their obligations to fulfill the realization of this right.

The Millennium Development Goals: are they congruent with the Right to Development as a Human Right?

Despite the cheerful assumption of the 2003 Human Development Report that the Millennium Development Goals not only

"mirror the fundamental motivation for human rights" but also "reflect a human rights agenda—rights to food, education, health care and decent living standards", the question of whether those goals are truly congruent and compatible with the right to development and the human rights agenda needs to be carefully assessed.

Certainly, many in the human rights-community, including scholars such as Philip Alston, feel it would be a "mistake" to take this "love-in too far, either at the conceptual or empirical level". In his paper A Human Rights Perspective on the Millennium Development Goals, prepared as a contribution to the work of the UN's Millennium Project Task Force on Poverty and Economic Development, Alston argues that "the MDGs reflect only a partial human rights agenda and a clear challenge exists to ensure that there is full mutual compatability. Merely wishing it so will not make it so". He therefore suggests that "the differences need to be acknowledged and strategies need to be identified for ensuring authentic compatibility" if the "natural synergies that would seem to exist within the MDG/Human Rights equation are to be realized".

What are some of the misgivings?

- The right to development is an inalienable human right and human rights are universal, inter-dependent, indivisible and inter-related. Yet the MDGs are problematical because they are distinctly selective. A number of rights are excluded altogether or dealt with only by inference. The eight MDGs deal exclusively with (1) eradicating extreme poverty and hunger, (2) achieving universal primary education, (3) promoting gender equality and the empowerment of women, (4) reducing child mortality, (50) improving maternal health, (6) combating HIV/AIDs, malaria and other diseases, (7) ensuring environmental sustainability, and (8) developing a global partnership for development. All of these are perfectly laudable goals, related to specific economic and social rights, but what of the other rights, many of which are not covered at all by the MDGs?

- The target-based approach of the MDGs compounds the problem when these are viewed against the approach of the right to development, or the rights-based approach more generally. The MDGs seem to settle for half measures, for the possibly feasible, rather than the universal, the equal or the just. How, for instance, can the targets of halving poverty and hunger by 2015, or reducing child mortality by two-thirds by that date, be reconciled with a right to life for all, especially if it is held that poverty itself is a serious-and some would say the worst—violator of human rights? If the equality of all human beings in terms of their rights is a cardinal principle of the right to development and the rights-based approach, the targets of the MDGs, by excluding millions, are clearly invidious and less than congruous.

- There is a problem, too, with the MDGs definition of "extreme poverty". It is restricted to those living on less than $1 per day and suffering from hunger. But extreme poverty is a far more complex condition. Not surprisingly, therefore, much work is still having to be done, both within human-rights circles and development –circles, to examine the issue of poverty eradication more comprehensively and to devise strategies to deal with it that are compatible with human rights norms and standards.

- In a time of globalization and privatization the view can certainly be taken that the MDGs are excessively government-centered and do not adequately take into account the increasing role of non-state players in influencing, sometimes adversely, the human rights situation. While the targets for Goal 8 refer, inter alia, to pharmaceutical companies cooperating in the effort to provide access to affordable drugs in developing countries, and the private sector cooperating in making available the benefits of new technologies, especially information and communications technologies, there is a certain superficiality, in human rights terms, with the way in which the MDGs handle the changed environment in which the right to development is having to be realized.

- A central tenet of the right to development is the need to ensure distributive justice among the beneficiaries of development. This tenet gains salience in an age of globalization and privatization, which has witnessed a tendency to

- Sharpen disparities. The MDGs, however, do not specifically deal with challenges of this kind, even though they are most relevant to the proper promotion and protection of human rights. There are clearly equity challenges relating to trade, finance and labour that have to recognized and met.

- At a more fundamental level, the MDGs become problematical in terms of the right to development because they seemingly lack the critical element of adequate participation by the peoples of the world in the process of their formulation. Adoption of MDGs at a Summit of Heads of State and Government, after negotiations by Ambassadors Plenipotentiary, is hardly the decentralized, participatory process envisaged by the Declaration *on the Right to Development for the pursuance and realization* of that right. The MDGs thus suffer from the perception that they are part of a continuing "top-down" process that is, in fact, the antithesis of the approach expected of those seeking a rights-based approach to development.

All of this indicates that, even though "the MDGs, human development and human rights share a common motivation", much more needs to be done to establish, in concrete terms, the theoretical and practical strategies on the basis of which the synergies that exist between them can be properly realized. This is also evident from the reviews that have been conducted thus far of the many dozens of country- reports received by UNDP on the implementation of the MDGs. By and large, these reports woefully fail to relate the MDGs to the concepts of the right to development or, indeed, to the wider regime of human rights instruments that now exists in the form of Conventions, Covenants, Declarations and Principles. In other words, despite the shared vision, a long road must still be traversed both by the

development-community and by the human rights-community to give true strength to each other.

This does not in the least mean that the MDGs are not a step in the right direction as far as the right to development as a human right is concerned. They very much are, but many more steps need to be taken, and practical strategies evolved, to make the development-approach and the human rights-approach mesh more completely and coherently.

The process is, however, under way and it can already plausibly be claimed that at least some of the MDGs are beginning to reflect customary international law and are increasingly binding on governments. Philip Alston puts it this way: While it is "very difficult to argue that a human rights-based obligation has emerged which would require wealthy countries to provide specific assistance to any developing country which is unable to meet the economic and social rights of its citizens", "the case is much stronger in favour of the gradual emergence over time of such an obligation linked to the MDG commitments which have been reaffirmed so often by developed countries and the much more limited, specific and feasible nature of any such obligations." Thus, for instance, the MDGs have been successively reaffirmed in the Monterrey Consensus adopted at the 2002 International Conference on Financing for Development, the Programme of Action for the Least Developed Countries for the Decade 2001-2010, the Johannesburg Declaration on Sustainable Development agreed to at the 2002 World Summit on Sustainable Development, the launch of the Doha Round on international trade, the 2003

World Summit on the Information Society and The Spirit of Sao Paulo adopted at UNCTAD-XI.

All of this is good news, whether viewed from the development or human rights perspective, especially in relation to Goal 8 of the MDGs dealing with the development of a global partnership for development. In other words, while the MDG/right to development meshing may not, at present, be as congruent or as coherent as we may wish, we should not let our desire for the perfect lead to us to disparage the good and the feasible and what has been attained thus far. The effort

must continue to be made to draw the development and human rights approaches and agendas closer together in a mutually reinforcing strategy, in which the MDGs support the realization of human rights and the protection of rights promotes the sustainable achievement of the MDGs. This must be done with a sense of realism and the process must recognize that there is need to set priorities, even if there must be no harmful "trade-offs" between rights.

In this connection, the work of the UN High-Level Task Force on the Right to Development is worth a mention. In its report of 24 January 2005, The Task Force concluded that a major challenge for the implementation of the MDGs was to put into practice certain distinctive features of the human rights approach, including that of the right to development. These features included:

Specificity-to bring into focus the legally binding standards and principles of human rights instruments into strategies for achieving the MDGs;

Indivisibility-to ensure the formulating of coherent policies and development strategies that harness "cross-sectoral synergies" in addressing the various MDGs;

Accountability-to ensure the establishment and use of mechanisms at the national and international levels that are participatory in nature, and are based on an identification of rights duty holders and the procedures that are required for claiming human rights through judicial and other means;

Mobilizing civil society-to ensure that the MDGs are achieved in a rights-based manner.

Towards this end, the Task Force recommended, inter alia, that policy makers should be provided with a "clear and rigorous mapping " of the MDGs against the provisions of international human rights instruments. It also felt that there was need for the development of practical tools, including guidelines and objective indicators to help in this effort. It was further of the view that States should be encouraged

to undertake independent assessments of the impact of trade agreements on poverty, human rights and related social aspects.

The Declaration on the Right to Development saw a role not only for governments but for all elements of civil society and all varieties of institutions, including non-governmental organizations, in furthering that right. In the years that have elapsed since the adoption of the Declaration on the Right to Development on the one hand, and the Millennium Declaration and MDGs on the other, it has become evident that National Institutions for human rights can and should play a greater role in monitoring the MDG processes and in infusing them with the human rights perspective. This is all the more so since it is indisputable that the MDGs fall squarely within the area of competence of those dealing with human rights. Many National Human Rights Commissions, including our own, have in recent years done most valuable work in respect of economic, social and cultural rights and issues of good-governance, including the corrosive effects of corruption on the realization of human rights. But, by and large, their approach has been sectoral or subject-specific in character—the right to food, access to public health facilities, access to primary education etc. From the point of view of ensuring that the comprehensive right to development is properly treated as an inalienable human right and a matter of some priority, it is essential that National Institutions fulfill their responsibility more completely. This will require an enhancing of their technical and analytical capacities, but it is a responsibility worth assuming.

Indeed, National Institutions can be critical players in monitoring and furthering the right to development as a human right in the context of the MDGs. Such institutions have inherent strengths that others lack in influencing governmental policies and processes; and they have access to the entire apparatus of the United Nations, the new UN Human Rights Council, the High Commissioner, Treaty Bodies, Independent Experts and Special Rapporteurs. This is a reach and possibility that must be fully used if the right to development as a human right is to be realized and if the MDGs are to be firmly and progressively linked to the legal framework of the human rights regime. It is an opportunity and a

challenge not to be missed, especially in a country like India. The success or failure of our response to the MDGs will determine in large measure whether or not the world will succeed or fail. Such are the responsibilities of our size and scale and the example we must set.

Annexure-I

Millennium Development Goals and human rights standards*

Millennium Development Goal	Key Related Human Rights Standards
Goal 1: Eradicate extreme poverty and hunger	Universal Declaration of Human Rights, article 25(1); ICESCR article 11
Goal 2: Achieve universal primary education	Universal Declaration of Human Rights article 25(1); ICESCR articles 13 and 14; CRC article 28(1)(a); CEDAW article 10; CERD article 5(e)(v)
Goal 3: Promote gender equality and empower women	Universal Declaration of Human Rights article 2; CEDAW; ICESCR article 3; CRC article 2
Goal 4: Reduce child mortality	Universal Declaration of Human Rights article 25; CRC articles 6, 24(2)(a); ICESCR article 12(2)(a)
Goal 5: Improve maternal health	Universal Declaration of Human Rights article 25; CEDAW articles 10(h), 11(f), 12, 14(b); ICESCR article 12; CRC article 24(2)(d); CERD article 5(e)(iv)
Goal 6: Combat HIV/AIDS, malaria and other diseases	Universal Declaration of Human Rights article 25; ICESCR article 12, CRC article 24; CEDAW article 12; CERD article 5(e)(iv)
Goal 7 Ensure environmental sustainability	Universal Declaration of Human Rights article 25(1); ICESCR articles 11(1) and 12; CEDAW article 14(2)(h); CRC article 24; CERD article 5(e)(iii)
Goal 8: Develop a global partnership for development	Charter articles 1(3), 55 and 56; Universal Declaration of Human Rights articles 22 and 28; ICESCR articles 2(1), 11(1) , 15(4), 22 and 23; CRC articles 4, 24(4) and 28(3)

* ICESCR (International Covenant on Economic, Social and Cultural Rights)
ICCPR (International Covenant on Civil and Political Rights)
CERD (International Convention on the Elimination of All Forms of Racial Discrimination)
CEDAW (International Convention on the Elimination of All Forms of Discrimination Against Women)
CRC (Convention on the Rights of the Child)

Annexure-II

Millennium Development Goals

Goals and targets adopted by the United Nations, 2001

Goal 1 ***Eradicate extreme poverty and Hunger***

- Halve, between 1990 and 2015, the proportion of people whose income is less than $1 a day
- Halve, between 1990 and 2015, the proportion of people who suffer from hunger

Goal 2 ***Achieve universal primary education***

- Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling

Goal 3 ***Promote gender equality and empower*** *women*

- Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015

Goal 4 ***Reduce child mortality***

- Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate

Goal 5 ***Improve maternal health***

- Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio

Goal 6 ***Combat HIV/AIDS, malaria, and other diseases***

- Have halted by 2015 and begun to reverse the spread of HIV/AIDS
- Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases

Goal 7 ***Ensure environmental sustainability***

- Integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources

- Halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation
- Have achieved by 2020 a significant Improvement in the lives of at least 100 million slum dwellers

Goal 8 ***Develop a global partnership for development***

- Develop further an open, rule-based, predictable, nondiscriminatory trading and financial system (Includes a commitment to good governance, development, and poverty reduction - both nationally and Internationally)
- Address the special needs of the least developed countries (Includes tariff- and quota-free access for exports, enhanced program of debt relief for and cancellation of official bilateral debt, and more generous ODA for countries committed to poverty reduction)
- Address the special needs of landlocked countries and small island developing states (through the Program of Action for the Sustainable Development of Small Island Developing States and 22nd General Assembly provisions)
- Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term
- In cooperation with developing countries, develop and implement strategies for decent and productive work for youth
- In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries
- In cooperation with the private sector, make available the benefits of new technologies, especially information and communications technologies

RE-LOOK AT THE CRIMINAL JUSTICE SYSTEM ESSENTIAL FOR PROTECTION OF HUMAN RIGHTS

Justice K.T. Thomas

The criminal justice system shall be reviewed at intervals of every 25 years. The focal points of our criminal justice system should be how to maintain balance between the philosophy enshrined in Article 21 of the Constitution of India and the rights of others for their life and liberty. Human rights violation will be the consequences when the said balance is not maintained. The scenario of large number under-trial prisoners languishing in detention has to be treated as visible reflection of the imbalance between the above two propositions.

This persuades me to dwell upon the provisions for granting bail. The sections in the Criminal Procedure Code as far as they deal with bail cannot now be made more stringent than what they are today. In fact, I am inclined to think that such provisions should be made more lenient for human rights protection. It is true that persons accused of serious offences like murder must be dealt with seriously while considering bail, because even the sight of such persons moving around in open is difficult for the common man to feel safe. At the same time, the system which detains such accused as prisoners beyond the time needed for completing the investigation, until he is found guilty, is a negation of the essence of Article 21. The introduction of second proviso to Sec. 164 of the Code of Criminal Procedure would only help the investigation to be completed within the periods specified in that section. Still the persons accused of serious offences like murder would, normally, continue to remain in jail till completion of trial. This aspect involves a human rights problem, as the accused, without being held guilty, has to undergo imprisonment. Different Law Commissions have addressed on this subject. All that they could suggest is to speed up the trial in such cases so that the length of under-trial detention of such accused could be reduced. Even this hope is only a mirage as the trials of such under-trial prisoners would depend on many factors, even beyond what the judges could order.

There is no law, at present, for protecting the human rights of the spouses and children or of the old parents of the prisoners undergoing incarceration whether as under-trial or as post-conviction detention. Parole regulations have been proved to be fraught with many drawbacks. One reform which is worthy of consideration is for providing guest rooms attached to central prisons. This would enable the wife and children and also the aged parents of the prisoner to be with the him at least for one or two days in a month. Such facilities are afforded in advanced democracies. This facility will help the human rights of the prisoners as well as the innocent kith and kin of them.

It must be remembered that there is practically no threat of human rights violation from stray accused, not even from seasoned offenders like thieves etc. (even there is some it is only negligible) But the real threat is from those who indulge in organised crimes. For delving into the present subject (Re-look at the Criminal Justice system- essential for protection of human rights), I must point out at this stage that I have confidence in the legal system now in force in India which according to me is good enough to deal with organised crimes. There are four stages in which the law has to be of assistance to deal with such crimes. The first is, the stage where preventive measures are taken to prevent the criminals from resorting to criminal activities. Second is, the stage of investigation. Third is, the stage when the perpetrators of the detected offences are put to trial in the judicial forums. Fourth is, the post-trial stage where the appeal or the revisional court exercises jurisdiction.

Nobody made a complaint so far that the law is a hurdle for adopting measures to prevent crimes. Similarly the law as it stands now is very helpful during investigation. In my experience a committed judge, if assisted by a dynamic public prosecutor, can prevent unmerited acquittals even in case of organised crimes. I have many instances to cite in support of my point of view. The doctrine of proof and reasonable doubt did not stand in the way of a dynamic judge to enter a verdict of conviction in all cases where he is conscientiously convinced that the accused before him had committed the offence charged. Sec.3 of the Evidence Act has always been capable of helping a judge to deal with the situation if the judge has commitment to judicial dispensation.

Organised crimes include activities of narcotic lobbies. The provisions of Narcotic Drugs and Psychotropic Substance Act are more than sufficient to adopt preventive exercises. According to me, the law dealing with such substance has now become quite harsh. For preventing such types of crimes the police must be so equipped as to become capable of nipping the tendency of committing such offences even at the very burgeoning stage of conspiracy. This may require a top class intelligence squad whose personnel are not merely trained for that purpose, but well equipped with latest gadgets and devices. No purpose will be served by repeatedly blaming the letters of law when the enforcement agencies are ill-equipped and ill--informed and/ or dishonest in enforcing the already existing provisions of law.

By the word crime, one should not restrict it to be the offence involving violence alone. In fact, organised crimes are much larger in economic fields. For example, making counterfeit currency notes is one of the well organised crimes. This crime has potentiality to substantially destroy the economy of the country. The technology for counterfeiting currency notes has reached a stage of perfection that even with minute checking it is not possible for a layman, however careful he is, to discover that the currency note is fake. I understand that fake Indian currency notes are being manufactured not only in India but in neighbouring countries as well. I am told that Finance Ministers in India prepare budgets by keeping a margin for the flow of such fake currency. But if the inflow of such notes goes up to higher levels it is more dangerous than even an army invasion of our country. This is particularly now more important than ever before with the currency figure reaching the all time high four digits. The perpetration of this kinds of crimes involves not only acquisition of high quality of machinery, not only a large net work for its uttering, it needs highly guarded secrecy of the activities at all stages. The counterfeiting of Indian currency has acquired such a magnitude in Kerala as to create a special sessions court called "counterfeiting currency notes court", because such offences increased very much during a particular period of time. Justice Thakker of the Supreme court of India has once commented in a judgment with his sarcastic style thus: "The counterfeiters world over will be singing in ecstasy, if there is any heaven

on earth, it is here, it is here, it is here in Kerala". The peculiar feature of the crime is that it is often difficult to prove the case against kingpins-of the crimes. There is no improvement in the legislative provisions for dealing with these dangerous organised crimes.

You must remember that provisions in the Penal Code for dealing with this crime were made as early as 1899 by inserting a group of sections in the IPC (Sec. 489(A) to Sec. 489(E). According to me the above provisions are quite insufficient to combat the growing menace of this organised crime. Quite often, only those who are even in possession of fake notes could be convicted, whereas, those who conspire or even manufacture such fake notes could escape. At present, the investigating agency makes an effort to convert one of the accused as approver. This is perhaps the farthest in the present set up which the investigating agencies could achieve for bringing the kingpins of this crime to conviction. But experience shows that many courts are approaching the evidence of approver from the conservative angle as was done during pre-independence period.

I would suggest that the law dealing with such fake currency notes should be drastically amended. The burden of proof shall be placed on the accused who is charge sheeted for conspiring or for manufacturing or uttering fake currency to disprove the allegation. The law of presumption should be so modified as to meet this situation. I also suggest the passing of a special statute for this purpose. That special law should contain provisions for: (i) Stringent bail restriction (ii) Mandatory presumptions (iii) Minimum sentence on a par with the sentence provisions embodied in the Prevention of Food Adulteration Act.

Another area of organised crime is adulteration of food as well as medicines. I must say to the credit of our Parliament that the special statute which has been improved from time to time, has made the law a well structured once to contain the menace of food adulteration to a considerable extent. But I am told that the medical shops in India contain copious packets of fake medicines, in spite of very stringent provisions made in the Drugs and Cosmetics Act. Very often life saving medical

A national protection system, while not fully defined, can be seen to comprise all those structures and institutions of governance which ensure that all persons enjoy all human rights-civil, political, cultural, social and economic. This paper will highlight the evolution of one element of such systems-a national human rights institution. For purpose of definition a national human rights institution shall comprise those institutions which comply with the Principles relating to the status of national institutions, or the Paris Principles.[2] The then Centre for Human Rights (now the Office of the United Nations High Commissioner for Human Rights-OHCHR) defined the term national institution "as a body established by a Government by the Constitution or by a law to protect and promote human rights." It then continued to cite the actual attributes according to the Paris Principles.[3] National institutions are independent bodies that promote and protect human rights. Their mandate and composition are clearly established in national constitutions and/or legislation. They may take various forms, including human rights commissions, specialized human rights agencies or ombudsman.[4]

In 1993, at the World Conference on Human Rights in Vienna there were 30 institutions of varying types including Commissions and Ombudsman, which participated in the Conference.[5] The Conference reaffirmed:

> The important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in

[2] Adopted by the United Nations General Assembly Resolution 48/134 of 20 December 1993.

[3] HR/MANILA/1995/SEM/BP.5/9 March 1995, English/French: Programme of action for technical cooperation to encourage the creation of national institutions to strengthen existing national institutions and to develop cooperation and coordination between national institutions, Background Paper prepared by the Centre for Human Rights to the Third International Workshop of National Institutions for the Promotion and Protection of Human Rights, Manila, Philippines, 18-21 April 1995.

[4] Note that in this article reference to national institutions includes not only those which are Paris Principle compliant.

[5] Report of the World Conference, Vienna, 14-25 June 1993, N.U. doc.A/CONF/157/24(Part.I), para.17. Note that many of these institutions would not necessarily be considered as in compliance with the Paris Principles

the dissemination of human rights information and education in human rights.[6]

The World Conference on Human Rights encouraged the establishment and strengthening of national institutions, having regard to the "Principles related to the status of national institutions" and recognized that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.[7]

When the Paris Principles were adopted there were only a handful of national institutions in existence. At the Second International Workshop of National Institutions for the Promotion and Protection of Human Rights, held in Tunis, Tunisia, 13-17 December 1993, institutions of various typologies from 26 countries participated.[8] Since Tunis there has been a growth in the number of national institutions attending their international workshops (referred to as Conferences since 2000). Increasingly there are attempts at making a clearer distinction between those which are deemed as in compliance with the Paris Principles and those which are not.[9]

It was in Tunis that the Prime Minister of Tunisia, Mr. Hamed Karoui, called for the establishment of an international coordination committee to define the functions, powers and spheres of activity of national institutions. This item formed an official part of the workshop's agenda. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) was hence established as a loose federation initially comprising eight institutions. It now comprises sixteen national institutions-four from the geographic regions of the Americas, Africa, Asia and the Pacific, and Europe-with representation determined by each region, respectively.

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[6] Ibid.

[7] Para.36, Part I of the Vienna Declaration.

[8] These included from countries such as Austria, Japan, Kuwait and the People's Republic of China where no NI yet exists. It also brought together representatives of Commissions, Committees, Ombudsman, Mediators and People's Advocates.

[9] This is done at the international level through the International Coordinating Committee (ICC) as well as at the regional levels through regional networks such as the Asia Pacific Forum of National Institutions for the Promotion and Protection of Human Rights which review compliance with the Paris Principles by national institutions against a specific set of criteria. The other networks of national institutions: the Network of National Institutions of the Americas, the African Coordinating Group of National Institutions; and the European Group of NIs do not have rigorous accreditation procedures but rely on that of the ICC.

In 2000, the International Coordinating Committee formalized, through adoption of its rules of procedure, the establishment of a sub-committee, the Accreditation Sub-Committee. The Sub-Committee with four representatives-one from each national institutions region and again nominated by the respective region – has as its mandate to advise the ICC as to whether or not an institution complies with the Paris Principles and can therefore be properly considered a national institution. The sub-committee meets annually during the meeting of the ICC or on other occasions when agreed by the Chair of the ICC in consultation with the Members.

As at April 2005, the ICC determined that 51 institutions comply with the Paris Principles.[10] The various categorizations of national institutions which the ICC include are :being in compliance with the Paris Principles (A status); Accreditation with reserve-granted where preliminary analysis indicates compliance with the Principles but insufficient documentation is submitted to confer A status (A(R); Observer Status-Not fully in compliance with the Paris Principles or insufficient information provided to make a determination (B); and Non-compliant with the Pairs Principles(C).

It was also in Tunis that the then Centre for Human Rights elaborated its programme of action concerning national institutions for the coming years; elements, which remain very much core to the world of OHCHR in 2006. It included:

(a) To promote the concept of a "national institution" as a means of reducing existing regional disparities in their distribution;
(b) To contribute to the emergence of independent and effective institutions conforming to principles adopted concerning their status;
(c) To improve the effectiveness of existing institutions; and
(d) To improve cooperation and coordination among national institutions at the regional and sub-regional levels.

[10] It is important to highlight that while the ICC enjoys the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), which National Institutions Unit is its secretariat, and holds its meetings under its auspices, that the determination as to whether a NI is in deemed in compliance is in this instance one of the ICC and not OHCHR.

International Dimensions

International Fora

In the agenda of the Second Workshop of national institutions the item *Contribution of national institutions and similar bodies to United Nations human rights bodies and participation in the worked of those bodies* was included. It is therefore no surprise that a number of representatives of national institutions which are familiar with this history have been exasperated at similar agenda items remaining on their annual calendar of work with no formal status for national institutions within United Nations fora.

While there have been some incremental gains since 1993 concerning national institution participation, it was only in 2004 and 2005 that there was a major push to move to a formalization of their status. The issue of national institutions participating in international fora came to the fore when the United Nations Secretary General through Commission on Human Rights (CHR) resolution 2004/75 *National institutions for the promotion and protection of human rights OP 20 was requested to report to the Commission at its 61st session "on ways and means to enhance participation of national human rights institutions in the work of Commission, to enable them to contribute substantially to the work of the Commission by passing on their expert knowledge and practice experience in human rights matters."*

At its 14th session in 2004 (15-16 April 2004), the ICC was presented by the then Chair of the ICC, the Conseil consultative des droits de l'homme du Maroc, with a paper which highlighted a number of possible avenues for national institutions' participation in the CHR and other bodies. Background documents submitted during the ICC's previous sessions by the Canadian Human Rights Commission (in cooperation with the national institutions of Australia and France) as well as the Secretariat (in consultation with all national institutions) expressed strong support to greater engagement by national institutions in the work of CHR and its subsidiary bodies. In addition, the Australian Human Rights and Equal Opportunity Commission prepared a paper for the 9th Annual Meeting of the APF on "The role of NHRI in the Commission on the Status of Women (CSW)."

At present national institutions are able to participate in the work of the CHR in the following manner:

- Attend all open session of the CHR as observers;
- Address the CHR under agenda item 18(b): the speaking times are not definite and have varied from 3 to 7 minutes for national institutions and up to 12 minutes for regional groups;
- Have their statements circulated in their own right provided they bring 200-250 of their own copies;
- Have been provided with their own United Nations Symbols;
- Have a dedicated seating place in the Commission room-albeit with a limited number of seats-from which they may speak.

The Secretary General's report Effective Human Rights Mechanisms: *National Institutions and Regional Arrangements-Enhancing the participation of national human rights institutions in the work of the Commission on Human Rights and its subsidiary bodies* built on these papers and other consultations held with relevant stakeholders.[11] The report called for:

- *Consideration as to whether national institutions should be* permitted to speak under all agenda items of the CHR, in line with NGO speaking rights and that such national institutions are accorded their own document symbols for materials produced for the meetings of the CHR and its subsidiary bodies. (The report highlighted that national institutions are accorded speaking rights under all agenda items of the Sub-Commission on Human Rights and that the members of Working Group on Minorities have invited national institutions to participate in its workings);
- Copies of oral statements to continue to be circulated in the conference room with reports produced from the regional meetings of national institutions as documents of the Commission (noting that a specific national institution document symbol was launched in *2004* (E/CN.4/2004/NI.1, etc.); and
- The ICC is requested, in relation to those national institutions already accredited as in accordance with the Paris Principles by the ICC, to put in place a process of reassessment following five

[11] E/CN.4/2005/107

> years of such accreditation, for example, possibly by means of the insertion of a clause in the ICC Rules of Procedure. It was proposed that the CHR requests the ICC to, over a period of three years, to re-evaluate all national institutions already accredited by the ICC. Those institutions not yet accredited by the ICC could participate in the CHR sessions as observers with speaking rights only as part of their country's government delegation, in contrast to accredited national institutions which could participate in their own independent right.

A breakthrough occurred with the adoption of CHR resolution 2005/74 *National institutions for the promotion and protection of human rights* following the Secretary- General's report.[12] It finally provided the space for national institutions to participate in the overall work of the CHR and its subsidiary bodies. The resolution noted that the CHR:

> decides to request the Chairperson of the 61st session, in consultation with all relevant stakeholders, to finalize, by the 62nd session, the modalities for: *(a)* Permitting NHRI [national institutions] that are accredited by the ICC Accreditation Subcommittee under the auspices of the OHCHR, and coordinating committees of such institutions, to speak, as outlined in the report, within their mandates, under all items of the Commission's agenda, while stressing the need to maintain present good practices of management of the agenda and speaking times in the Commission, to allocate dedicated seating to NHRI for this purpose, and supporting their engagement with all the subsidiary bodies of the Commission; and *(b)* Continuing the practice of issuing documents from NHRI under their own symbol numbers.

While discussions are ongoing concerning a United Nations Human Rights Council the modalities concerning national institutions participation in the CHR are being finalised. Moreover, national institutions are presently discussing their role within a Human Rights Council. Similarly it would appear that cooperation with national institutions within the Council has been envisaged and that their

[12] CHR resolution 2005/74: National institutions for the promotion and protection or human rights

participation could possibly be assured similar to that being negotiated concerning the CHR. Given the precedent of CHR resolution 2005/74, national institutions hope that they shall have similar access to the Council.

Human Rights Treaty Bodies - Manila 1995 *as a beacon*

Another important area in which national institutions have taken an interest relates to the international human rights treaty bodies. This dates back to the mid-1990s and it is interesting that ten years later as part of the overall reform of the United Nations Human Rights Treaty Body system there is a revisiting of the importance of national institutions in ensuring national level compliance with State: party obligations.

OHCHR has in particular begun training national institutions on their role in the treaty body process with specific attention to follow up to the treaty bodies' concluding observations, OHCHR 's specialist National Institutions Unit, the only one of its kind in the United Nations, has a dedicated focal point on treaty body issues.

National institutions have historically been involved in the promotion or ratification of international human rights instruments, one of the important principles highlighted in the Paris Principles. At both their second and third International Workshops, national institutions reaffirmed the importance of the elaboration of a Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.[13] Their third International Workshop held in Manila is perhaps the strongest of events they have held vis-a-vis calling for new international human rights legal instruments. In Manila they called upon a protocol to CEDAW enabling the receipt of individual complaints about non-compliance with the Convention.

At their Fifth International Conference in Morocco national institutions called for the bringing into force of the International Convention on the Rights of Migrant Workers and their Families.[14] They had previously done so in Manila when they called for, at each of their periodic meetings, a report on the application of international

[13] Tunis, 1993 and Manila, 1995

[14] Morocco, 2000, 5th International Conference of National Institutions, Rabat Declaration

instruments on migrant workers and urged their respective governments to sign and ratify the international human rights instruments on migrants. Through a contact group based in Geneva, national institutions were sent information on the Convention and encouraged to look to the rights of migrants.

At their 7th International Conference held in Seoul, Republic of Korea from 14-17 September *2004,* national institutions called for the ratification of the International Criminal Court under the Rome Statute as well as to adopt domestic legislation in line with the Statute.[15] National institutions had first lent their support to the Court in Manila, in 1995, when they urged "the United Nations to create on a permanent basis an International Criminal Court, competent in particular to judge the crime of genocide and crimes against humanity,"[16].

The Manila workshop also encouraged the ratification of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) and *the full application of its provisions, in particular accepting the procedure for individual communications provided for in Article 14 of the Convention, and the withdrawal of any reservation they have formulated which limit the scope of the Convention.*

With respect to the drafting of a new international convention on the rights and dignity of persons with disabilities, national institutions have followed up on their concern regarding the rights of persons with disabilities enunciated at their 3rd International Workshop. For the first time in their history they are individually and collegially through the International Coordinating Committee engaging directly in the process of drafting of the Convention.[17] Manila also reaffirmed the importance of ensuring respect for the rights of persons with disabilities.

Another interesting development relates to the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT). For the first time in an international

[15] 7th International Conference of National Institutions, Seoul Declaration, 14-17 September 2004

[16] Manila Declaration, Third International Workshop of National Institutions for the Promotion and Protection of Human Rights (21 April 1995).

[17] OHCHR supports the participation of a designated representative from among the ICC membership to the Ad Hoc Committee and its related discussions and individual national institutions representatives also attend. The European Coordinating Group of National Institutions and the Asia Pacific Forum of National Institutions have also submitted position papers to the Committee

human rights instrument there is actual reference to the Paris Principles. Article 18 of the Optional Protocol provides that when States establish a national preventive mechanism they *shall give due consideration to the Principles relating to the status and functioning of national institutions for the promotion and protection of human* rights (the Paris Principles). Therefore it gives the potential for national institutions to officially be the national preventive mechanism to the Optional Protocol to CAT. Most recently national institutions have called for the bringing into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.[18]

While there are no steadfast rules concerning the participation of national institutions within each treaty body - each treaty body determines its own operational guidelines - there has been an increase in such participation and attention paid to national institutions by the treaty bodies.[19] Depending on the result of ongoing discussions concerning human rights treaty body reform there appears to be a growing consensus among the treaty bodies for a uniform approach to their engagement with national institutions. In general, national institutions participation in the work of the treaty bodies can be summed up as:

- Three treaty bodies have issued General Comments on National Institutions (CERD 1993; CESCR 1998; and CRC 2002);
- A number of national institutions participate independently during State party presentations to the treaty bodies and some have been members of the State party's official delegation;
- Some national institutions have prepared and presented parallel reports to the treaty bodies;[20] and

[18] See the conclusions of the Premier Congres des Commissions Nationales de la Francophonie (Montreal, Canada, 29 September to 1 October, 2005); 5th International Conference of African National Human Rights Institutions (Abuja, Nigeria, 8-10 November 2005); and the International Round Table of Economic, Social and Cultural Rights (New Delhi, India, 29 November to 1December).

[19] For a sampling of the references made by the treaty bodies relating to National Institutions refer to Annex 1.

[20] The Northern Ireland Human Rights Commission while not an institution which represents the entire territory of Great Britain and Northern Ireland, has been welcomed in the family of national institutions and has presented parallel reports to the Committee against Torture (CAT) in November 2004; Committee on the Rights of the Child (CRC) in March 2002; the Committee on Economic, Social and Cultural Rights (CESCR) in April 2002; the Committee on the Elimination of Racial Discrimination (CERD) in August 2000: and the Committee on the Elimination of Discrimination against Women (CEDAW) in June 1999. Others which have presented parallel reports include: The Irish Human Rights Commission to CEDAW in 2005 as well as CERD; The National Human Rights Commission of Thailand to the Human Rights Committee on Civil and Political Rights (HRC) in July 2005; and the Australian Human Rights and Equal Opportunity Commission to CERD in February 2005.

- ❖ National institutions are encouraged by the treaty bodies to assist in follow up to the Concluding Observations.

An area in which national institutions have yet to exercise their powers relates to the rights or petitions presented to treaty bodies. For example, the right to petition of national institutions before the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), has yet to be exercised by a national institution. NGOs, irrespective of their status -ECOSOC or not, are able to petition the Committee and therefore it would appear that there would be nothing preventing national institutions to do so as well. Similarly the Optional Protocol to the ICCPR offers a right of petition to individuals who allege a violation of the rights provided for in the Covenant and who have exhausted domestic remedies.

Regional and Other Groups

There now exists in Africa, the Americas, Asia and the Pacific, and Europe regional groups of national institutions. What they have in common is a general approach to inclusion rather than exclusion in relation to compliance with the Paris Principles; a move to building capacity and sharing experiences at the regional level; and close links with OHCHR and the ICC.

In Manila in 1995, national institutions following on the address of President Ramos' statement concerning the need to establish a regional human rights mechanism in the Asia Pacific, recommended that *priority be given to the development of appropriate regional arrangements to ensure the effective implementation of international human rights instruments and of the Principles and to specifically encourage Member States in the Asia-Pacific region to establish appropriate regional human rights arrangements for the promotion and protection of human rights.* It was in Manila where the idea of a regional workshop for national institutions for the Asia Pacific was first raised.

The following year, at the First Asia-Pacific workshop of National Human Rights Institutions held in Darwin, Australia from 8- 10 July 1996 the Asia Pacific Forum of National Human Rights Institutions

(APF) was founded.[21] Present were four of the five Human Rights Commissions which then existed in the region: Australia, India, Indonesia and New Zealand. At that time the APF was to be an informal body but is has since taken on a greater structure with a Permanent Secretariat based in Sydney, Australia. Its membership is now at seventeen with thirteen full time, three associate and one candidate member.[22] What is interesting in the context of APF is that it reviews applications of institutions, which wish to be Members of the APF based on the Member's views of whether the applicant complies with the Paris Principles. Applications are discussed in collegian among the Members behind closed doors. Discussions relate to a written application but applicant institutions, if present, are generally given an opportunity to respond to questions from the membership.

The First Regional Conference of African National Human Rights Institutions was held in Yaounde, Cameroon from 5-7 February 1996 under the auspices of the United Nations Centre for Human Rights. By way of the Yaounde Declaration, the conference resolved to support the establishment and strengthening of human rights institutions in Africa, called for the ratification of international human rights instruments and incorporation of those into domestic law, affirmed the indivisibility, universality and interdependence of all human rights, and stated that human rights were essential for a vibrant democracy. At this Conference, a decision was made to create a Coordinating Committee for African National Human Rights Institutions. This Coordinating Committee, which consists of eleven national institutions drawn from across all five regions of the continent, collaborates closely with OHCHR and the ICC. It is in the process of establishing its Permanent Secretariat in Kenya.

It was in 2000 that the Network of the National Institutions of the Americas was established. While there are a number of networks of national and state level institutions in the Americas there was not one network which held membership in accordance as to whether the

[21] Larakia Declaration. Durban, Australia, 10 July 1995.

[22] For the members, mandate and activities of the APF refer to www.asiapacificforum.net.

institution complies with the Paris Principles. Hence at a Conference in Mexico City in November 2000, the Network was born with an initial 7 members. It now has 13 members with institutions of the Caribbean as observers. The Network bases its membership on the ICC's determination of compliance with the Paris Principles and does not have its own formal review structure as the APF. Its Permanent Secretariat lies with the National Human Rights Commission of Mexico.

In the European context the European Coordinating Group of National Institutions was established in 2002. It initially was quite small as it based membership on the ICC's list of accredited national institutions - four initial members. It too has expanded mixing both accredited and non-accredited institutions within its membership. It is increasingly looking eastward beyond western European with respect to those who participate in its events. In addition to close cooperation with OHCHR it has established a working relationship with the Council of Europe and the European Commission. It is very engaged at present in discussions concerning the establishment by the European Commission of a Fundamental Rights Agency and engages on policy positions with the Commission and the Council of Europe. In this regard, it to date is the most active group concerning regional human rights mechanisms. However, due to its focus on Western Europe it has not moved as much as other regions with respect to sharing of experiences and capacity building.[23]

National Level Initiatives

National institutions are seen as core to national protection systems and effective country engagement through their capacity to assist in implementation of international human rights norms. Their work essentially cuts across all themes and in theory should serve all people. It is certain that while the Paris Principles call for a national institution having as broad a mandate as possible, depending on the institution

[23] There have been some exchanges, for example between the Danish Institute for Human Rights and the Northern Ireland Human Rights Commission but they have been quite few. A project (JOIN) of mutual cooperation with the Council of Europe and the United Nations with National Institutions within Europe is under development.

execution of its mandate may be challenging. This depends not only on political will but having the human and financial resources to carry out one's work effectively.

It is not the purpose of this paper to review all the areas of competency of national institutions. Rather it is in part to give a flavour of some of the new directions in which national institutions are embarking. One of the most interesting developments is the growing role of national institutions in the administration of justice. Increasingly national institutions are empowered to bring legal cases to protect the rights of individuals. This action can also lead to changes in law and practice. Some national institutions have the power to bring cases on behalf of those unable to do so-often from the most marginalized groups or individuals for whom access to justice is difficult (children, persons with disabilities, those in detention). One of the most common forms of intervention is as an *amicus curiae* providing advice to the court on particular cases. This helps inform the court on human rights aspects, which might otherwise go unseen.

Other quasi-judicial functions which some national institutions have include the powers to issue summons or orders for a person to appear before the national institution; to question a person in respect of any subject matter; require disclosure of information from any person; and commit a person for contempt. Similarly where a violation has occurred some national institutions can order the release of a detained or restricted person; payment of compensation; or any other legal remedy or redress.[24] Concerning the seeking of remedies some national institutions can go to court to seek a remedy which the court may provide, but others are able to seek the help of the court to ensure that their recommendations or decisions are enforced.[25] It is important when dealing with human rights violations to seek full accountability of actions

[24] The Uganda Human Rights Commission has some of the strongest powers in this regard. Refer to the Ugandan Constitution articles 53 (1) and (2).

[25] If one looks to the example of the Ghanaian Commission on Human Rights and Administrative Justice this power is used in few circumstances. Of the 64,000 cases received by the Commission since its establishment the Commission only took 43 cases to court to enforce its decisions. See Justice Emile Francis Short, *Direct Powers of Intervention: To Litigate or Not* a paper presented to the OHCHR sponsored Round Table: National Institutions and the Administration of Justice, Copenhagen, Denmark, 13-14 November 2003.

and not encourage impunity. In this regard, national institutions should assess what powers are available to them and where necessary seek quasi-judicial functions or the capacity to directly access judicial processes. This is particularly relevant in states where the judiciary is weak or inaccessible.

Justice Emile Short of the Ghanaian Commission on Human Rights and Administrative Justice provides a succinct list of potential areas where a national institution can gain access to the courts:

- Empowering the national institution to initiate contempt proceedings in court for failure or refusal to comply with a subpoena issued by the national institution;
- According *locus standi* to the national institution as a complainant in its own right;
- According the national institution official status as *amicus curiae;*
- Granting a power of intervention in relevant cases;
- Empowering the national institution to provide assistance to individuals seeking to redress grievances through the courts; and/or
- Granting the national institution power to apply to the court to enforce its decisions or recommendations.[26]

Another growing area of attention on the part or national institutions relates to economic, social and cultural rights. National institutions are well placed to ensure the realization of economic, social and cultural rights due to the fact that they are accessible, generally representative and able to be pro-active. This is in some contrast to the courts. In some instances this will require national institutions to take a broad interpretation of their mandate and clear prioritization of efforts in this area. This can be, for example, taken by interpreting discrimination which

[26] Justice Emile Francis Short. *Direct Powers of Intervention: To Litigate or Not* a paper presented to the OHCHR sponsored Round Table: National institutions and the Administration of Justice, Copenhagen, Denmark, 13- 14 November 2003. For the Conclusion of the Round Table refer to the Report of the Secretary-General: Effective Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements; 7 January *2005* E/CN.4/2005/106.

may be considered civil or political as in relation to social, economic or cultural — for example in relation to sex discrimination. Similarly the power of national institutions to undertake systemic reviews also enables them to address issues through an economic, social and cultural rights lens. The rights of persons with disabilities and child poverty serve as examples.[27] Similarly by using a human rights framework and promoting a rights based approach, a national institution can work with government ministries and departments which have not always been seen as relevant to promoting and protecting human rights - planning ministries, finance and economics departments and ministries, etc.

The South African Human Rights Commission (SAHRC) and the Indian Human Rights Commission have been two of the most active in exercising their powers regarding economic, social and cultural rights. The decision of the Constitutional Court in the Grootboom case has been hailed as a great victory for the homeless and landless people of South Africa.[28] The SAHRC assisted the court by furnishing it with reports it received from various government departments, monitoring and assessing the observance of human rights, particularly socio-economic rights such as access to housing and welfare. The judgment made a substantive contribution to the development of jurisprudence on socio-economic rights and the nature of the positive duties placed on the State to realize these rights.

The Indian National Human Rights Commission has continued to redress numerous individual complaints that it has received from persons suffering from casteism and alleged acts of discrimination. In furtherance of its statutory responsibilities, the Commission has thus accorded the highest priority to ending discrimination against Scheduled Castes and Scheduled Tribes and in seeking to eradicate pernicious practices which largely affect the economic social and cultural rights of the members of these communities.

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[27] This is not meant to minimize the importance of individual complaints handling procedures, indeed I would argue that an effective national institution should have both the capacity to receive and investigate individual complaints and address systemic issues.

[28] Government or the Republic of South Africa v Grootboom 2000 (11) BCLR 1169

Relations With Others

Office of the High Commissioner for Human Rights

Since the establishment of their international network, national institutions have supported the work of the then Centre for Human Rights and the present Office of the United Nations High Commissioner for Human Rights. The Canadian Human Rights Commission at the 3rd International Workshop of national institutions in Manila noted:

> *What it needs is not an end to talk about high-minded principle, but action to back them up. Any action must proceed at two levels: improving the capacity of the international machinery -mainly the High Commissioner's office and the Centre -to operate effectively; and providing the wherewithal to get on with the job at the national level where real human rights problems present themselves. Both of these require dedication, effort and financial commitment.*
>
> *National institutions can play their part by urging their national governments to support an increase in the funds allocated to the UN Centre out of the regular budget and to the Voluntary fund for the purposes of creating and strengthening national human rights institutions....*

Subsequent meetings and conferences of national institutions have called for the same. In addition, resolutions of the CHR regarding national institutions consistently have called for support to OHCHR in relation to its work on national institutions.

National Institutions and Classical Ombudsman

At the Second International Workshop of National Institutions for the Promotion and Protection of Human Rights, held in Tunis, Tunisia, 13-17 December 1993, Jacques Pelletier, the then Mediator for the French Republic, highlighted a plan of six points for enhancing cooperation between national institutions and similar bodies (Ombudsman, Mediators and People's Advocates). In particular he called for:

a) A list to be prepared of all national institutions and similar bodies complying with the Principles adopted in October 1991,
b) The United Nations Centre for Human Rights to be designated as the coordinating body for exchange of information;

c) An institutional link to be established between all or some national institutions and similar bodies;
d) Periodic and regular joint meetings to be organised;
e) A programme of joint action to be drawn up;
f) An information letter to be published.

It was stressed that national institutions and similar bodies were complementary and did not compete with each other. The International Ombudsman Institute (IOI), established in 1978, was in some ways a precursor to its sister body the ICC. The call by Mr. Pelletier, however, has only been partially met. While some members, such as the Mexican National Human Rights Commission are members of both the ICC and the IOI there has been little formal contact between the two bodies. Where the typology of national institutions is increasingly mixed - for example many institutions in Latin America and Central and Eastern Europe deal with both traditional maladministration and more clearly defined human rights issues - it would appear rational that greater coordination occur between these entities. Indeed if one reads the IOI's main objective it is clear that providing effective service delivery and good governance is linked to the enjoyment of human rights:

> The role of the ombudsman is to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration in order to improve public administration and make the government's actions more open and the government and its servants more accountable to members of the public.[29]

Supporting Each Other

The national institution meeting in Tunis also began a call for coordinated action when a national institution was under threat. For example at that meeting national institutions called on support for the head of the National Human Rights Commission of Togo and addressed a message of solidarity in support of members of the then Algerian National Human Rights Monitoring Organisation who were subjected

[29] Refer to the IOI website: http://www.law.ualberta.ca/centres/ioi/

to threats at that time. Again in Manila in 1995, representatives called on support to the Algerian National Human Rights Institution in particular in support of its work regarding the defence of the rights of women.

In 2005, the ICC adopted its early warning guidelines, which call for the ICC and institutions such as OHCHR to move expeditiously, with the consent of the national institution under threat, with a series of measures to support the institution. The ICC considered the following threats, which could be considered for action:

- Calls for abolition of the institution;
- Impediments placed on the institution concerning required support to ensure their very existence and the effective functioning of their mandates including:
  - Financial
  - Restriction of mandate
  - Creation of additional/competing institutions which are more
  - government oriented
- Intimidation and/or threats of death or violence against members or staff of the institution.

Possible action could include:

- Posting on the national institutions website (www.nhri.net) information concerning facts regarding the threat and the proposed action;
- Requesting the ICC Chair and OHCHR to write or make contact with the requisite; authority concerning the alleged threat;
- ICC Chair can request the intervention of other NIs and in particular ICC Members; and
- OHCHR, can if appropriate, make contact with the Governmental authorities.

Depending on the nature of the threat the process can be incremental. If resolved through direct contact with the authorities then the process can stop. If not then additional pressure may be required, for example:

- Engaging with the national and international media;
- Requesting the intervention of the relevant United Nations or regional special mechanisms, in particular for example the United Nations Special Rapporteur on Human Rights Defenders, the African Rapporteur on Human Rights Defenders, the European Human Rights Commissioner, etc;
- Drawing the issue to the attention of the United Nations treaty bodies;
- Drawing the attention to the key International and Regional NGOs;
- Drawing attention to the issue of concern in the Commission on Human Rights under agenda item 18(b).[30].

While such protection of national institutions is important they are also prepared to take to task sister institutions which are considered to no longer comply with, or deviate from, the Paris Principles. The ICC Rules of Procedure provide that:

> Where the circumstances of any member of the group of National Institutions change in any way which may affect its compliance with the Paris Principles, that member shall notify the Chairperson of those changes and the Chairperson shall place the matter before the accreditation sub-committee for review of that member's membership.
>
> Where, in the opinion of the Chairperson of the ICC or of any member of the accreditation sub-committee, it

[30] *National institutions in need: Guidelines for Early Warning* as adopted by the ICC during its 16th session held in Geneva 14-15 April *2005*.

> appears that the circumstances of any member of the group of National Institutions may have changed in any way which affects its compliance with the Paris Principles, the Chairperson or sub-committee may initiate a review of that member's membership.[31]

This power by the Chair has yet to be fully exercised though regional groups such as -the Asia Pacific Forum have had discussions concerning their own members.[32]

Working with Civil Society

Non-governmental organisations have increasingly taken an interest in national institutions. This interest, however, is not always one which welcomes their participation and certainly tends to be an assessment with some scepticism. Amnesty International, for example, issued its paper *Proposed Standards for National Human Rights Commission.*[33] It issued a subsequent paper *Recommendations for effective protection and promotion of human rights.*[34] Human Rights Watch also prepared an assessment of national institutions in the African continent. The International Council on Human Rights Policy prepared an interesting work relating to the performance of national institutions.[35] It has now completed with OHCHR and national institutions an assessment of indicators of efficiency of national institutions with a view to being able to assist national institutions in ensuring compliance with the Paris Principles.[36]

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[31] Article 3(g) of the ICC Rules of Procedures as adopted on 15 April 2000 and amended on 13 April 2002.

[32] The compliance of the Nepal National Human Rights Commission was discussed during their meeting in Geneva, Switzerland on 12 April 2005.

[33] AI Index IOR 40/01/93, January 1993,

[34] National Human Rights Institutions: Amnesty International - Recommendations for effective protection and promotion of Human Rights, AI Index IOR *40/007/2001;* 1st October 2001.

[35] *Performance and legitimacy - National Human Rights Institutions,* International Council on Human Rights Policy, 2004.

[36] *Assessing the Effectiveness of National Human Rights Institutions,* Office the United Nations High Commissioner for Human Rights and the International Council on Human Rights Policy, 2005.

Regarding actual guidelines concerning national institutions and NGO cooperation, the Kandy Declaration is perhaps the most instructive.[37] What is evident is that the potential for collaboration exists while both parts of the human rights movement must respect each others mandate and methods of operation. While there are some who believe training of national institutions and NGOs on cooperating together is necessary, I would argue that joint activities and initiatives are the best way forward. Such initiatives build confidence, trust and a common understanding of their respective mandates, ways of functioning and issues. At the 7th International Conference of national institutions held in Seoul, Republic of Korea 14-17 September 2004, NGOs and national institutions jointly discussed the role of national institutions in dealing with conflict and in countering terrorism, respectively. The NGOs, for the first time at an International Conference of National Institutions, held a pre-Conference forum to assess their positions on the subject matter and also agree on what their expectations were vis-a-vis national institutions. National institutions for their part welcomed the participation of NGOs - despite their status as observers - in discussions during the Working Groups as well as in shaping the final Declaration.

It is crucial that when national institutions are being established that the relationship with civil society be cemented from the start. For example, it was the NGO community of the Republic of Korea which was the most vociferous concerning the establishment of the country's National Human Rights Commission, empowering it with public credibility today. A similar conviction on the part of civil society was evident in Thailand concerning the establishment of its national institution. While, in the case of Japan, there does not appear to be a concerted broad-based effort by civil society regarding a national institution for that country and therefore the process has been more fraught with a lesser broad based view of a publicly owned institution.[38]

[37] Kandy Programme of Action. Cooperation between National Institutions and Non-Governmental Organisations. Workshop on National Institutions and Non-Governmental Organisations: Working in Partnership, Kandy, Sri Lanka. 26-28 July 1999.

[38] The contribution of the NGO IMADR and the Japanese Bar Association concerning the establishment of a national institution must be recognised. For further discussion concerning NGO and national institution relations see the British Council report of the workshop on "National Institutions and Non-Governmental Organisations: An Agenda for Cooperation" held from 22 November to 25 November 2004 in Colombo, Sri Lanka (refhttp://humanrights.britishcouncil.org).

The Way Forward

A roundtable organised by OHCHR on 10 and 11 December 2004 provided the space for national institutions, NGOs and OHCHR to reflect on the Paris Principles. Participants while reaffirming the Paris Principles also highlighted that there was a . need to ensure their effective implementation and build on them.[39]

A main area where national institutions are the weakest in their compliance with the Paris Principles - at least the spirit thereof - relates to their members' appointment. Appointment by executive or governmental decision without any public consultation or competitive process can weaken the perception if not the reality of the independence of the institution. A challenge for national institutions is therefore how to better the existing legislation to ensure a more open and transparent appointments process. Appointments solely by heads of state without a proper consultative process involving civil society, government and the voices of opposition should no longer be tolerated.

If national institutions are to have a more prominent international role they must remain vigilant in ensuring the effective conduct of their mandate and be steadfast in any action taken which could compromise it. White it is recognised that there is an inevitable balancing act which national institutions must play in their relationship with governments, there is at the end of the day an absolute need to be able to address concerns and alleged violations by state and non-state actors. This therefore requires constant affirmation through words and action by a national institution demonstrating clear independence. This cannot be more so in times of crisis and conflict. It is therefore not surprising, and justifiable, that in countries such as Togo and Nepal, where there has been conflict due to an absence of democracy, that civil society has raised its voice loudly. It is critical that the Paris Principles be adhered to and that the letter and spirit of their drafters be respected.

National institutions over a number of years have made a number of important pronouncements, whether they relate to a particular country

[39] Conclusions of The Paris Principles: A Reflection, International Round Table, OHCHR, Geneva, Switzerland, 10-1 I December 2003.

situation or the evolution of an international human rights framework. What will be the challenge is to ensure follow-up and implementation of such pronouncements. Such follow-up will require consistency of, and at times concerted, action and effective follow-up mechanisms. Issues which are raised at one International Conference should not be left to the Declarations but rather should provide the basis for effective implementation and subsequent monitoring thereof.

Effective and independent national institutions which are in full compliance with the Paris Principles can contribute to decision making bodies regarding human rights, Mr. Louis Joinet of the French Consultative National Human Rights Commission at the Tunis Meeting suggested that national institutions should be represented on the board of directors of the UN Voluntary Fund for Technical Cooperation.[40] Present discussions concerning the establishment of a European Fundamental Rights Agency include the direct role national institutions can play within such an institution.

It is time, after over 10 years of lobbying for an enhanced role for national institutions which comply with the Paris Principles in United Nations fora, that this is assured. This should not only be restricted to the traditional human rights bodies such as the Commission on Human Rights or any successor body but extended throughout United Nations activities given the Secretary-General's commitment to ensuring that human rights be a cross cutting theme throughout all of the United Nation's work.

National institutions are here to stay as national, regional and international actors in ensuring respect for human rights. They are key to the establishment of national human rights protection systems. The increasing recognition of the importance of international human rights standards, and their further development, and an appreciation of human rights as interdependent, indivisible and interrelated, are the background for the future work of national institutions and the strengthening of national protection systems. Most institutions which are now being established have within their legislative mandate direct reference to the

[40] para. 32 E/CN4/1994/45.

international treaties including the power to monitor the implementation of international instruments, to propose the ratification of existing and new ones, contribute to the preparation of State party reports in relation to the treaties, and assess whether domestic legislation is in conformity with the international standards.[41] Those institutions which were created prior to the adoption of the Paris Principles can be strengthened by having such references incorporated into their legislation. All national institutions should avail themselves of the international treaties to which their States are a party and refer to these treaties when making human rights determinations.

A principal challenge of a national institution is to ensure that it is adding value to, and complementary to State institutions providing that with respect the promotion and protection of human rights that other institutions may be unable to undertake. Therefore when measuring the success of a national institution, it is important to ensure due consideration is taken to its different role in relation to the executive, legislative or judicial branches of government.[42] The added value can also be to take to task those who are not meeting their international and national human rights obligations and proposing solutions to advance the human rights cause. Such work requires patience, perseverence, tenacity and many times courage. However the examples of national institutions that exist today demonstrate that investing in them can pay important human rights dividends.

[41] For an interesting discussion of this refer to Ontario Human Rights Commission and the Canadian Human Rights Foundation, *Policy Dialogue: Human Rights Commissions: Future Directions*, Toronto, Ontario, 28 February 2000. The example was discussed of the Ontario Human Rights Commission referring to the International Convention on the Elimination of Discrimination against Women in establishing its *Policy on Discrimination because of Pregnancy*. Other discussions revolved of the lack of reference to the international instruments by Canada's Human Rights Commission.

[42] For a discussion regarding the effectiveness of national institutions refer to *Assessing the Effectiveness of National Human Rights Institutions*, Office the United Nations High Commissioner for Human Rights and the International Council on Human Rights Policy, 2005.

ANNEX 1

References in concluding statements of Treaty Bodies relating to National Institutions

Malawi	CERD/C/63/C 0/12 10 December 2003 29th Session	63rd Session	The Committee is concerned that the budgetary constraints facing the Malawi Human Rights Commission may limit its effectiveness. The Committee recommends that the *State party include information on this issue in its next periodic report. It also recommends* that information on the functions and activities of the Malawi Human Rights Commission be disseminated both in English and in Chichewa.
Ecuador	(CEDA W) 30 June - 18 July 2003	Supplement No. 38 (A/58/38)	Although the Committee welcomes the establishment of the National Council for Women by executive decree in 1997, it is concerned at the lack of a law institutionalizing the Council and regulating its normative capability, operations and financing. It is also concerned that this body does not have an explicit mandate allowing it to guarantee, and require from the different sectors of government, the enforcement of laws, plans and programmes for gender equality, and that a Director still has not been appointed. The Committee is also concerned that the participation of civil society organizations in the Council could be weakened and that movements of indigenous women and women of African descent are still not represented. 304. The Committee urges the State party to strengthen the regulatory and normative role of the National Council for Women by adopting a law institutionalizing and regulating its activities and giving it a more active role in monitoring the enforcement of standards to promote gender equality, and to allocate to it the financial resources necessary for its operation and the exercise of its functions. Furthermore, the Committee encourages the State party to appoint a director to head the National Council for Women. The Committee encourages the State party to ensure the participation of civil society in the Council and to promote the participation of movements of indigenous women and women of African descent.
Venezuela	E/C.12/1/Add.5	25th Session	The Committee encourages the State party to proceed with the adoption of the Act

	6 21 May 2001 (CESCR)		establishing the Ombudsman's Office and urges the Ombudsman to attend closely to the promotion and protection of economic, social and cultural rights, in particular with respect to indigenous communities.
Indonesia	CAT /C/XXVII/ Concl.3 12-23 November 201	27th Session	The Committee is concerned about: The insufficient level of guarantees of the independence and impartiality of the National Commission on Human Rights (Komnas- HAM) which hinders it from fully carrying out its mandate, including, inter alia, having sole responsibility under Law 2000/26 to conduct initial investigations relating to gross violations of human rights, including torture, prior to forwarding them to the Attorney General for prosecution. Because only the Attorney Genera and not Komnas-HAM, has the-authority to *decide whether or not to initiate proceedings, the Committee is further concerned that reports of Komnas-HAM on preliminary investigations are not fully published, and that Komnas-HAM does not have the right to challenge a decision by the Attorney General not to prosecute a case.
Ireland	69th Session HRC	Ireland. A/55/40 paras. 422-451 24/07/2000	The Committee expresses continuing concern that not all Covenant rights are guaranteed in the domestic law of the State party. The consequent lack of domestic recourse will limit the power of the proposed Human Rights Commission to take action in the courts to enforce those rights not covered.
Islamic Republic of Iran	24th Session CRC	CRC/C/15/ Add.123 28 June 2000	The Committee encourages the State party to establish a statutory, independent institution, adequately staffed and resourced, with the mandate regularly to monitor and evaluate progress in the implementation of the Convention and empowered to receive and address complaints of violations of children's rights. The Committee recommends that the State party seek assistance from UNICEH and OHCHR, among others.

This article 'The ABC OF NATIONAL HUMAN RIGHTS INSTITUTIONS' was written by the author in the year 2005. Thereafter the following Developments have Occurred with the Constitution of Human Rights Council.

— Editor

The major change that have taken place in the United Nations System is the creation of Human Rights Council which replaces the Commission for Human Rights. The Human Rights Council envisaged greater responsibility on the National Human Rights Institutions. In the seventh session of International Coordinating Committee of National Institutions (ICC) which was held at Geneva in April 2006 it was agreed to prioritize the issue of NHRIs access to Human Rights Council. In pursuant to the above decision it was decided to establish a working group to develop the ICC position on the role of NHRIs in the human rights council. The working group consists of one representatives from each of four regional groups. One of the major tasks of working group was to give final shape to the ICC paper on the role of NHRIs in the Human Rights Council and accordingly the following recommendations are approved by ICC:

NHRI contribution to new functions of the Human Rights Council and review of existing mechanisms

NHRIs are committed to contribute substantively to the process of consolidating the work of the Human Rights Council in its first year of work and to ensure inter-session follow-up to the results achieved in session based on our constructive and consultative approach to human rights promotion and protection. NHRIs, regional coordinating bodies and the ICC therefore have a role to play in various types of procedures of the Council, though the exact nature of that role will depend to some extent on the manner in which the Council fashions its procedures and the decisions of individual NHRIs.

Specifically, NHRIs have a role to play in relation to:

(a) the Special Procedures of the Commission on Human Rights, in particular the thematic and country mechanisms, which the Council is to "assume, review and, where necessary, improve

and rationalize.... In order to maintain a system of special procedures, expert advice and a complaint procedure" (GA resolution 60/251, para 6);

(b) the new procedure for universal periodic review of the performance of all member States of their human rights obligations ((GA resolution 60/251, para 5(e)); and

(c) the exercise by the Council of its mandate "to address situations of violations of human rights , including gross and systematic violations" (GA resolution 60/251, para 3) and "to contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies" (GA resolution 60/251, para 5(f)).

The Human Rights Council, its subsidiary bodies and special procedures should therefore take steps to ensure that they seek the participation and input of NHRIs directly and through the ICC/regional coordinating bodies into their activities and take advantage, where appropriate, of the role of NHRIs as a bridge between the international and national levels.

This participation could include:

- Monitoring the State's compliance with recommendations adopted by the Council in relation to particular situations.
- Providing a right to NHRIs to present recommendations, suggestions and reports relating to the promotion and protection of human rights.
- Providing a right to NHRIs to comment on any reviews instigated by the Council of its procedures or effectiveness.
- The Human Rights Council should consider establishing a mechanism which allows NHRIs to raise issues of special concern with the Council.

NHRI interaction with the Special Procedures

- The Human Rights Could encourage the Special Representative of the Secretary-General on human rights defenders to interact closely with the ICC in relation to the protection of NHRIs

and their members, in particular with regard to threats against them

- Considering the specific role and expertise of NHRIs in protecting and promoting human rights at the national level, Special Procedures of the Council should take into account any relevant information made available by NHRIs.
- In relation to country missions by Special Procedures, NHRIs should be advised of the mission in a timely manner and could be included in the program of the mission.

NHRI participation in the universal periodic review

- NHRIs could be given the right to comment on and contribute to the process of defining the universal periodic review mechanism so as to ensure that this new mechanism and other UN human rights mechanisms such as treaty monitoring bodies and Special Procedure are mutually reinforcing and coherent, including that practical reporting formats are developed. The mechanism to be adopted must be just fair, transparent, consistent and reasonable.
- NHRIs could provide information on the fulfillment by the States of its human rights obligations, including follow-up by the States on previous recommendations of the Human Rights Council and other UN human rights mechanisms such as treaty monitoring bodies and Special Procedures. NHRIs could also be encouraged to comment on draft state reports.
- NHRIs could advise the States on follow-up to the recommendations of the Human Rights Council.

If country missions are to be undertaken in relation to the universal periodic review, NHRIs should be advised of the mission in a timely manner and could be included in the program of the mission.

The other major developments during the past one year was the adoption of UN Convention on Disability and an Optional Protocol by the UN Adhoc Committee on the Disability. The United Nation Adhoc Committee in its eighth session after several discussions adopted

the convention on Disability. The text agreed on 25th August 2006 by the Adhoc Committee is subject to review by the Drafting Group. The function of the Drafting Group is only to tidy up the text. This convention will enter into force after the ratification or accession by 20 states. It will establish a new treaty body, the committee on Rights of Persons with Disability.

The article 33 of the adopted convention of disability is of particular importance to the NHRIs. The text of article 33 is as follows:

"Article 33-National Implementation and Monitoring

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within Government to facilitate related action in different sectors and at different levels.
2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.
3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process."

This provision is important as specifically obligates a state party to identify one or more institution at the national level to monitor the implementation of the convention and requires the state party to take into the account the Paris Principles when establishing or designating such a body. It means that NHRIs will have to prepare themselves to assume this role under the convention when their state becomes a party to this.

KNOWLEDGE FOR EMPOWERMENT: A HUMAN RIGHT PERSPECTIVE

Prof. Ranbir Singh

"We all want to matter, from the poorest, marginalized to the most powerful individual and community. We want our views to be heard, our pain and suffering addressed, our hopes and aspirations to be acknowledged. The motivational power of this universal desire to be relevant has always encouraged me.

Democracy theoretically offers every individual an equal voice in deciding our collective future. That is empowerment. But it is a long voyage from theory to practice. It is along this journey that we can nurture individual and collective motivation with compassion and understanding, or sow the seeds of our collapse through indifference, shatter dreams and silence voices. Our fifty five year experiment with democracy has been a mixed bag."

Aruna Roy[1]

By way of a Prologue:

The very aim of education process should be to impart knowledge that equips or empowers an individual to take charge of the world around him or herself. It is in furtherance of this goal that education should be disseminated. The purpose of the exercise should be to produce human beings who can internalize the ideals taught to them, only then can knowledge be truly beneficial. In the Preamble to the Constitution of India, the people of the country resolve to "*secure to all its citizens justice social, economic and political*". It also speaks of promoting "*fraternity and assuring dignity of the individual*". Both these goals when read together gives a picture that dignity of life can only be secured if justice is meted out in the fairest possible manner. This perspective can be only embodied if there is a shift from the letter of law to the spirit of law.[2]

[1] *Member, National Advisory Council, Activist.*

[2] South Asia Human Rights Documentation Centre, 'India's NHRC: No effort for Compliance of Directions', *National Human Rights Institutions in the Asia Pacific Region* (South Asia Human Rights Documentation Centre 2002), p. 20.

Emphasis on different arguments justifying the value and necessity of education from the point of view of the individual as well as society has varied according to the historical needs of any society in different stages of its evolution. The first argument regards education as a value in itself, since it develops the personality and the rationality of individuals. The assumption here is that society, recognizing the innate value of rationality and learning, accords a high status to the educated. The second argument emphasizes the usefulness of educated persons to society at large. Their knowledge, by serving a social purpose, raises their status in society. From the point of view of the individual, education provides the necessary qualification to fulfil certain economic, political and cultural functions and consequently improves his socio-economic status.

With the recognition of the need to direct the process of social change and development towards certain desired goals, education has come to be increasingly regarded as a major instrument of social change.

> "The realization of the country's aspirations involves changes in the knowledge, skills, interests and values of the people as a whole. This is basic to every programme of social and economic betterment of which India stands in need..... If this 'change on a grand scale' is to be achieved without violent revolution (and even for that it would be necessary), there is one instrument, and one instrument only, that can be used: Education."[3]

One of the expectations from this directed use of education is that it will bring about reduction of inequalities in society, on the assumption that education leads to equalization of status between individuals coming from hitherto unequal socio-economic strata of society.[4] It was on this argument that the Universal Declaration of Human Rights included education as one of the basic rights of every human being. The Constitution of the UNESCO directs its efforts to achieve 'the ideal of equality of educational opportunity without regard to race, sex or any distinctions, economic or social'.

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[3] *Education and National Development*, Report of the Indian Education Commission, Chapter 1, pp. 7-8.

[4] Ibid., pp. 18-19.

Human Rights of an individual can only be realized if a basic level understanding exists as to what are your rights that are inextricably linked with your survival, only then can you stand up and speak for yourself. What is being advocated thus is an education system that leads to capability expansion, as Amartya Sen had put forth. Education should lead to overall development of capability to perform. Thus, the fact of acquiring an educational degree then becomes subservient to what you can do with your life after this degree has been conferred. Whether or not education system produces such results is a matter that has to be seen, but the goal of legal education should be furthering of capabilities. Human beings should be seen as an end in themselves and not just as means to an end.

Contextualising the issue to Indian Scenario: Myth and Reality:

The picture painted above is an ideal situation, more often the reality is far away from it. In case of India there are various social factors that need to be taken on board in order to develop a proper understanding of what human rights issues are central to Indian society. It is a contextual understanding of a given scenario that yields best results. More than half of the population still lives below poverty line, the country is still ridden with caste based inequalities, women and girl child have still not been given their due. It is therefore, imperative to look at all these factors is greater depth and then draw a conclusion as to what are the needs of Indian society today. Also an analysis will be made of the criminal justice system so that the front where the most gross abuse of human rights occur is brought to light and the horrifying stories are narrated to drive home the point that rights here have to be looked at in a wholesome manner.

Economic Realities:

Though a look at the booming stock markets and high rate of Gross Domestic Product (GDP) will give a picture that economic condition in India is better than ever before, but the time has come to look at this *'feel-good factor'* with a more critical perspective. The fact of globalization has masked the reality that major part of Indian population is still poverty stricken.

Economic Globalisation has also reduced the sense of isolation felt in much of the developing world and has given it, access to knowledge well beyond the reach of even the wealthiest in any country a century ago. Increased communication has brought immediate attention to gross violation of human rights in a particular locality throughout the world. It led the culture of human rights to flourish, as international community became more sensitised to serious human rights violations occurring anywhere in the world.[5] As, trade and investment became more important to a country's economy, it become more important how it is perceived abroad, because governments and corporations may refuse to do business with what is seen as a repressive state. All this has created the conditions in which the human rights stand a better chance of being realised.

While these developments are exemplary, the persistence of serious social and economic problems is evidence that they are not a panacea. There are more than one billion people living in conditions of extreme poverty, countless millions unemployed and underemployed in the developing world, an estimated child workforce of between 100 and 200 million, often subjected to the most inhuman forms of exploitation. Though, most of these problems predate the advent of economic globalisation, but increasingly it is being asked whether it is not exacerbating some of the conditions and whether an undue emphasis has not been put on free trade and the market economy to the detriment of consideration of social problems and violations of human rights arising from economic globalisation.[6]

One of economic globalisation's significant commitments has been to economic growth and trade expansion and there have been spectacular success in achieving both. Yet the things that most of the people really want- proper means of livelihood, healthy and uncontaminated food, a clean environment - seem to slip from the grasp of most of the world's people with each passing day. This is becoming pervasive in almost every locality of the world and there is growing

[5] Joseph Stiglitz, *Globalization and Its Discontents*, p. 4.
[6] Amit Sengupta, *Health in the Age of Globalization*, p.67.

suspicion among people the world over, that something has gone very wrong. The world is increasingly being divided between those who enjoy opulent affluence and those who live in dehumanising poverty. Evidence of resulting social stress is everywhere: in rising rates of crime, drug abuse, suicides, divorces, environmental disasters, etc. Taken together all these manifestations constitute a global human crisis.[7] It is this division between haves and have-nots that is undesirable.

This highlights the fact that all these economic reforms should have been carried out keeping the social context of India in mind. Human development is the end-economic growth a means. So, the purpose of growth should be to enrich people's lives.

Thus, what is the necessity of this hour is that:

- **Growth with equity:** First and foremost, economic growth must lead to expanding opportunities for the poor to climb out of poverty. This can be achieved by making poverty eradication a central part of any economic growth strategy. A growth strategy must also provide for allocation of major resources to health, education and other human development efforts. Only industrial development can have no significant impact on poverty reduction and only a few actually benefit from this.[8] A determined effort to expand human capabilities - through improved education, health and nutrition - can help transform the prospects for economic growth, especially in the low-human development, low-income countries.

- **Job oriented:** Economic growth is translated into people's lives only when they are offered productive and well-paid work. An important way to achieve this is to aim for patterns of growth that are heavily labour-intensive. In this respect, strengthening small-scale and informal sector has the potential for generating employment and incomes for millions of people and provide to them the basic goods and services needed in daily life. Therefore, any strategy of growth should encourage and support these sectors and not restrict them.

[7] David Korten, *When Corporations Rule the World*, p. 21.
[8] Michael Scipel, *Global Poverty*, p.200.

There are many encouraging examples among small farmers, micro-enterprises, and poor and marginal communities in this respect. Extension of services and other mechanisms to enable small-scale producers to get better and quicker access to technology and information can make a big difference in their productivity.[9]

- **Sustainable and future oriented:** The present environment degradation is hampering the health, living and livelihoods of people all over the world. The future is bleak if this continues as usual.[10] Clearly, private capital flows into developing counties, especially emerging markets, will continue to grow rapidly into the foreseeable future. The challenge is to attract foreign investment in sustainable development activities. Governments must ensure through regulations and incentives, that new investment is directed towards sustainable goals, which does not jeopardise the environment. Any growth model should therefore be sustainable, taking in account the need of the future generations. It should provide for adequate conservation of natural resources and protection of environment.

  Though, an unsustainable and polluting growth may breed immediate short-term gains, but the benefits arising from it would be offset by the more long-term losses in form of increased health costs, correcting environmental damages, etc. The forces of globalisation can be harnessed for environmental gains also, such as helping developing countries leapfrog to the cleaner technologies of tomorrow. China has become the world's largest manufacturer of energy efficient compact fluorescent light bulbs in recent years, in part through joint ventures with lighting firms based in Hong Kong, Japan, the Netherlands, and Taiwan. And India has become a major manufacturer of advanced wind turbines with the help of technology obtained through joint ventures and licensing agreements with Danish, Dutch, and German firms.

- **Education oriented:** One of the most important ways to fight poverty is to educate the poor, since education opens up a wide

[9] Human Development Report 1996.
[10] Human Development Report 1998.

range of economic opportunities for people. Without an educated labour force, neither individuals nor countries may be able to compete effectively in the global labour markets and cope with ever-changing economic environments. This is true of present information and technology oriented economies. Thus, education should be a major concern in any growth model.

Much of the current reaction has been a reaction not so much against a globalisation, that has brought the world closer, but it is against the economic fundamentalist form of globalisation, that has dominated the international agenda for the last two decades. It is not so much the idea of globalisation per se, that has aroused such reaction, but rather the limited economic approach to globalisation, that has eroded democratic accountability, has operated blatantly in the interests of the most powerful, have exacerbated inequality and has marginalised other issues such as social justice in the interest of a narrowly conceived global economic interest.[11]

The actual vision of a globalised world was based not so much on economic activity, as on ideas of a universal humanity, global citizenship, international understanding and solidarity, and mutual responsibility. In recent times, however, the international agenda has been taken over by economic matters. And social justice, peace, environmental concerns, etc. have had to take second place.

Globalisation to be in the interests of people should be based on the ideas of social justice rather than on narrow economic interest alone. Thus, the task is not to oppose globalisation per se, but rather to work towards an alternative globalisation, that has primarily social rather than economic aims. In such a formulation, the idea of human rights can play a crucial role. It has proved to be one of the most rhetorically powerful concepts used in popular demonstrations against globalisation. It provides the nearest thing to a coherent challenge to economic globalisation. It emphasises the importance of human dignity, the right to work in just conditions and in return fair wages, the protection of the

[11] Vijayashri Sripati, *India's National Human Rights Commission: A Shackled Commission?, Boston University International Law Journal*, vol. 18 no 1, Spring 2000, p48.

environment, while aiming to distribute the fruits of economic growth on a more equitable principles.

Also, the developing countries must assume responsibility for their own well-being. Most of the developing countries have minimum resources necessary to eliminate underdevelopment. They can manage their budgets so that they live within their means, meagre though that might be. What the developing countries most importantly need is effective governments, with strong and independent judiciaries, democratic accountability, openness and transparency and freedom from the corruption that has stifled the effectiveness of their development process.

Gender and Caste:

Gender and Caste related matters have taken toll over the entire Indian development. Superstitious beliefs and ignorance are so widespread among the Indian masses that even after all these years of independence; people of backward classes remain downtrodden. They are generally economically 'ill-off'. Even though the constitutional mandate speaks about affirmative action a lot needs to be still done in order to improve their condition.

The following are certain positive steps that have been taken in independent India for empowerment of women:

1. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women.[12]

2. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. From the Fifth Five Year Plan (1974-78) onwards has been a marked shift in the

[12] Desai, Ashok H., and Muralidhar, S., *Public Interest Litigation: Potential and Problems*, in Kirpal, B.N., Subramanium, Gopal and Ramachandran, Raju, ed., Supreme but not Infallible, 2000. p. 162

approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels.

3. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India, on the other. Gender disparity manifests itself in various forms, the most obvious being the trend of continuously declining female ratio in the population in the last few decades. Social stereotyping and violence at the domestic and societal levels are some of the other manifestations. Discrimination against girl children, adolescent girls and women persists in parts of the country. The underlying causes of gender inequality are related to social and economic structure, which is based on informal and formal norms, and practices. Consequently, the access of women particularly those belonging to weaker sections including Scheduled Castes/Scheduled Tribes/ Other backward Classes and minorities, majority of whom are in the rural areas and in the informal, unorganized sector – to education, health and productive resources, among others, is inadequate. Therefore, they remain largely marginalized, poor and socially excluded. With this in mind a white paper on National Policy for Empowerment of Women was brought forth in 2001. Some of the key highlights of this plan were:

Education:

Equal access to education for women and girls will be ensured. Special measures will be taken to eliminate discrimination, universalise education, eradicate illiteracy, create a gender-sensitive educational system, increase enrolment and retention rates of girls and improve the quality of education to facilitate life-long learning as well as development of occupation/vocation/technical skills by women. Reducing the gender gap in secondary and higher education would be a focus area. Sectoral time targets in existing policies will be achieved, with a special focus on girls and women, particularly those belonging to weaker sections including the Scheduled Castes/Scheduled Tribes/Other Backward Classes/Minorities. Gender sensitive curricula would be developed at all levels of educational system in order to address sex stereotyping as one of the causes of gender discrimination."[13]

Thus, being member of a particular caste or sex has led to social discrimination and steps need to be taken to undo this historical position. A possible solution to this over pervasive menace is that of the legal resources approach, which starts from two basic concepts. The first is the concept that law is a means of empowerment and that groups of the impoverished seeking to develop countervailing power through mobilization and organization, can also use law as one of their means of empowerment. The second is the concept that law is a resource either as a source of rights and remedies, or as a means for '*buying more time*' and harassing the oppressor. The legal resources approach envisages the '*capacity*' to use '*law*' to advance shared interests. By the term 'law', we mean more than official state law; the term also refers to widely shared perceptions of justice perceptions rooted in custom and culture, or in popular conceptions of 'natural law' or derived from principles set out in international declarations of 'Universal' human rights: all of these different kinds of law can certainly be invoked by groups to expose contradictions between exploitative practices and law, to denounce oppressive administrative, to articulate claims for recognition of right sand demands for legal reforms, to structure new collective activities

[13] http://www.logos-net.net/ilo/150_base/en/init/ind_2.htm

and otherwise advance or defend shared interests. Studies over the recent years have shown how, given legal resources, people do use law, in all these forms for all these purposes- and thus how important law can be as a resource for the oppressed. Dominant groups are able to perpetuate their control over poor through the control they retain over land, credit, water, fertilisers and other inputs needed to cultivate. Here, too there are a variety of laws which remain unimplemented, for example those pertaining to usurious money lending. Thus, what is contemplated is enforcement of already existing rights.

Identifying and Confronting Obstacles to Access to Justice:

For the majority poor and vulnerable of South Asia's nearly 1.3 billion people, law and justice are often not synonymous. Many may not be aware of or understand the law, or able to afford its protection. In the terminology adopted by Upendra Baxi, a large section of the society is simply disarticulated, as in it is not in a position to voice its claims and obtain the apt redressal. Yet the courts continue to be the repository of people's expectations, and are seen as a final recourse, where otherwise unequal power relationships can be adjudicated in an unbiased manner. Judges across the region have struggled to recognise the difficulties of accessing justice and dilemmas associated with working in essentially under-resourced environments.

Contextualising and Conceptualising the problem:

The role of governments at this stage becomes highly significant as they can formulate such policy guidelines that will uplift the poor and downtrodden and thus, take the nation to actual path of development. Governments must ensure adequate access to justice through institutions so that citizens can enjoy their basic human rights. In order for this to be achieved, existing laws should be reformed so that the necessary institutions and legal infrastructure could be put in place. Governments should improve legal aid programmes so that persons who felt aggrieved about the violation of their rights could have legal representation to assist them in vindicating their claims. Legal aid as has been pointed out earlier has a great role to play in empowering the poor as the need of the hour is advocacy of their interests and negotiation of their demands

and in this area legal aid lawyering can make a huge impact. Lawyers should take advantage of their profession and should sensitise the public of their rights and duties. "The legal profession must be conscious of its social responsibilities and must be keenly aware of its need to mould the law, creatively and imaginatively, in the service of the weaker sections of humanity."[14]

> *"Governments... have a duty to repeal existing laws which obstruct the effective enforcement of human and fundamental rights. Laws must not only speak human rights but they must deliver human rights."*

Ramesh Lawrence Maharaj, former Attorney-General of Trinidad and Tobago.

Contemporary Judicial Activism:

> *"Judicial Activism is not opium but a pervasive power and a brooding omnipresence"*[15]

Judicial Activism heralded a new era in the history of Supreme Court of India. It can also be understood to be reflection of the Critical Legal Studies movement that had begun globally. Law was no more read as it is but a contextual understanding of law became necessary. The Judges now looked at who were the actors involved and whose interests were being infringed at a much micro level, thus it marked a shift from Analytical positivist thought to Critical Legal Studies. The vibrant functioning of the Indian Supreme Court over the past few decades raised it to the status of one of the most powerful courts in the world, made its brand of judicial activism respected amongst jurists the world over and virtually a household term within the country. Among other things, the Supreme Court of India has been responsible for the articulation of several rights enshrined in the Directive Principles of State Policy. Thus the previously so called distinction between positive rights and negative rights is now getting blurred. Positive obligations that state owes towards its citizens are increasingly being considered

[14] Parmanand Singh, *"State, Market and Economic Reforms in (P. Singh (ed.))* LEGAL DIMENSIONS OF MARKET ECONOMY 23 (1996).

[15] Iyer, Krishna, "Case for Judicial Activism", The Hindu, 9th October 2001, available at http://www.hindu.com/thehindu/2001/10/09/stories/13090177.htm

crucial for the survival. Right to life cannot be read in exclusion with right to health, clean air, drinking water, right to education. It cannot be disputed that judicial activism has faced a certain degree of opposition even within India, but since the liberalisation of the economy, it has become discernible that the Court is perhaps tending to sway with the political and economic tides, but this judicial scant should be more strong for protecting human rights.

Right to Information: Ensuring Effective Access to Justice:

A law on access is essential but is not enough; by itself it will do little to change a closed, secret, elitist environment into an open democracy. Lack of political will is perhaps the most serious obstacle to transforming government from closed to open. This most often manifests in delays operationalising access legislation once it is enacted. Delays send mixed signals of government intention and pander to the penchant for secrecy. Often justified on grounds that time is needed to put in place systems to enable efficient information-giving, delays often mask a battle against openness being waged within the bureaucracy. Delays can range between the reasonable, such as in Australia and Canada where laws were operationalised within a year of enactment, and the unreasonable, such as the United Kingdom, which has been heavily criticised for insisting on a five year gap to get its house in order when it has already had in place a working code of access applicable to all central government-held information since 1994. In India too, the national law has been passed by parliament but has not been brought into force. In a country notoriously slow to implement bureaucratic change, this does not auger well.

The right to communication depends on a free flow of information, both to and from the communicant. In particular, the exercise of democratic rights requires that everyone should have access, subject only to narrowly defined exceptions, to information held by public bodies, often referred to as the right to freedom of information. Freedom of information is an important component of the international guarantee of freedom of expression, which includes the right to seek and receive, as well as to impart, information and ideas.

There can be little doubt as to the importance of freedom of information and numerous authoritative statements have been made by official bodies to this effect. During its first session in 1946, the United Nations General Assembly adopted Resolution 59(I) which stated:

"Freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the UN is consecrated."

All three regional human rights systems have adopted authoritative statements on freedom of information. These international developments find their parallel in the passage or preparation of freedom of information legislation in countries in every region of the world. In the past seven years, in particular, a large number of countries from all regions of the world have adopted freedom of information legislation, including Bulgaria, Fiji, India, Israel, Japan, Mexico, Pakistan, Peru, Poland, South Africa, Thailand, Trinidad and Tobago, the United Kingdom and Uzbekistan.

Global governance actors, as well as individual States, hold public information and should have to provide access to it. This is increasingly being recognised as various international actors adopt disclosure policies, including, for example, the United Nations Development Programme (UNDP), as well as the World Bank and all four regional development banks. With the shift of power from the State to private corporations, and in particular multilateral corporations, it is important that these actors should also recognise at least a limited right to access information. The South African Constitution provides for an enforceable right to information vis-à-vis private actors where this is necessary for the exercise or protection of a right. The Article 19 publication, *A Model Freedom of Information Law* states:

"Any person making a request for information to a private body which holds information necessary for the exercise or protection of any right shall, subject only to the relevant provisions of... this Act, be entitled to have that information communicated to him or her."

A New Era of Information:

Everyone has the right to freedom of opinion and expression; the right includes the right to hold opinions without interference and to

seek, receive and impart information and ideas through media regardless of frontiers.

Universal Declaration of Human Rights: Article 19

The enactment of the Right to Information Act, 2005 is a historic event in the annals of democracy in India. Information is power and now a citizen has the right to access information "held by or under control of" the public authorities. Concurrently, it is the duty of all public authorities to provide information sought by citizens. A sea change can be achieved towards transparency and accountability in governance by implementing the Act in letter and spirit.

The Right to information Act, 2005("the Act"), which came fully into effect on 12 October, 2005 (on the 120th day after its enactment), is one of the most significant legislations enacted by the Parliament of India. The Act enables the establishment of an unprecedented regime of right to Information for the citizens of the country. It overrides the 'Official Secrets Act' and similar laws/rules. It strikes at the heart of the paradigm long practiced by Government officials and public functionaries that '*confidentiality is the rule and disclosure is an exception*'. The Act seeks to establish that "*transparency is the norm and secrecy is an exception*" in the working of every public authority. It aims to ensure maximum openness and transparency in the machinery and functioning of Government at all levels: Central, State and Local.

The right to information is expected to lead to an informed citizenry and transparency of information which are vital to the functioning of a democracy. It will contain corruption and enable holding Governments and their instrumentalities accountable to the governed.

The 'People's Right to Know' has a long history of prolonged debates, deliberations, discussions, struggles and movements at both national and international levels.

Conclusion:

Equality before the law in a democracy is a matter of right. It is not a subject of charity or magnanimity, but an entitlement strictly afforded to one and all.

Proper access[16] to justice is only possible with the attainment of the endeavours like engaging the poor in a dialogue for empowerment; co-ordinating the participation of all role players in the law reform process; fostering linkages to regional and international networks for the purposes of advocacy, training and capacity-building within existing institutions and, where necessary, the creation of new ones; advocating for lay participation in the justice system so that the Courts are better informed; advocating for the establishment of such offices as that of the Ombudsperson in order to promote an accountable and transparent legal and judicial environment; encouraging lawmakers and the legal profession to use local language and simplify language in the justice system and inform poor communities how the formal system works; and initiating pilot studies tracking cases in the civil, criminal and administrative Courts thereby also monitoring and assessing the quality of judgments and the delays in their execution.

When we employ law and legal activism as a mean of social change we somehow tend to think of law as an autonomous and self-sufficient force upon which the rest of the social order depends. Thus we oversimplify the nature of law and exaggerate its power. But law is neither autonomous nor self-sufficient but is heavily dependant upon other institutions to accomplish its tasks. We rely heavily on formal structure of law composed of the documents i.e. constitution, statutes and precedents, the apparatuses i.e. legislatures, courts, executive departments and the personnel i.e. judges, lawyers, administrators, policemen. We begin to believe that a legislative enactment or a judicial decision aimed at social change would automatically be translated into corresponding social actualities.

This is however a mere delusion. We exaggerate the power of law because we have inadequate notion of both what law is and how it acts. Positive law supervenes upon an established social order which is

[16] Access to justice means among others, access to a fair set of laws, access to protection from harm (policing), access to legal representation, including the services provided by the paralegal sector, access to an appropriate set of institutions in which problems and disputes can be settled. Moreover, access to appropriate remedies and solutions to the problems is essential, as is access to popular education about law, institutions and procedures. And threading through all of these different forms of access is the important requirement that such access should be affordable, otherwise it was not covered within the meaning of 'access.'

supported by prior facts such as caste, religion, family, morality, habits, beliefs, attitudes, emotions and traditions. Law has to perform the task of repairing the deficiencies in the social order. For instance law and legal action tries to eliminate social and economic inequalities, social oppression, gender-injustice, sex-exploitation, de-linking of crime from politics and removing several social practices such as untouchability, child-marriage, sati, bonded labour and caste-domination. These deficiencies in social order are rooted in various social and religious institutions which law seeks to repair. Traditionally the most conspicuous and important of these institutions have been family, education and religion which perform the crucial role of transforming human nature. These institutions exert a powerful influence upon the attitudes and behaviour of the people.

In our respectful submission the effective operation of law as an agent of change depends largely upon the support extended by other social institutions. If the institutions of family, religion and education have not been doing their job properly, law shall be missing support from them and all our attempts at social reconstruction through law will be thwarted or delayed. The disappointing performance of the law and legal doctrine prohibiting untouchability, dowry, sexual exploitation, torture, rape and caste-discrimination support our contention that legal effectiveness depends upon the effectiveness of other agents of social order. Law and legal action can never provide the conditions of cultivation, socialisation, sense of obligation, responsibility, sympathy, fellow feeling, and other factors that mould human character in definite ways. These undertakings have to be carried on by other social agencies because they lie within the province of morality rather than law.

The question is to what extent law can solve social problems and achieve social goals? It is interesting here to point out the change in the attitude of Professor Roscoe Pound in the twenty years between his 1922 Storrs lectures and 1942 Mahlon Powel Lectures. In 1922 Dean Pound expressed his unconditional confidence in the power of law to bring out social change by the techniques of "social engineering"[17].

[17] Roscoe Pound, *An Introduction to the Philosophy of Law*, 97 (1922).

By 1942 he recognised the limits to the reach of law. He remarked[18]:

> *"When we have got so far we must pause to inquire how far, after all, the law in any of its senses can achieve this purpose (of harmonizing human demands, maintaining a social order, and furthering the course of civilization). We must ask how far social control through politically organized society, operating in an orderly and systematic way by a judicial and administrative process applying authoritative grounds of or guides to decision by an authoritative technique, can stand by itself as self sufficient and equal by itself to the maintaining and furthering of civilization. Thus we are brought to consider the limits of effective legal action, the practical limitations which preclude our doing by means of law everything which ethical considerations or social ideals move us to attempt".*

The case for empowerment of through legal literacy programmes making people aware of the laws of country, their rights and entitlements under law is the focal theme of this paper. Legal literacy component must percolate in the curriculum of schools and colleges in India specially providing education so that the people of the day are aware of basic laws of the country and are prepared to defend themselves with the help of law. Legal literacy programmes in the given present scenario in the country becomes an imperative need because of growing gender bias and increasing violence against the women.

The untouchability and unapproachability are writ large also in the life of the larger community in the shape of discriminatory family laws, and even the right to bare substance from spouse or divorcee. In short, the struggle for justice, social, economic and political, remains to be fought and won. The constitutional provisions are weapons, not victories. These are strong measures recommended by the Constitution itself to correct the age-old exploitation of women and children and to redeem their equality, dignity and rights. Realization of this grand vision is a function of the laws and legal processes which can deliver only if used properly before proper for a in appropriate situations. This presupposes knowledge of the laws and legal processes enacted to

[18] Roscoe Pound, *Social Control through Law*, 54 (1942).

encounter injustice or confer rights and entitlements. Hence, the need for legal literacy. This also presupposes access to proper for a including courts to ventilate one's grievances. Hence, the need for organised free legal aid to weaker sections of the people. Given the minimum degree of legal literacy and easy access to legal processes and institutions, one can expect in the not-too-distant future a better deal for all and specially women not only in the laws of the country but also in day-to-day life.

Therefore, in the words of Justice A.S. Anand, "*Universality of human rights demand eradication of global inequalities and to achieve this, the importance of right to development has to be emphasised. Human rights are inter-dependent and inter-related and have a direct relationship with Human Development.*" With reference to the wide global disparities in different parts of the world, he stressed that they are linked to varying level of human development and must be minimised to ensure that minimum needs of everyone throughout the world are met.

> *"The biggest horror for any individual or community is exclusion. In the consequent spread of alienation and intolerance we sow the seeds of our own destruction. We must make and protect the spaces for dissent, even of the most poor, alienated, and marginalized. We must ask ourselves what we can do to change those conditions. It requires confidence and political maturity to listen to these voices. When we do so, we will have an involved and empowered India."*
>
> *Aruna Roy, Member, National Advisory Council, Activist*

POVERTY AND DISABILITY: ARGUMENTS FOR AN INCLUSIVE POLICY

Anuradha Mohit and Kumar Sanjay Singh

Disabled people are disproportionately high amongst those living in chronic poverty because they are often not included in any aspect of regular community life. Because disability and poverty are inextricably linked, poverty can never be eradicated until disabled people enjoy equal rights with non-disabled people. (Lee, 1999-Disability as a Development Issue and how to integrate a disability perspective into the SCO. Oxford: Oxfam) [9]

Introduction

It has been established through several studies that there are 4 broad factors associated with poverty which aggravate disability: - 1) Unsanitary living conditions and polluting environment, 2) malnutrition and under nutrition 3) lack/inaccessibility to immunization and 4) hazardous and dangerous work environment. If already not poor, people with disabilities tend to become poor because they lack access to income, education, basic medical and rehabilitation services. Hence poor are more likely to be disabled and disabled are more likely to be poor.

While there have been studies indicating the correlation and association of poverty and disability, the causality between the two has been studied to a much lesser extent, with insignificant statistical support. There has also been limited field-testing on the circularity of relationship between poverty and disability. A quantitative analysis of the poverty amongst the disabled and corresponding policies was undertaken by the National Human Rights Commission (NHRC) and National Association for the Blind (NAB) in 2005, in order to recommend concrete measures for poverty reduction amongst the disabled.

Even though current poverty alleviation programmes are required to have three percent funds earmarked for the disabled, barely one percent of this actually gets utilised. These programmes start with the assumption that the disabled can only be dependent on others, and

that they are an unproductive resource and hence can not be targets of employment schemes. They do not provide for specific requirements of disabled people, which once met will enable them to lead a life of dignity, self-reliance and full participation, a goal mandated in The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. This paper extends the argument of Dreze and Sen that entitlement promotion is more progressive than entitlement protection and suggests that measures of poverty alleviation amongst the disabled must provide for essential support, necessary for them to access minimum basket of goods and services. *'Since poverty is the biggest violator of human rights, its eradication is vital for development'.* (Justice A.S. Anand, 2006).

With the 11th Five Year Plan on the anvil, time is now perhaps ripe to look into requirements of diverse groups and fine-tune the poverty line for working out consumption baskets for different groups including the disabled. On the basis of extensive field surveys this paper presents estimates of additional costs needed for different categories of the disabled from different regions. While investments are required for full participation and providing equal opportunities to the disabled, it is important to recognise that there are potential economic gains of inclusion and corresponding losses due to exclusion. We also provide estimates of potential economic gains on relieving the care providers for productive endeavours, which would largely depend upon the extent to which built environment, public transport and other services are made accessible to persons with disabilities. The Government of India has already decided to incorportate a gender dimension in the 11th Five Year Plan. There is no reason why the same should not be done in the case of disabled people. Analysis and data presented in this paper would contribute to this endeavour.

Poverty and Disability

Incidence of crushing poverty amongst the persons with disability is emerging as an important concern, both for the Development and Human Rights institutions. About half a billion-disabled people are undisputedly amongst the poorest of poor and are estimated to

comprise 15-20% of the poor in developing countries. (Metts, 2000) Government of India has also accordingly accorded significant weight to the issue of poverty alleviation amongst the disabled. Many economic assistance programmes have been targeted at this group such as the Jawahar Gram Samriddhi Yojana (1999), Employment Assurance Scheme (1999), Sampoorna Grameen Rozgar Yojana (2002) and more recently The Rural Employment Guarantee Scheme (2006). The Disability Act, 1995 mandates to earmark 3% of the budget of the poverty reduction schemes for persons with disability. Following which the Sampoorna Grameen Rozgar Yogna also recognises the disabled as one of the vulnerable groups in rural India. The Biwako Millennium Framework 2003-2012 is being implemented now as an extension to the earlier decade. These efforts have not only failed to have a significant effect in alleviating the conditions of the disabled but they have also failed in incorporating the needs of the disabled in the major policy decisions. The special assistance schemes, therefore, are like so many pearls that do not quite make a necklace. The high incidence of poverty amongst the disabled is an eloquent testimony of the failure of the schemes to make a significant impact on the quality of life of the disabled.

The complete lack of relation between the special assistance schemes for the disabled and the major policy thrusts of the GOI is underscored by the silence of the planners to the specificity of the reasons for poverty amongst the disabled. The Planning Commission in 1977 constituted a Task Force on projections of Minimum Needs and Effective Consumption Demand. The Task Force defined the poverty line as per capita consumption expenditure level. This expenditure level is widely known as the 'Poverty Line'. A great deal of research has gone into refining concepts and quantifying the consumption requirements taking into account major variables in Indian society. Yet the Task Force did not go into refinements like consumption requirement for groups like the disabled, apparently as their concerns had still not fully caught the attention of policy planners and development experts.

Outcasts from Poverty Alleviation: Missing the Disabled

Gaps in the policy and the schemes of the Government of India (GOI) are a result of two inter-related assumptions that need to be

corrected. The first assumption is that the disabled are a group incapable of supporting themselves. They are not viewed as differently-abled individuals who are capable of handling their individual rights and social responsibilities if provided with the requisite support and access to opportunities. As per the NSSO survey 2002 of the disabled persons in India, of the two crore disabled persons 60% are capable of handling routine responsibilities of life *(it must be pointed out that the NSSO survey is inadequate since it does not take account of several activities expected of one's age and environment)* without aids and appliances and another about 17% can do it with necessary support. Emerging from this assumption of the disabled as helpless is the second assumption that impacts upon the nature and character of the GOI's schemes towards the disabled. In this context the policy review suggests that it is essentially paternalistic rather than empowering. Take for instance the Sampoorna Grameen Rozgar Yojana. As already mentioned this is one of the schemes where the government has identified the disabled as one of the vulnerable groups in rural India. However, the plan provision for the disabled and the other groups has radically different value content.

To indicate and understand this difference it will be necessary to quote the relevant section of the policy. It states:

The SGRY will be open to all rural poor who are in need of wage employment....While providing wage employment, preference shall be given to agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers, women, members of Schedule Castes/Schedule Tribes and parents of handicapped children or adult children of handicapped parents...(Sampoorna Grameen Rozgar Yojana, Government of India, Ministry of Rural Development, Krishi Bhawan, 2002, p.2.)

It is evident that the disabled though recognised as one of the vulnerable sections are yet not seen as a target group of giving employment. Instead the emphasis is to provide protection for them by generating employment for their family members who may be their caretakers. In a similar vein, state assistance to facilitate travel and transportation to the disabled does not involve making means of public transport more accessible so that the target group can become self-

reliant in travelling. Instead the schemes involve only providing free travel to the disabled and their caretaker. Government policy, therefore, consistently reinforces the cycle of dependence of the disabled rather than enhancing their basic freedoms for a life of dignity.

In the case of the disabled in India policies based on paternalism have evidently failed to deliver. However, even if they were to succeed in providing a modicum of security and pecuniary benefits, they would not have met the ideals set by the Constitution of India and The Persons with Disabilities Act, 1995 for Equal Opportunities, Full Participation and protection of rights. This act reserves 3% of government jobs, etc. for the disabled and provides non discrimination in the matter of work, education and access to public facilities and so on. Yet, they routinely face violations of right to food, housing, education, health, work and social security. As a consequence, they suffer from acute poverty, malnutrition, and chronic illness. Some of the most insidious forms of discrimination come with the imposition of physical and social barriers – the root cause of their exclusion and marginalisation. The current practice of policy planning is outmoded as it deals with disability in isolation rather than in relation with other social fault lines. Government data infact testifies to significant link between disability and other forms of marginalization. For instance NSSO data 1991 suggests that 40% of the disabled_poor belong to the SC/ST community. Thus, if empowerment programmes of the SC/ST do not have a disablility component a large section of the community will be perpetually doomed to marginalisation.

Another curious feature of policy regarding the disabled in India is that while it is seemingly inclusive for urban based educated disabled, it exludes large multitude of rural disabled poor. For instance, the disabled_are given three percent reservation in govt. and public sector jobs, which can easily be accessed by city based educated disabled. However, village based disabled, who suffer from high illetracy rates, are excluded from employment generating poverty alleviation programmes because they are not considered employable.

Promoting Entitlements of the Disabled

Evidently then paternalism has not only failed in ameliorating poverty amongst the disabled, it in fact has also failed in empowering them to take control over their life. It follows that the basic presuppositions behind the policies concerning the disabled need to be radically altered. (The arguments in the following paragraphs are based on those developed by Dreze and Sen.) It can be argued that the most fundamental alteration that is desirable is to change the policy thrust from protection to empowerment. It is an accepted fact that in today's world total available opportunities, services and goods are not divided amongst the population on the principles of equity and distributive justice. Individuals or groups have to establish their entitlement over the available opportunities, etc. Policies based on welfare seem to remain confined to state controlled distribution mechanism. Consequently they fail to take note of the processes through which individuals and groups establish their entitlement.

Entitlement, in other words, is opportunity available to a person or a group to participate in economy. Entitlement of an individual or a group depends on their capability. Capability essentially provides freedom to a person or group to choose from a range of options available that has a direct impact on their quality and standard of life. This assumption entails that poverty does not only mean impoverished state of existence, but also the lack of real opportunity to choose from other types of living. In other words, as Dreze and Sen have argued, poverty is capability deprivation (Dreze and Sen,1995, pp.10-11). If poverty is ultimately based on an individuals or groups capability to access economic opportunities, goods, etc., it follows that a successful policy of poverty alleviation will not primarily base itself on a distribution of a particular amount of goods and opportunities. The focus will also include efforts to enhance the capacity of the individual or the group to enhance their entitlement, which is concerned with the command over goods.

Poverty alleviation either among the disabled or in general necessarily means capability enhancement; since absence or erosion of

capability leads to erosion of entitlement leading to deprivation. Capability enhancement thus has two related but distinct objectives: 1) that of entitlement protection and 2) that of entitlement promotion. Entitlement protection is essentially a conservative task to ensure that vulnerable groups do not face a collapse of their ability to command goods and necessities. In contrast the "exercise of entitlement promotion is, in many respects, more progressive. In this the concentration has to be on expanding the general command that people—particularly the more deprived sections of the population—have over basic necessities." (Dreze and Sen, 1993, p.260.)

If capability enhancement has to result in greater access to the available opportunities, good, services, etc. It follows that capacity enhancement of a target group must focus on areas that are the greatest barriers for free access. Among the vulnerable sections of our society the chief problem is to get access to a minimum basket of goods and services. Economists such as Dreze and Sen have accordingly suggested forms and direction of capacity enhancement to ensure access to a minimum basket of goods and services. They have recommended measures both under entitlement protection and entitlement promotion. Under entitlement protection they advocate income or employment creation as wages in cash or kind to regenerate the purchasing power of the target group. Under entitlement promotion they recommend "expansion of basic human capabilities, including such freedoms as the ability to live long, to read and write, to escape preventable illnesses, to work outside the family irrespective of gender, and to participate in collaborative as well as adversarial politics". Such an approach, they believe, will not only affect the quality of life of the people but also affect the real opportunities they have to participate in economic expansion." (Dreze and Sen,1995, p. vii.)

While this approach holds true for other socially and economically vulnerable sections, its recommendations are inadequate for the disabled who apart from the general minimum basket of goods and services need access to health and rehabilitation services, assistive devices, caregivers and an accessible home to live including adjustments in the work environment. Thus, measures of poverty alleviation amongst

the disabled must involve not only measures to increase access to a minimum basket of goods and services but also to provide support services specified above essential to enable them to avail the offered goods and services. In other words poverty alleviation programs targeting the disabled must include in addition to the programs for the other groups, creation of adequate support structure for health care, provision of aids and appliances, human and other support mechanisms (caregivers etc.) and building a barrier free environment. Amongst them building a barrier free environment is a relatively more progressive step for it increases the access of the disabled to public and private spheres, there by reducing their dependence. Schemes related to creation of a barrier free environment therefore is concerned with the entitlement promotion of the disabled. Other programmes such as job reservations, free travel on public transport, concessions for aids and appliances, etc. are concerned with entitlement protection. It is regrettable that most state policies concerning poverty alleviation amongst the disabled are policies of entitlement protection and not of entitlement promotion. It is not fortuitous, therefore, that in spite of several and concurrent measures to alleviate the conditions of the disabled their genuine empowerment is far from achieved.

There is a positive correlation between such structural inputs and incidence of poverty amongst the disabled. Available data indicates that states where such structural input from the government and the NGO is high, have fewer disabled and incidence of poverty amongst them is lower. Conversely, states where such structural inputs are low not only have larger number of the disabled but also the incidence of poverty amongst them is higher. From all this it follows that poverty amongst the disabled stems from very specific causes. With the 11th Five Year Plan on the anvil, time is now perhaps ripe to look into requirements of diverse groups and fine-tune the poverty line for working out consumption basket for these diverse groups.

Even in order to live at the basic minimum level as defined in the poverty line, the disabled require additional services, which entail additional expenditure. It is opined that the cost of these additional services that is absolutely necessary for 'enjoying' the minimum

consumption basket for the disabled should be added to the poverty line. It is contended that the cost of living for the disabled includes cost of living for the non disabled plus

1. -Cost of requisite assistive devices.
2. Cost of converting living areas into non-handicapping environment.
3. Cost of modifications in gadgets/tools/equipment/appliances.
4. Cost of attendant.
5. Cost of medical intervention, Counselling,
6. Cost of training of disabled, their caregivers and even rehabilitation workers.
7. Costs for acquiring disability certificate, awareness generation etc.

While inclusion of the above factors in calculating poverty line might be the first step in understanding the extent and causes of poverty amongst the disabled, eradication of poverty will require certain positive policy measuers. It is thus imperative that a disability perspective is incorporated in the government's policies, especially in the forthcoming 11th Five Year Plan. The Government of India has already decided to incorporate a gender dimension in the plan the same logic needs to be extended in the context of the persons with disability. *"Disparities must be minimized to ensure that the minimum needs of everyone throughout the society are met. It is only when the potential of all human beings is fully realized that we can talk of true human development."* (Justice A.S. Anand at the first session of The UN Human Rights Council).

Most organizations, professionals, researchers and govern-ment bodies dealing with disability issues do recognize that the disabled need to incur additional expenditure on services and facilities. Many also identify the areas in which the disabled require to spend additional money (the cost of exclusion). These additional costs, however, need to be estimated more precisely across different regions, disabilities, locations etc than just stop at making qualitative statements about their prevalence. In India, these costs amount to any where from three days to two years income, with a mean of two months income. (Susan Erb and Barbara Harris-White, 2002)

Since, a case is being made to include the additional costs that persons with disability incur to manage routines of daily life in the poverty line criterion and in policy measures for their empowerment, it is suggested that they be estimated across different regions, disabilities, locations etc. Keeping these specificities in mind, one can present some provisional figures to get a rough idea of the costs required. These estimates are presented in the appendices and are based on the joint study of NHRC and NAB, India 2005.

Appendix 1 :Correlation between structural investments, poverty and disability.

Appendix 2 :Cost requirements for different cateogaries of Persons with Disability.

Appendix 3: Actual expenditure by the disabled from different income groups

Appendix 4 :Requirement of services and their cost by different categories of disability.

Appendix 5: Additional percentage of persons with disability who could be educated/ employed

Findings indicate that the total additional cost across disabilities, districts, gender and age groups is Rs. 15000. This broadly constitutes Rs.9000 as disability related direct cost. The remaining Rs.6000 is the wages foregone. 15-20% of this expenditure is borne by the Govt. through schemes for assistive devices, free travel etc. These estimates appear quite realistic as the research in industrialized countries has shown that the average cost of needed supports and accommodations is less than $500 per person. The cost of facilities and services may be one time fixed costs like modification in home and neighbourhood environment, a correc-tive surgery, etc or variable like the services of an attendant, therapeutic services, maintenance of assistive devices etc. The second set of costs would be those occurring after every few years like prosthetic and orthotic devices, assistive devices, Teaching Learning Materials and so on.

Gains from Inclusion and Losses due to Exclusion

Whilst recognizing that investments are required for promoting full participation and providing equal opportunities to the disabled, it is important for organizations and nations to know that there are potential economic gains of inclusion. One of the pioneer works in the area of estimation of benefits foregone by exclusion of the disabled in the economic activity has been done by Marcia Rioux, relating to Canada. An important observation by Ms. Rioux is that, *'it is not the severity of disability that explains partici-pation in the labour force. The basic explanatory variable is whether people's needs for support are met or not'*. (Marcia H. Rioux, 1998) The obvious policy fall out of this is to make attempts to overcome the obstacles and barriers to inclusion rather than letting the disabled remain excluded.

There are three broad levels at which the benefits foregone by excluding the disabled can be estimated.

1. *Loss due to occurrence of a disability while in service:*

An attempt could be made to estimate the loss in production/output due to the onset of disability while in service. This would provide an estimate on the minimum level of loss in production. In the case of Canada, the direct and indirect cost of this category of exclusion was 7% of the GDP in 1991; a similar estimation of loss of production due to disability occurring while in employment has not been regularly and precisely made in India. It may, hence, be difficult to estimate the base line loss. Some scant information collected by NSSO is available. It is disquieting to note that as per NSSO Survey 2002, in rural areas, 39% were working before the onset of disability, which may have led to loss/ change in the vocation. In 1991, 47% got inflicted with a disability while in service. However, estimation of precise monetary loss on this account may be difficult.

2. *Cost of Unemployment and non participation in economic activities:*

While there are different estimates on the percentage of people unemployed (depending mainly on the period from which employment

status is considered), it is realistic to assume that at any given point of time 5-10% of the people of the employable age are unemployed. Juxtaposed to this is the fact that as per the NSSO estimates 2002, 26% of the disabled persons were employed. This survey looked at the disabled above 5 yrs of age. The proportion of the employed was the lowest among the mentally retarded. In fact as per one estimate only 0.14% of the disabled in India have regular employment since 1990. If we take those attending educational institutions, the self employed in agriculture/non-agriculture and casual labours the percentage aggregates only to 40%. This implies that 60% of the disabled of 5 yrs and above age were either not employed or attending educational institutions.

Comparison of cost of exclusion should be made between the unemployment rate (at around 10% as per latest estimate/census estimate) amongst the non-disabled with the unemployment rate amongst the disabled roughly estimated at around 60%. The endeavour should be to ensure that the rate of unemployment amongst the disabled is not higher than the rate of unemployment amongst the non-disabled. To achieve this level another about 50 % of the employable disabled should be given employment opportunities so that they reach close to the general employment rate. As per NSSO survey 2002 of the disabled persons in India, there are about 20 million disabled. Of this roughly 50 % or a little more are estimated to be in the employable age (20-60) i.e. about 1 crore. At present only about 25% of the disabled are employed. It has been also brought out in the survey that 60% of the disabled can take care of themse1ves *(in the research however we have looked at a much larger list of ADL(ACTIVITIES OF DAILY LIVING) and we view that the simplistic approach in the NSSO surveys misses out on many activities expected of one $ age and environment)* without aids and appliances and another about 17% can carry on daily activities of life with aids and appliances. With suitable changes in the environment and providing for individual needs it is reasonable to expect that another about *50%* of 10 million, i.e. 5 million, of those in the employable age can be productively engaged. Even assuming an average wage of Rs. 2000/- per month, the disabled can contribute 2000 x 50,00,000 x 12 = Rs. 120,000 million/annum. However, if the incidence of disability is taken at 5% as brought out in

the NSSO surveys 1991 and as estimated by W.H.O. 4%, DFID 4-7%, the contribution by the disabled could be Rs.300,000 million.

3. *Cost of care givers:*

As per NSSO Survey 2002, about 17 % can take care of themselves with the help of aids and appliance, 10% have not tried aids and appliances as are not available; another 13 % cannot take care of themselves even with aids and appliances. These groups are expected to be at least partially utilizing the services of caregivers. A large proportion of caregivers can be relieved for taking up productive pursuits by providing individual and environmental needs of the disabled. It may be reasonable to assume that a minimum 40 lakh caregivers can be relieved to take up other jobs. Even if a salary of Rs. 3,000/- per month is assumed (the caregivers are expected to have picked up at least some skills during care giving) there could be an addition of Rs. 3,000 x 12 x 40 lakh = 144,000/- million.

The cost of exclusion of the disabled even in the short run is a staggering Rs. 250,000 million/annum. If however the proportion of the disabled is taken as 5% the benefits of inclusion could increase to Rs.350,000 million/annum. This in fact is the short term benefit of inclusion of the disabled through investments in home and neighbourhood environment alone. Comparing this with the additional costs needed to provide comprehensive services at Rs.160000 million, show the net benefits of inclusion of the disabled at around its Rs.90,000 million/annum.

4. *Long Term investment:*

The benefit scheme can be further increased through long term investment in training and skill development etc. along with providing barrier free environ-ment and services. The primary data collected reveals that the additional cost including the imputed wage for the caregivers and those accompanying the disabled adds up to about Rs. 15,000/annum.This corroborates well with the estimate given by Marcia Rioux that for developed countries the additional cost is less than $500

annum for the disabled and also supports the contention that the benefit stream is greater than the cost of additional services.

'In many cases for people with disabilities whatever the cost of support and additional facilities for inclusion, this is still far smaller than the cost of exclusion, particularly when the cost of exclusion include the productivity foregone'. That the cost of exclusion is far more than the cost of inclusion is evident from several micro examples. The national award winners in the category of best employers are a clear testimony to this. For e.g. *M/s* Shakthi Masala Private Ltd. has 112 disabled on its role in a total strength of 361 employees. Facilities extended to the disabled range from assistance for education, housing, marriages along with providing free therapy, medical check up, transport and other facilities. Despite the additional expenditure on facilities to the disabled the company is doing well commercially- M/s Titan Industries Ltd. employs 117 disabled. The company has taken initiatives to provide specific facilities needed by the disabled in providing an environment, which is safe and healthy- Barrier free buildings are foremost among the facilities. Another national award winner – *M/s* Annai J.K.K. Sampoorani Ammal Trust and its Associate Mills looks after the medical needs of the disabled, their educa-tion and provides aids and appliances whenever required. All this is a pointer to the fact that the disabled are able to compensate the extra costs that are needed for the additional facilities to them, through their full participation in the work and ensuring profit for the company.

Conclusion

Poverty amongst the disabled often stems from the necessary costs that they have to incur for medical facility, aids and appliances and support mechanisms to overcome access barriers in order to enjoy the minimum basket of goods and services. In India the disability related direct expenditure is on an average Rs. 15,000/ per person, the opportunity cost amounts to any where from three days to two years income, with a mean of two months income. 15-20% of this expenditure is borne by the Govt. through schemes for assistive devices, free travel etc. The additional expenditure in most cases is accounted for by the cost of

medical inter-vention, wages foregone of the care taker, obtaining a disability certificate, assistive devices, necessary barrier free environment in and around the house, extra costs in employment and education and for participation in cultural activities.

The Government of India is a signatory to international agreements and has several poverty alleviation plans aimed specifically at the disabled. These programmes however have only reinforced the cycle of dependence of the disabled. They view disability in isolation and fail to see its linkage with other forms of marginalisation. Social marginalisation and disability are related. For instance NSSO data 1991 indicates that about 40% of the disabled belong to the SC/ST community. Economic marginalisation and disablility is also related. Available data indicates that in states where structural input from the government and the NGO is high, have fewer disabled and incidence of poverty amongst them is lower. Conversely, states where structural inputs are low not only have larger number of disabled but also the incidence of poverty amongst them is higher. Given the horizontal linkages of disability with other forms of marginalization it is imperative that a disablity perspective is incorportated in the governments policies, especially in the forthcoming 11th Five Year Plan in consonence with the decision to incorportate a gender dimension. A sustained reduction in poverty generally, and among the disabled specially, can be expected only if clear measures promoting entitlements of the disabled are adopted. Absence of these measures not only deprive the disabled of their right to a life of dignity and accessibility to public and private spaces, it also results in a net loss to society because gains from including the disabled, or equivalent losses from excluding them, far outweigh expenditures incurred in making an inclusive society.

Since, a case is being made to include the additional costs that persons with disability incur to manage routines of daily life in the poverty line criterion and in policy measures for their empowerment, it is suggested that they be estimated across different regions, disabilities, locations etc.

Appendix 1

Correlation between structural investments, poverty and disability

Locale of study

In order to provide a representative sample, the present study was carried out in 4 states, namely, Karnataka, Orissa, Haryana and Rajasthan. The above-mentioned states were selected for ensuring that an all India representative sample of states is chosen based on level of SDP and NGO effort. The basic criteria were: (a) To have states where the NGO effort is significant and is matched by governmental effort. (Karnataka) (b) Where both the NGO effort was not as strong and the state has a low State Domestic Product (Rajasthan) (c) The state has high per capita SDP but the NGO effort is not as prominent as in some other states e.g. Haryana. (d) The state has low SDP but efforts are being made to promote the NGO effort. (Orrisa). (Fig 1)

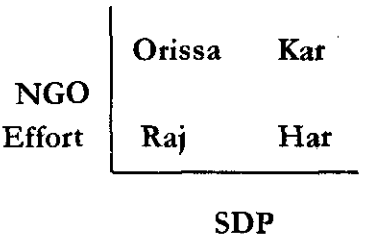

Figure 1

Orissa has highest incidence of disability among the major states, with a significant difference between incidence in rural and urban areas. Orissa is also seen, along with highest incidence of disability, one of the highest rates of illiteracy among the disabled implying that there is another vicious circle illiteracy and disability. Haryana has an incidence of disability, which is close to all India level Rajasthan and Karnataka have rates of disability well below the national average but with two subtle differences:

(a) NGOs are reportedly much more active in Karnataka than in Rajasthan.

(b)The difference in incidence rate of disability between urban and rural is much smaller in Rajasthan compared to Karnataka.

Appendix 2

Cost requirements for different cateogaries of Persons with Disability

The main findings of the Field Testing are as under. It must be pointed out at the outset that these observations are based entirely on the responses of the respondent and no moderation has been done: --

Physical Aspects:

Orthopaedically Handicapped: Along with assistive devices, surgery, therapy, modification in living environ-ment, they also needed govt. financial assistance in the form of scholarship or pension, which was not reaching them. The required modifications in tools and equipment at home were mainly lower taps and door locks, lower steps in stairs, side railings on the side wall of stairs or lower side wall of the stairs for support while climbing. Lower almirah in the kitchen was also required and the entire kitchen arrangement was needed to be at the floor level.

Hearing Impaired: The range of services needed were assistive devices, surgical intervention, financial assistance, Scholarship or pension, video signal with door bell etc. They also expressed the need for facilities for learning sign language and information and counselling for getting vocational training/jobs.

Mentally Handicapped: The category needed medical intervention, special educational services and voca-tional training, information and counseling and training of parents. As our primary data also corroborates (section) their requirements are quite at variance with other types of disabilities.

Costs Involved: Some cost estimates based on field testing of the schedules are as under:

Orthopedically handicapped:- Callipers/crutches of Rs.1500/-, surgical intervention costing around Rs 150/- per annum, cost plus maintenance of the ramps around Rs 5,000/- per annum. (Upto first floor), railing on the side wall of the stairs costing Rs 100, lowering of taps (plus maintenance) costing around Rs 100, lower almirah Rs 200 and Vehicles

costing around Rs 11,000/- per annum. The total additional cost for OH came around Rs. 7000/annum (without the cost of the vehicle).

Hearing Impaired:- Hearing aid around Rs 600/- per annum, bulb attached with door bell Rs 300/- per annum, learning sign language around Rs 6500/- per annum special educational services Rs 36,000/- per annum. While the cost of carrying on ADL (Activities of Daily Living) are not so high, it is the learning environment which is expensive.

Mentally Retarded:- Cost of medical intervention around Rs 2,500/- per annum, intonation and counseling Rs 1,500/- per annum and special educational services Rs 90,000/- per annum. For MR also, educating them is an expensive proposition. Some of the difficulties faced during field-testing include estimating the imputed wage of the attendant, determining the literacy of MR, estimating the cost of barrier free environment etc.

For VI, the costs are estimated to be similar to the cost of OH.

Based on the inputs earlier given by ALC, responses of the disabled at the terms of canvassing the schedule and the difficulties observed by researcher in responses; the schedules were modified and finalized.

Almost all the functionaries pointed out that assistive devices and barrier free home envi-ronment is required by persons with lesser degree of disability (mild and moderate *HH,* OH and MR). In the case of VB, it is the totally visually impaired that require these services. Caretaker on the other hand was needed by higher degree of disability (severe and profound). The functionaries were unanimous that medical assistance/counselling is required by almost all types and degree of disability.

In terms of the four major disabilities - it was indicated that the MR required maximum quantum of services and therefore highest additional costs and HH the minimum.

In terms of the present reach of services in the areas schemes handled by the functionaries as ex-pected the coverage range from 5-10% 10 to 80-95%. In other words while some schemes, in some pockets had almost complete coverage, others were yet to have any impact.

Appendix 3

Actual expenditure by the disabled from different income groups

Another useful observation was the expected/Actual expenditure by different income strata. The findings are summarized in the table below:-

Expected expenditure for Locomotor disability on three most important services:

Table I

		Mild	Moderate	Severe
Rich	1	5000	6000	10 000
	2	6000	4000	30,000
	3	12000	-	10,000
Middle	1	3000	6000	10 000
	2	1000	-	-
	3	5000	5000	-
Poor	1	6000		Free
	2	5000	free	10000
	3	free		-

Table II

The disabled with severe disabilities often need surgery and therapy; mildly the disabled require services like vocation, education and therapy. Many poor expect at least some services like assistive devices and modifica-tions in home environment to be provided free.

While some functionaries felt it was the mild disabled who need greater expenditure, others observed that the moderate disabled needed to spend more. It is quite disturbing to note that even poor expect an expenditure of average of Rs 15,000 annum implying that their effective income for income bracket 0-60,000/- would be Rs 15,000/annum (assuming a median income of Rs 30,000/-).

Expected /Actual expenditure for Mental Disability for three important services.

		Mild	**Moderate**	**Severe**
Rich	1	15000	3000	-
	2	3000	10000	-
	3	6000	15000	-
Middle	1	3000	3000	-
	2	20000	15000	-
	3	-	-	-
Poor	1	Free	Free	Cash support
	2	10,000	10000	-
	3	free	Free	-

Table III

The range of service for the MD category varied from providing computers, creative learning environment etc. It is the milder category of MD who appears to require the maximum support. It is indicated to be as high as Rs. 80,000/- for the mild MR belonging to rich category and about Rs 25,000/- for the middle-income brackets. Even for poor the anticipated expenditure is closed to Rs 20,000/- per annum.

Appendix 4

Requirement of services and their cost by different categories of disability

It is disquieting to note that functionaries did not indicate requirement of any services for the server MR, who are likely to stay excluded even if services are provided and lead lives of marginalization and alienation.

Expected/Actual expenditure for Visual Disability for three most important services:

		Low Vision(LVI)	Total Visual Impairment(TVI)
Rich	1	1000	3000
	2	3000	-
	3	-	-
Middle	1	1000	2000
	2	2000	-
	3	-	-
Poor	1	Free	Free
	2	Free	-
	3	-	-

Table IV

Most LVIs require assistive devices and counseling. For TVIs the expected expenditure is Rs 3,000/- and for low visioned it is Rs 3,000- Rs 4,000/- . This is true across different income strata except that the poor expect these services free.

Expected/Actual expenditure for HH for three most important services:

		Mild	Moderate	Service
Rich	1	4,000	4,000	15,000
	2	10,000	-	-
	3	-	-	-
Middle	1	4,000	4,000	-
	2	-	-	-
	3	-	-	-
Poor	1	Free	Free	1000
	2	-	-	-
	3	-	-	-

Table V

In terms of the cost and expected services, the HH as per the observations of the functionaries require minimum support. In other words, with little effort the Hearing impaired can be easily rehabilitated. One of the most expensive supports they require is vocational training/vocation. The average cost for a rich HH would be around Rs 10,000/- For a middle-income person, the expected expenditure for functional independence and rehabilitation is around Rs 5,000/- For the poor HH the additional costs would be in the range of Rs 3,000-4,000/- with many of them expecting the services free.

Appendix 5

Additional percentage of Persons with Disability who could be educated/ employed

The functionaries were also asked to indicate the additional percentage of the disabled who could be educated and/or productively employed by providing the requisite support. While the responses varied from functionaries to functionaries, a general cluster appears to be emerging, indicating the average additional percentage of the disabled who could be employed and who could get educated once the requisite services are provided. The cost is therefore on average Rs 7,500/- annum and economic benefit is around additional 40-55% getting employed and 60% getting educated.

	Orthopaedically Handicapped retarded	Hearing Impaired	Visually Impaired	Mentally
80-100	Xx			
60-79		xx	xx	
40-59	Xxx	xx	xx	x
39 and below		x	xxxx	

Table VI

The maximum percentage increase in carrying on ADL(ACTIVITIES OF DAILY LIVING) and requisite services is in OH category. It was indicated by the respondents that 50 to 90% of OH can independently undertake ADL(ACTIVITIES OF DAILY LIVING) the requisite services are provided. It was lowest among MR 0-20%. For HH and VI, the increase in percentage would be around 50%.

Additional Percentage of the disabled who can be Educated:

	Orthopaedically Handicapped retarded	Hearing Impaired	Visually Impaired	Mentally
81 and above				
61-80	Xxx	x		
41-60	Xx	xx	xxx	
21-40		x	xx	
0-20				xxxx

Table VII

Education and Requisite Services: Here again, the maximum addition to the educated category can be achieved for OH category through providing the necessary services, followed closely by HH. While for OH, the additional percentage educated could be 60-70%, for HH it would be 55-60%. The minimum additional percentage who would be educated even if all the requisite services are provided is again MR category.

Additional Percentage of the disabled who can be Employed:

	Orthopaedically Handicapped retarded	Hearing Impaired	Visually Impaired	Mentally
51 and above	xx	Xx		
31-50	xxx	x		
21-30		x	Xxxx	
11-20		x	X	
0-10				xxxx

Table VIII

Employment and Requisite Services:

The additional percentage of the disabled who can possibly be employed follows the same pattern as education but with lower percentages across all disabilities. OH 40-50%, HH 30-50%, VI 25% and MR 0-10%.

The information collected reveals the significance of providing the requisite services as with the help of facilities and services, there can be a quantum jump in the disabled carrying on ADL(ACTIVITIES OF DAILY LIVING) independently, getting educated and being productively employed. The percentage expected to get employment is as high as 50%. Even if we assume an avg. salary of Rs 2000 the annual income would be Rs 24000. As indicated there are about 1 crore disabled in the employable age if 50% of the disabled in employable age can be provided employment and there would be net addition of 50 lakh x 24,000= 1200 crore. The secondary data has also shown the possibility of generating about 1200 crore.

Hence, both the primary and secondary data indicate the probability of generating Rs. 1200 crore through employing the disabled. This is against an expenditure of about Rs 7500 crore (average additional expenditure x no. of the disabledin the employable age). This clearly shows the economic benefit of about Rs. 4,500 crore of providing the requisite serves.

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SENSITIZATION: KEY TO PROTECTION OF HUMAN RIGHTS

Prof.(Mrs.) S.K.Verma

"Where do ***human rights*** *begin: in small places, close to home- so close and so small that they can not be seen on a map of the world."*

Eleanor Roosevelt, 1948

Every human being is entitled to human rights as being born as a human being, regardless of the status and the place one resides. To create the culture of human rights, it is necessary that people living even in small places should be able to enjoy these rights by knowing the rights and the mechanism to implement and enforce them. The existence of protection of rights on paper alone or laying down the norms/standards of human rights means little in terms of realizing human rights on the ground. 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 human rights have to take root in the society and to flourish against all sorts of social injustice and inequality. The right to live with human dignity is the fundamental right of every individual. The close relationship between peace and human rights as well as peace and development has been well recognized by the Charter of the United Nations in its preamble and various provisions. The analysis of international human rights instruments confirms the conviction of the international community, based on the tragic experience of the Second World War that respect of human rights is at the basis of peace. Therefore the phrase, "recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" incorporated in the Universal Declaration of Human rights, 1948 has been repeated in many human rights instruments including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Declaration on the Right to Development makes the human person as the central subject of development and therefore an active participant

and beneficiary of the right to development. To make the human being as central to all state actions, action/discourse needs to be initiated at all levels of policy making and actions.

Despite much progress to register at the norm-creating level by the United Nations since its inception through its numerous bodies and the law created by its Members to give shape to these norms at the national levels, so far these rights have remained a distant dream for majority of the populace of the world. Reasons are not difficult to fathom for this state of affair and steps need to be taken to make them a reality for the people for whom they are created. It is noticeable that violation in one part of the world is threat to whole humanity, just like poverty is a threat to prosperity any where in a society.

The different human rights instruments put certain duties on the States to take steps (including legislative, administrative and executive) to make these rights a reality for its nationals. For example, the International Covenant on Civil and Political Rights puts negative duties on the State not to violate the rights of the individual which are stated therein. Similarly, the International Covenant on Economic, Social and Cultural Rights requires the State to take positive steps towards the realization of these rights. Though most of the United Nations members are parties to these treaties, the realization of the rights is in a dismal state. The rights exist mainly on paper. The persons for whom they are meant are most of the time ignorant of their rights. On the other hand, the state agencies or other non-governmental bodies, who are custodians and required to enforce these rights are not adequately sensitized about their role and the rights as such. To make these rights a reality and make the human rights treaties/laws to work in their true spirit, it is necessary that whereas the state agencies and other non-governmental agencies should be properly sensitized, the beneficiaries of those rights should be made aware about their rights. Sensitization of the key governmental and non-governmental agencies entrusted with the task of enforcing and protecting human rights and creating right kind of awareness among the subjects of these rights are necessary to create a culture of human rights in the society for its prosperity and well-being. Thus the action plan to make human rights a reality for every

member of society requires two categories of activities: a) for raising mass awareness about human rights, and b) to sensitize the specific target groups, having important role in the enforcement and realization of these rights, viz. police, security forces, judicial officers, media and others through right kind of education and training in human rights.

The long-term objective of these activities should be to assist communities together to realize their rights, by empowering people at the local level to be pro-active in ensuring greater respect for human rights and to strengthen partnership between local human rights constituencies and international bodies working in this area.The government needs to mainstream human rights into its strategy in education and other policy matters, as education holds the key to awareness. Human rights need a 'bottom-up' approach by emphasizing the role which a civil society plays in the promotion and protection of human rights.

In 1998, on the 50th anniversary of Universal Declaration of Human Rights, the then United Nations High Commissioner for Human Rights initiated the ACT Project (Assisting Communities Together), whose motto was to "Bringing Human Rights Close to Home" by creating right kind of awareness for human rights. Because informing about human rights is the basis for the protection of those rights, there should be actions on the part of concerned authorities to support activities targeted to the general public, such as creation of information centres on human rights, special TV programmes, arranging street plays etc. It is the vulnerable sections of society, such as children, women, tribals, poor and deprived sections of society, patients with HIV/AIDS who suffer a lot with little knowledge of their rights and no one to help them. It is true that "nurturing citizenship" is equally important.Special measures/actions for different target groups are required to create right kind of awareness.

Translating the Universal Declaration on Human Rights into Local Languages

Many people cannot access basic information on human rights; they live in remote areas and speak local language. This will enable several

thousands of persons who probably will never have heard about human rights to become aware of their basic rights.Providing basic information about these rights in local language will go a long way, at least in the literate part of the local population.

Informing on Children's Rights

Recently the Government has banned child labour (employing children below 14 years is banned from October 10, 2006), in any kind of employment (including household), but for its proper implementation, the necessary awareness needs to be raised among the people, including NGOs, beside drawing a feasible scheme of their education and rehabilitation. Because of their vulnerability, children need special care and assistance. The United Nations adopted the Convention on the Rights of the Child in 1989 and India is a party to it.

Informing on Women's Rights

Like children, women are particularly vulnerable due to their status in many societies. Even though they comprise more than half of the population of the world, they are the deprived lot and 'equality of rights' has remained a distant dream in their case because of gender. The United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women in 1979; the Convention entered into force in 1981 and India is a party to it. But the discrimination between sexes is too evident in practice despite the legal equality in key areas. All over the world, the expansion of the awareness of women's rights takes place first in communities (villages, schools, community activities, etc.).

The awareness programmes on women's rights targeting the communities will create the right impact.

The Rights of the Tribals

With the increasing industrialization and urbanization, tribals are facing displacement and denial of their traditional rights. Their displacement is not only affecting them alone but has serious implications for the biodiversity and environment. It is being stated that world biodiversity crisis is matched by a 'world cultural diversity' crisis. Indigenous peoples live predominantly in areas of high biodiversity while

at the same time comprise 95 percent of the cultural diversity in the world.[1] In 1994, the UN Draft Declaration on the Rights of the Indigenous Peoples, drafted by the UN Sub-Commission on the Promotion and Protection of Rights of Indigenous Peoples, has outlined the human rights of indigenous people. But these rights must be translated into action by making provisions for them to understand these rights and setting a mechanism to realize them. They must understand the meaning of ownership of cultural property and their identity. A proper mode of conveying these rights need to be devised as well as the authorities must be sensitized about their rights.

Role of Media in Sensitization/Promotion of Human Rights

The media has been playing a crucial role in the promotion and protection of human rights in India. It has been the backbone of the human rights movement. Courageous reporting, persistence and commitment have provided vital support to those whose rights have been violated, to the defenders of human rights and to judges committed to justice and the rule of law. It has been in the forefront in highlighting the cases of violation of human rights and acted as a watchdog for the protection of human rights as well as generating public awareness. The role of the media, print as well as audio-visual, acquires tremendous significance in promotion of human rights. The common man is in a position to understand human rights through press reports and audio-visual media. Through these modes, masses are made aware of their rights and also familiar with the institutions where they can approach for redress in case of violation of their human rights. The media has tremendous power to mould the public opinion against age-old societal wrongs like gender discrimination, child abuse, untouchability, manual scavenging, and many rights of an individual, like right to food, right to health, right to education, right to work, etc. It can also arouse society's indignation against the violations of these rights, viz., child labour, child prostitution and child marriage.

[1] A.Gray, *Between the Spice of Life and the Melting Pot: Biodiversity Conservation and its Impact on Indigenous Peoples*. IWGIA Document 70 (1991, Copenhagen).

The courts (Supreme Court and high courts) as well as the National Human Rights Commission (NHRC) have often taken *suo moto* cognizance of press reports in several cases of human rights violations and initiated proceedings against the violators. Interestingly, the first case taken up by the NHRC, immediately after its establishment, was based on the media report related to the unprovoked firing by the Border Security Force personnel on armed civilians in Bijbehra, Jammu and Kashmir.[2]

However, media has exposed itself to criticism for its over-indulgence. More recent trends in the electronic media has become a cause of concern where the lines between fact and fiction, reporting and storytelling often get blurred, to the detriment of those whose rights are being violated.The Supreme Court, while disposing off a case of contempt of court against the editors of two newspapers, observed:

> It is the duty of the a true and responsible journalist to inform the people with accurate and impartial presentation of news and his views after dispassionate evaluation of the facts and information received by him and to be published as a news item.

The editor of a newspaper or a journal has a greater responsibility to guard against untruthful news and its publication. The Court further observed that "If the newspaper publishes what is improper, mischievously false or illegal and abuses its liberty, it must be punished by a court of law." While a free and healthy press is indispensable to the functioning of a true democracy, the freedom of press is subject to reasonable restrictions.[3]

Since a sizable population in India is illiterate, to which print media will have little relevance, it is the electronic media, like radio and television, which will be of immense importance to creating right kind of awareness and a desired level of sensitization towards human rights. In *D.K.Basu* v. *State of Bengal*[4], the Supreme Court came out very clearly

[2] On November 1, 1993, the Commission took *suo moto* cognizance of the incident, *Annual Report, 1993-94*, pp 11-12.

[3] Article 19(2) of the Constitution

[4] (1997) 1 SSC 416

against the custodial violence and directed the rights of the persons taken in custody must be clearly displayed at each police station and these rights should be widely publicized through the media, like radio, television and press. The court stated[5]:

> The *requirements* [as mentioned] shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Territory and it shall be their obligation to circulate the same to every police station under their charge and get the same notified at every police station at a conspicuous place. It would also be useful and serve larger interest to broadcast the *requirements* on All India Radio beside being shown on the national Network of Doordarshan and by publishing and distributing pamphlets in the local language containing these requirements for information of the general public. Creating awareness about the rights of the arrestee would be a step in the right direction to combat the evil of custodial crime and bring in transparency and accountability.

Sensitization of Judicial Officers and Public Authorities

Role of the Judiciary in Protection/Promotion of Human Rights

The role of the judiciary in the protection/promotion of the human rights is seminal. For human rights to become a reality, there should exist judiciary that is sensitive to the common persons needs and its limitations to access the justice. The creativity and courage of the judicial officers in finding ways to talk about and enforce human rights standards is significant in realizing human rights on the ground. This is not so easy, given the power of the *status quo*. The Constitution of India, while talks about the *"JUSTICE, social, economic and political" and "EQUALITY of status and opportunity"* in the Preamble, it is only through the help of the judiciary that these pious objectives of the Constitution could be realized. The very movement of the Public Interest Litigation, started by the Supreme Court, is to realize these goals by interpreting the Fundamental rights provisions of the Constitution in such a manner that the deprived sections of society get their rights and their violations

[5] *Id.* at p. 437 (Para. 39)

be redressed. In *People's Union for Democratic Rights v. Union of India*[6], Justice Bhagwati stated:

> The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as upholders of the established order and the *status qua*. They must be sensitized to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realization must come to them that social justice is the signature tune of our Constitution to enforce the basic human rights of the poor and vulnerable section of the community and actively help in the realization of the constitutional goals... Public Interest Litigation is brought before the Court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of a large number of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed.

In the beginning, the PIL was primarily focusing on human rights, particularly of the deprived sections of the society, but now it is invoked also for "collective rights" like environment, eradication of corruption in public offices, etc even though human rights have gradually come under the domain of the National Human Rights Commission (NHRC) to which the judiciary is giving a helping hand.[7]

Judiciary is the guardian of the conscience of the people and it should strike a balance to fulfil and achieve the aspiration of individuals and requirement of the community. Sensitization of the judiciary should aim to put the needs of the victims and witnesses in the forefront which should ensure that the victims and the witnesses see justice done more often and more quickly while being treated with respect and dignity that

[6] AIR 1982 SC 1473 at p. 1478

[7] S.P. Sathe, *Judicial Activism in India*, 18 *et al* (OUP, Delhi: 2002); S.K. Verma, "Public Interest Litigation", in Sakumoto, Kobayashi, Imaizumi (ed.) *Law, Development and Socio-Economic Changes in Asia*, Ch. 8, at p. 205.

they deserve as a human being. Judiciary should become sensitive to the common person's needs and which is not hampered in any manner in its delivery of justice. Whether the gap between the laws on the statute book and their implementation is because of the non-implementation of laws or the gaps exist in the law or it is the non-sensitization of the judiciary to these rights is the right reason for the non-realization of the rights needs to be identified. These questions need to be revisited in the light of the constitutional mandate, so that the law becomes meaningful and relevant to the under-privileged sections of the society. Once the reasons have been identified for the non-implementation of human rights, they must be addressed through creating proper awareness among the judiciary by right kind of training in these rights.

After a person is subjected to his/her human rights violation, it is the judiciary one looks up to protect its rights. For both the victim and the accused, the judicial officers are the first independent forum to decide about the content and execution of these rights. Hence their sensitization of the human rights is a *sine qua non* to create a culture of respect for human rights. A large number of the members of the judicial officers have been presiding over the Munsif, Magistrate, Metropolitan courts who are at the cutting edge of the criminal justice system, as most of the people, common citizen as an accused or victim goes first go to the trial courts, and not to the high courts or the Supreme Court. In a human rights violation case, judicial officers at the district level are in touch with the public and play a vital role in protecting the human rights of the people. People from various sections suffer on account of lack of legal knowledge. It is the responsibility of the judicial officers to come to the rescue of such people.

Even though the role of judiciary is changing from protecting the vested interests to uphold the rights of the vulnerable and marginalized sections of the society, who do not have means to seek the redressal of their rights but despite many welfare legislations for the weaker sections of the society, these legislations have not been effectively implemented, because of the ignorance of the judicial officers about the rights of the victims. Further, these vulnerable sections are many times unable to get access to the judicial mechanism, and are not heard

by the executives to get redressal for their grievances. The judicial officers must be sensitized about their role in promoting and protecting human rights and fundamental rights under the Constitution; to engender a debate on the protection of fundamental rights, so as to create a culture of human rights; to sensitize them the reasons for people's inability to get adequate protection from the judiciary; and lastly to understand the constraints of the system which hamper the judiciary from performing its role satisfactorily and discussing methods in which they can be overcome.

Police and Law Enforcement Officers

Along with the judiciary, the sensitization of the police and armed forces is important. The police is generally required to be in constant touch with the public, who approaches them in cases of violation of human rights. While dealing with the violators and the victims of these violations, the police officers are under onerous duty to act in consonance with human rights, as required by the Constitution and the law of the land. After a violation occurs, the victim, in the case of civil and political rights, approaches to the police personnel, who should be well informed about the rights of the victim as well as of the accused. Similarly, in meeting the challenges of terrorism, it must be remembered that state terrorism is no answer to combat terrorism. Police force must meet the challenges of terrorism with innovative ideas and approach and not through "third-degree methods". Same logic applies for the defence forces while fighting insurgency and terrorism.

Non-Governmental Organizations

NGOs are active in nearly every sphere of international human rights. They have advocated and assisted in the drafting of international human rights norms in multilateral treaties and other instruments, have assisted inter-governmental organizations and governments in the implementation of human rights norms. At the national level they have played a pivotal role in highlighting the violation of human rights and getting redress for the human rights victims. They have done a significant work in the field of child welfare, environment, women rights, bonded labour, old age care, health, rights of the disabled and rehabilitation of other deprived sections of society. On many occasions they have been

instrumental in highlighting the conditions of the prisoners and under-trials by writing letters to the prison officials, judges and various government officers of the State involved. They not only monitor human rights violations but also help in the rehabilitation of the victims and promotion of the implementation of the human rights. Even though there are number of NGOs working in this area, but there has been a lack of coordination in their activities in terms of their fields, territorial areas and target groups of their activities, with the result that many times they do not leave desired impact.

The role of NGOs in protection and creating right kind of sensitization is seminal. There are several instances where NGOs have first reported the violation of human rights to appropriate authorities. The NHRC has taken action on several human rights violations cases reported by the local NGOs from different parts of the country. The *Chakma refugees'* case is in point where the NHRC approached the Supreme Court after receiving a complaint from a NGO – *the People's Union for Civil Liberties.* It is a sacred duty of NGOs to educate the local masses about their rights and report the cases of violations of human rights to the notice of appropriate authorities.

The Way Ahead

In order to make the human rights a reality for all sections of society without any discrimination of whatsoever, it is necessary that steps should be taken to sensitize the authorities who are the protector of those rights and who are expected to play their designated role, viz., the civil servants, judicial officers, police, para-military forces etc. to change their mind-set and be made aware of their duties in protecting and enforcing the human rights. For this education of human rights at all levels will be very significant, starting from the school-level. Youths and educators should be trained to contribute constructively towards the protection of human rights and acquire necessary skills and professional knowledge in their sphere of work. This requires properly structured courses that are carried out effectively to create salutary impact to improve the quality of response of the concerned persons in a given human rights situation and human rights culture.

The enforcement agencies, like judiciary, police and armed forces should be exposed to discussions and training courses on human rights through seminars/symposia/collogiums which should be organized on a regular basis by these agencies.

The general public should be made aware of these rights as well as a part of "nurturing citizenship" on human rights. Programmes on legal literacy should be organized, and in simple language the basic human rights of a person should be told. To spread the information in every corner of the country, the media – print and electronic, can play a vital role. NGOs have also their role clearly cut-out in this endeavour.

Lastly, to further these activities, the NHRC can play a pivotal role by moving the government agencies to undertake the training and education programmes in a right earnst.

IMPORTANT STATEMENTS/DECISIONS/ OPINIONS OF THE COMMISSION

1. A Review of the Achievements of the NHRC (1993-2006)*

— Dr. Justice Shivaraj V. Patil

Dr. Mohamed El Said El Dakkak, Member, National Council for Human Rights, Egypt, our Chief Guest for the Foundation Day function; Dr. Justice A.S. Anand, Chairperson of the Commission; Justice Ranganath Misraji, former first Chairperson of the Commission and esteemed former Members of the Commission Ms. Justice M.Fathima Beevi, Dr. Justice V.S. Malimath, Dr. Justice K. Ramaswamy, Shri Sudarshan Agarwal, His Excellency Governor of Uttaranchal, Shri Virendra Dayal and Smt. Justice Sujata V. Manohar, Justice S. Ratnavel Pandian, Justice Wadhwa, Justice R.S. Sodhi and Justice R.C. Jain, former Secretary Generals, Director Generals, Registrar Generals, Joint Secretaries, chairpersons and members of core groups and experts, we value your gracious presence, present Members of the Commission; Distinguished Guests; people from the Media; Officers and Staff of the Commission; Ladies and Gentlemen.

It is a privilege to speak on this occasion because it is for the first time that the National Human Rights Commission is celebrating its Foundation Day as such ever since it was constituted on 12th of October 1993. The Commission has today completed 13 years of its meaningful active existence. In these 13 years, under the able guidance of successive Chairpersons and the support of the Members, it has relentlessly endeavoured to provide better protection and promotion of human rights true to the letter and spirit of the Protection of Human Rights Act, 1993. Though 13 years is not a very long time in the life of an institution, but good enough to introspect and chronicle the journey taken by it so far. This is also time to acknowledge, appreciate and

* Speech delivered on the NHRC Foundation Day function held on October 12th, 2006

express gratitude to everyone associated with the Commission for their contribution. The first Chairperson of the Commission Shri Ranganath Misraji's efforts in establishment of the Commission relating to acquiring building, getting staff and their welfare, also securing necessary finance for successful functioning of the Commission and laying sound foundation for culture of human rights are laudable. Subsequent Chairpersons Hon'ble Justice M.N. Venkatachaliah and Hon'ble Justice J.S. Verma continued the work of the Commission relating to various issues of Human Rights and made significant contribution with the concern and cooperation of the Members. The office of the Commission was shifted on 1.1.2005 from Sardar Patel Bhawan to Faridkot House, an independent and spacious building. The Commission is expected to have its own building 'Manavadhikar Bhavan' at INA, New Delhi at the estimated cost of around Rs. 18 crores. Possibly, the office of the Commission may move from the present premises to Manavadhikar Bhavan within 2-3 years. The strength of the staff of the Commission has increased from 44 to 343. The present Chairperson and the Members are continuing their efforts for better protection of Human Rights. The work of the Commission is continuing, cooperative, collective and cumulative as a national institution. For want of time I am not able to give details of contribution made by each individual but it is on record of the Commission. During this period, several significant steps have been taken and proceedings concluded in important matters like Punjab Mass Cremation case and issues relating to KBK districts of Orissa. The contribution of the present Chairperson particularly at the international level – be it in the APF or ICC or in the U.N. Human Rights Commission – has been well-recognised.

India was elected as the Member of New Human Rights Council, which held its first session in Geneva in June this year. It is noteworthy to mention that NHRC India was the only NHRI, which addressed the first session of the Human Rights Council. While addressing the Council the Chairperson NHRC had called for a paradigm shift from human development as seen in terms of economic development to human development as a basic human right.

The Chairperson of the Indian Commission has been nominated by the APF to be its spokesperson to articulate the views on the issue of participation NHRIs in the HRC.

In the past, the Chairpersons of the Commission chaired the International Coordinating Committee from 1996 to 2000.

National Human Rights Commission is nominated as Member to ICC in August this year at the APF Annual Meeting held at Suva, Fiji.

It is indeed a matter of pride that the International Coordinating Committee (ICC) of NHRIs appreciating and recognizing the role being played by NHRC of India in the area of disability rights unanimously nominated it to the U.N. Adhoc Committee as its representative for drafting the convention. Distinguishedly abled Ms. Anuradha Mohit, our Special Rapporteur was chosen to provide technical assistance as representative of the ICC and Asia Pacific Forum, to the Ad-hoc Committee for drafting the Convention. It is indeed a privilege for the Commission. The Convention has now been drafted by the Ad-hoc Committee.

The National Human Rights Commission of India (NHRC) was set up on 12 October, 1993. The Commission is an autonomous institution both functionally and financially with a wide mandate for better protection of Human Rights. Shri Virendra Dayal, former Member of the Commission in the Article "Evolution of the National Human Rights Commission, 1993-2002: A Decennial Review" published in the journal of the Commission Volume 1, 2002 has given a critical analysis of the statute, structure and functioning of the Commission, the work done and the shortcomings. I may add, at the inception of the Commission many who strongly believed in the promotion and protection of Human Rights, looking provisions of the Act, felt that it would be a 'toothless tiger'. No doubt, merely going by the provisions of the Act it may appear so. But a positive look at the provisions, the functioning, performance and impact created by the Commission during the last 13 years show that the Commission has a strong denture sufficient to bite, in the words of our Chairperson). The

independence of the Commission is guaranteed by the provisions contained in the statute relating to its composition, method of appointment of the Chairperson and Members and the clearly specified terms and conditions of office of the Chairperson and Members and the stringent provisions relating to their removal. The very functioning of the Commission all these years independently without hindrance supports the position.

From 12th October, 1993 till the end of September, 2006 the Commission received 6,37,009 complaints. In the first year of its establishment it received 496 complaints for redressal of the grievances made therein. However in the last three years, the Commission has been receiving on an average 6000 complaints per month i.e. between 70,000 to 75,000 complaints per year. During the year 2005-06, the Commission received 74,444 complaints. Against this, the Commission disposed of 80,923 complaints which included the complaints carried forward from earlier years. The complaints received cover a broad spectrum of Human Rights violation including custodial deaths, custodial torture – other police excesses, bonded labour issues, exploitation of women and children, exploitation of SC/STs, Human Rights violations due to natural calamities such as cyclones, earthquakes etc., and starvation deaths due to deprivation, denial of medical care as well as death due to electrocution etc.

During the last 13 years, the Commission has recommended for payment of interim relief to the extent of Rs.10,44,97,634/- to be paid in 716 cases, recommended disciplinary action in 223 cases and prosecution in 74 cases against the public servants who were prima facie found responsible for their acts of omission and commission resulting in violation of Human Rights of the people. Added to this, the Commission has also recommended a total of Rs. 23,24,25,000/- to be paid to the next of the kin of 1245 deceased in the matter of Punjab Mass Cremation case.

The enormous increase in the number of complaints indicates the awareness of Human Rights among the people and the confidence

people have in the Commission. However receiving of more and more complaints of violation of Human Rights may not be a happy situation.

The Commission has evolved a Complaints Management System (CMIS) which has been functioning reasonably well. The National Human Rights Commission in Nepal and National Centre for Human Rights in Jordan with the assistance of officers of this Commission have adopted our system.

I am happy to recall that our three former Members Justice M.Fathima Beevi, Justice S.S. Kang and Shri Sudarshan Agarwal having done excellent work in the Commission went as their Excellencies, the Governors of three States in the country. Those States have the benefit of their experience and guidance to serve the cause of Human Rights.

Credit for the modest amount of success of the Commission also goes to our Special Rapporteurs, senior officers, staff, Chairperson and Members of core group and experts for their able advice and assistance. The Commission places on records their services and thank them. Our Special Rapporteurs S/Shri Chaman Lal, K.R.Venugopal, S.V.M.Tripathi and Ms. Anuradha Mohit, are no more with the Commission but their valuable contribution is continuing. A special mention is to be made here to Shri Chaman Lal. The Commission could not succeed pursuing him to continue to assist, having regard to his commitment and excellent service record. Some persons need institutions after retirement and some institutions need retired persons. Shri Chaman Lal belongs to latter category.

Mainly and broadly the concerns of the Commission are handling complaints, dealing with civil and political rights and economic, social, cultural rights and issues relating to good governance and systematic reforms which are essential for the better protection of Human Rights and the matters connected therewith.

Civil and Political Rights

In its initial years, the Commission's focus was on protecting and promoting civil and political rights of the people. As early as 14

December 1993, the Commission instructed all Chief Secretaries to ensure that all cases of custodial death and rape be reported to it within 24 hours of occurrence, failing which an adverse inference would be drawn by the Commission. Thereafter, on 10 August 1995, went a step further, whereby the Chief Ministers were requested to ensure that all post-mortem examinations of deaths in custody be videographed. On 27 March 1997, Chief Ministers were additionally requested to adopt a Model Autopsy Form, prepared by the Commission. Further, comprehensive guidelines were sent to Chief Ministers on 27 March 1997 in respect of the manner in which encounters should be investigated and reported. On 22 November 2000, Chief Ministers were sent a letter providing detailed guidelines on the subject of arrest and detention in view of well known D.K.Basu case.

Disability

The Commission is deeply concerned about the rights of the persons with Disability. In 2003 the Commission launched a project in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi National Open University (IGNOU) to orient legal practitioners, academics, activists with domestic and international law, encouraging its creative application for better protection and promotion of the rights of the persons with disability. Under this project three key areas were identified, namely :-

a) A curriculum design
b) Training and reference material
c) Trainers to teach Human Rights, disability and law course in a stand-alone mode or as part of formal and non-formal courses in law and human rights.

Besides this under this project in 2004-2005 a training of trainers programme at NLSIU, Bangalore, National Wokshop at NALSAR and five Outreach programmes were organized.

These programmes culminated in a National Conference on Disability held on 23 June 2005 at New Delhi. Vice Chancellors of Universities, Union Secretaries, State Welfare Secretaries, State Disability Commissioners, NGOs, representative from NCERT,NCTE, RCI and

other apex institutions attended the conference. The recommendations of the National Conference on Disabilities were sent to Central Govt. State Governments, Union Territories and concerned.

The Commission on the complaint of non-availability of text books in Braille for blind students, took initiative and necessary steps. On 8th April 2005 Hon'ble Chairperson addressed letters to Chief Minister of all States requesting them to take steps to print books in Braille and work on proper distribution system so that the books prescribed by the State Board are available to visually challenged at the beginning of each academic session.

The Commission took up the issue of 'Sign Language' on 22.5.2003 on the representation of the Delhi Association of Deaf. After few meetings with the help of Special Rapporteurs and potential partners, a project was prepared. In the meeting held on 26.5.2006 in the Commission, it was informed that Ministry of Social Justice and Empowerment has approved an amount of Rs. 24 lakhs for this project known as "Common Sign Language for Deaf Children". Jawaharlal Nehru University will develop a technical vocabulary of sign language by the end of 2006.

On coming to know that when disabled persons are produced in the Court, they are made to remove their shoes which cause serious difficulty to them. The Chairperson vide letter 25th February 2005 communicated to all Chief Justices of High Courts to take necessary to prevent inconvenience caused due to this practice to the disabled.

Till date we have received responses from 10 High Courts.

Rights of Women

Pursuant to the request of the United Nations High Commissioner for Human Rights the Commission, in 2001, designated one of its Members Mrs Justice Sujata V.Manohar to serve as a Focal Point on Human Rights of Women including Trafficking. To create awareness, the Focal Point brought out an Information Kit on Trafficking in Women and Children with able and untiring assistance of Dr.Savita Bhakry our S.R.O. Subsequently, in order to create an authentic database to deal with the problem in all its dimensions, it undertook an Action

Research on Trafficking in Women and Children in India along with the UNIFEM and the Institute of Social Sciences based at New Delhi. Based on the study, research and recommendations a Plan of Action to Prevent and End Trafficking in Women and Children in India has been evolved by the Commission recently and disseminated to all concerned across the country.

The Commission has been continuously sensitising the field functionaries and civil society on these issues. A network of Nodal Officers, two in each State – one from the police department and the other from the social welfare department, has also been created to effectively deal with the problem of trafficking.

Sexual harassment of women at the work place and in trains is another area that has engrossed the attention of the Commission ever since the Focal Point on Human Rights of Women was constituted in 2001. It is with the intervention of the Commission that the role of the Complaints Committee prescribed in Vishaka Guidelines has been redefined. Complaints Committees are now deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee shall be deemed to be an inquiry report under those Rules.

Domestic violence is another issue which violates the dignity of women. To assess the ground realities, two research projects were undertaken by the Commission in this area. The Commission also examined the provisions of the Protection from Domestic Violence Bill 2002 along with the report containing the recommendations of the Standing Committee and forwarded its detailed suggestions to the Ministry of Women and Child Development. The Commission was happy to note that some of its suggestions were incorporated in the Protection of Women from Domestic Violence Act, 2005.

Rights of Children

Gabriel Mistral, the Nobel Laureate said –

> *"We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation*

of life. Many of the things we need can wait. The child cannot; right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer 'tomorrow'. His name is 'today'."

The 'rights of children', is another area that has drawn the attention of the Commission from the beginning. The Commission over the years focused its attention on child labour, child marriage, child trafficking and prostitution, child sexual violence, female foeticide and infanticide, child rape, HIV/AIDS afflicted children and juvenile justice.

The Commission, first and foremost, concentrated on ending the problem of child labour, especially those employed in hazardous industries. It laid emphasis on the provision of free and compulsory education for children upto the age of 14 years, and the allocation of an appropriate level of resources to achieve this objective.

The Commission made efforts to generate greater awareness and sensitivity in the District Administration and Labour Departments of concerned States.

When it came to the notice of the Commission that the children below the age of 14 years were employed as domestic servants in the homes of the Government officials, it took up the matter with the Government seeking amendment to the Government Servants (Conduct) Rules, 1964 to the effect that such employment amounted to misconduct inviting major penalty. Accordingly, the Conduct Rules were amended.

Last week, Ministry of Labour, Govt. of India announced that employment of children below 14 years as domestic servants in dhabas, restaurants, tea shops or any recreational centers is banned w.e.f. 10th October, 2006. Anyone employing children in these occupations is liable for punishment upto one year and / or fine. The Commission is happy in this regard as it feels that its efforts got the dividends. As a result of this, large number of children may be released. Though releasing of children from child labour is important but much more important and vital is to see that they do not relapse to the old position for lack of

support. Hence, there is an urgent and imperative need for the Governments both at the Centre and State level to have a concrete and practical policy in this regard.

Looking to the widespread persistence of child marriage in certain parts of the country, the Commission realised that the Child Marriage Restraint Act, 1929 (CMRA) should be recast. "The Prevention of Child Marriage Bill" was introduced in the Rajya Sabha on 20th of December 2004, incorporating the recommendations of the Commission. Last year, the Commission addressed the Central and the State Governments/Union Territories to organise mass-scale awareness programmes/campaigns to educate and sensitize people about the demerits of child marriages.

Sexual violence against children is another sensitive issue in this regard, the Commission took concrete measures. The NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. The Commission currently is also in the process of preparing guidelines for speedy disposal of child rape cases.

Faced with the widely prevalent misuse of sex determination tests to commit female foeticide, the Commission approached the Medical Council of India during the year 1995-96, to take a position on the ethical aspects of such tests. It also emphasised the need for undertaking a vigorous and comprehensive national campaign against female foeticide and infanticide. During the course of regional and national consultations on Public Health and Human Rights that were held during 2002-03, the Commission again took up the issue of combating female foeticide and infanticide. The Commission has maintained that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the gruesome problem of female foeticide and infanticide.

The Commission deeply concerned over the poor implementation of Juvenile Justice (Care and Protection of Children)

Act, 2000 devised a format seeking information regarding implementation of the various provisions of the Act. The Commission is in the process of suggesting measures for better implementation of the Act.

The Commission's persistent efforts proved fruitful with the Government of India ratifying, both, the Optional Protocols. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified on 30th November 2005

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified on 16 August 2005.

Abolition of Manual Scavenging

The Commission has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country. The Commission has held number of meetings with the State Governments. The last such meeting was held on 25th February, 2006 on Eradication of Manual Scavenging with the representatives of the Central and State Governments and other stakeholders. On the basis of detailed deliberations follow up action is taken.

Pursuant to the efforts of the Commission, the Prime Minister made an announcement for abolition of manual scavenging. The Planning Commission accordingly formulated a National Action Plan for Total Eradication of Manual Scavenging by the end of 2007.

Right to Health

Human dignity is central to Human Rights. Supreme Court has pronounced that right to health is covered by Article 21 of the Constitution.

The Commission has constituted a Core Group on Health so as to guide the Commission on matters relating to health. An Expert Group headed by an eminent medical specialist has also been constituted in the Commission to look into the prevailing unsatisfactory system of medical care in the country.

On 4th of March 2006 a 'Review Meeting on the Recommendations of the Core Group on Health and Public Hearing on Health' was held. On the basis of detailed deliberations follow-up action is being taken.

Health Awareness Week for the Older Persons

A health awareness week for the elderly was organised by the Commission along with an NGO working for the older persons in March 2006 in New Delhi. The weeklong initiative was an attempt to address the crucial needs of the elderly.

National Action Plan for Human Rights

The Commission has taken up the task of preparing the National Action Plan. The Commission constituted a Working Group and an Advisory Committee including representatives of various departments of the Government, NGOs and eminent lawyers to prepare a National Action Plan for Human Rights. The Working Group decided to focus on the following areas which would require a continuous dialogue and discussion before taking appropriate shape for its documentation in the body of National Action Plan for Human Rights: Human rights education; Criminal justice system - encompassing police, prosecution etc; Rights of vulnerable (women, children, bonded labour, dalits, elderly, tribals, minorities, disabled etc.); Right to food, water, health and environment; Right to social security, Globalisation and human rights.

The Working Group has recently decided to prepare draft chapters of the proposed National Action Plan for Human Rights and these chapters will be extensively discussed with the concerned ministries/ departments of the Government of India before they are finalised.

Spread of Human Rights Awareness

Ladies & gentlemen: logo of NHRC itself conveys its motto – protection of Human Rights and wishes happiness to all.

Creating Human Rights awareness is considered important and useful for better protection and promotion of Human Rights. With this in view, the Commission organized/supported several workshops,

training programmes and seminars for sensitising the stakeholders on Human Rights issues consisting of academicians, activists, NGOs, civil servants, etc. In the year 2005-06, twenty-five training programmes were conducted addressing problems of human rights and prevention of atrocities against the weaker sections, legal literacy for the women, mental health education, combating trafficking in women and children, child rights, are a few to mention.

Corruption being one of the key violators of human rights, a two-day National Conference on "Effects of Corruption on Good Governance and Human Rights" was organised in the month of May 2006. The main objective of the Conference was to explore the factors responsible for precipitating corruption in India as well as to ponder over strategies that could contain the problem of corruption in the country. This Conference was inaugurated by the President of India and the concluding address was delivered by the Chief Justice of India.

The Indian Army also organized sensitization workshop on Human Rights at Kargil on 22.5.2005 and Leh on 15.4.2005. The Commission conducted summer internship programmes from 15.5.2006 to 14.6.2006 to create awareness in Human Rights among the students of various law colleges and universities.

The Commission has so far published 49 books in English, out of them 19 are in Hindi. Besides these, it has supported other organizations to publish books. The Commission has published 6 journals also.

Right to Food

The NHRC has consistently maintained that right to food is inherent to living a life with dignity. It has also expressed that right to food includes nutrition at an appropriate level. To deliberate on the food situation in the country as well as ways and means to make the right to food a reality to the common man, the Commission reconstituted its Core Group on Right to Food which met on 13 January 2006. The Group dwelled on issues relating to food security, monitoring of existing schemes and reforms in Public Distribution System, starvation deaths/

suicides including the State's response to these occurrences, need for up-gradation of scientific and technological measures in the country and the spreading of awareness among the masses that all of them were entitled to get two square meals. It is a matter of common knowledge that wars produce hunger. But people seem to be less alive to the fact that hunger can lead to war. It is undebatable that hunger and peace cannot co-exist. In other words, while hunger rules, peace cannot prevail. All democratic institutions have onerous and great responsibility and duty to respond to the challenges, to maintain the abiding faith and continuing confidence of the society, which the society has reposed in them, because they essentially exist for the society.

International Round Table on National Institutions Implementing Economic, Social and Cultural Rights

The Commission in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized a three-day International Round Table on National Institutions Implementing Economic, Social and Cultural Rights at New Delhi from 29th November to 1st December, 2005 mainly to discuss and strengthen the role and capacity of National Institutions in protecting and promoting economic, social and cultural rights (ESCR).

Economic, Social and Cultural Rights are important part of the international Human Rights law. Although, these rights have received less attention than civil and political rights, far more serious consideration than ever before is currently being devoted to them. The distinction between the civil and political rights and Social, Cultural and Economic Rights was put to rest by the 'Vienna Declaration and Programme of Action" made at the World Conference on Human Rights on 25.6.2003 which affirms that "all Human Rights are universal, indivisible, inter-dependent and inter-related". It is plain that unless Social, Economic and Cultural Rights are made effective, civil and political rights would have no meaning for the under-privileged segments of the society.

Twenty-four National Institutions from countries in America, Africa, Europe and Asia-Pacific participated in the Round Table. A

declaration called the 'New Delhi Declaration' was adopted by the delegates at the conclusion of the Round Table.

Mental Health

Newer drugs, involvement of the family in treatment and modern methods of rehabilitation did considerably improve the quality of life of the mentally ill persons all over the world. Unfortunately, in our country even after 50 years of Independence, the mentally ill in institutional settings remained the silent sufferers. The Commission has been deeply concerned at the unsatisfactory conditions prevailing in mental hospitals in the country, many of which were functioning as custodial rather than therapeutic institutions. In the light of such problems as overcrowding, lack of basic amenities, poor medical facilities, little or no effort at improving the awareness of family members about the nature of mental illness, or of the possibilities of medication and rehabilitation, the Commission took the issue seriously which, if not redressed, would result in the continuing violation of the rights of those who need understanding and support.

The Commission continued to oversee the functioning of the Ranchi Institute of Neuro Psychiatry and Allied Sciences (RINPAS) Ranchi, the Institute of Mental Health and Hospital (IMHH) Agra and Gwalior Mansik Arogyashala (GMA) under the Supreme Court order dated 11/11/1997.

The performance these institutions have been improving ever since the NHRC started reviewing their work. The execution of all the tasks given by the Supreme Court related to improvement of hospital facilities, care of patients, development of infrastructure for their social and occupational rehabilitation, development of training, research facilities and extension of mental health sciences at community level by running satellite clinics.

The mentally ill have the fundamental / Human Right to receive quality mental health care and humane living conditions in the mental hospitals. When the precious Human Right of the mentally ill was threatened, the Commission took up the responsibility to examine the

problem and recommend appropriate remedial measures. Hence, it took up a project "Quality Assurance in Mental Health" under the guidance of Dr. Justice V. S. Malimath. The investigation and research work was assigned to the National Institute of Mental Health and Neuro Sciences, Bangalore, the premier institution on the subject. A committee was constituted under the chairmanship of Dr. S.M. Channabasavanna. That Committee did a remarkable job having taken into consideration all works. It turned out to be a landmark project.

The Commission decided to bring qualitative change and improvement in the management of all the 37 Govt. mental hospitals in the country based on the recommendations of Dr. Channabasavanna Committee. The Commission is observing the performance of these institutions through its Special Rapporteur followed by visits of the Chairperson and Members of the Commission. Because of the efforts of the Commission, there has been a marked improvement in the conditions of these hospitals and there is a shift in the approach from custody to care in relation to mentally ill persons.

The Commission has constituted Core Group on Mental Health on 31 Dec 2001 to study the problems of rehabilitation of patients who are cured and formulate an integrated programme for rehabilitation of such patients and establishment and running of half way homes. The seventh meeting of the Core Group on Mental Health was held in the Commission on 8th August 2006 to study the problems of rehabilitation of cured mental patients languishing in the mental hospitals at Ranchi, Agra and Gwalior.

Complementarity Between the Judiciary and Commission

The Act provides for the intervention of the Commission into court cases with the permission of the concerned court. The Commission has approached the courts in several cases to protect Human Rights of the Vulnerable people including in pending cases. One such latest case is 'Best Bakery Case'. The Supreme Court by its verdict dated 12.4.2004 set aside the judgment of acquittal in this case and further directed fresh investigation of the case and its retrial outside the State of Gujarat in the State of Maharashtra. The trial court at Mumbai on 21.2.2006 after

trial convicted and awarded life imprisonment to 9 out of 17 accused. The court also issued show cause notice to the witnesses who had turned hostile as to why they should not be prosecuted for perjury.

The Supreme Court reposing confidence in the Commission in number of cases, which were under its consideration, remitted them to the Commission. Some of the important remits made by the Supreme Court to the Commission are – (i) cases arising out of allegations of deaths by starvation in the "KBK" districts of Orissa; (ii) the monitoring of programmes to end bonded and child laobur in the country; (iii) the handling of allegations relating to the "mass cremation" of persons declared "unidentified" in certain districts of the Punjab and (iv) 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.

Proceedings in KBK Districts of Orissa and Punjab Mass Cremation cases were concluded on 30.8.2006 and 10.10.2006 respectively.

Such remits from the Supreme Court of India and the High Court to the NHRC have actually enhanced the prestige and credibility of the Commission. Complementarity between the judiciary and the Commission has been of great advantage in so far as the role of the Commission for protecting Human Rights is concerned. This demonstrates how the Judiciary and the Human Rights can work in coordination and in a complimentary manner with each other for protection of Human Rights.

Deeply concerned about the need to protect the Human Rights of the under-trial prisoner, the Commission moved a Criminal Writ Petition No. 1278/2004 before the High Court Delhi and prayed for quashing of the trial of Charanjit Singh who was languishing in jail since 1985 and whose condition had deteriorated despite prolonged treatment at various hospitals/ institutions. The High Court vide its order dated 4.3.2005 quashed the trial of the mentally ill prisoner. The High Court commended the initiative of the Commission and took note of promise by the Govt. of NCT of Delhi for taking care of medical need of

Charanjit Singh after quashing of the trial. Guidelines proposed by the NHRC for considering the cases of such mentally ill under-trial was accepted by the Court and suitable direction issued to the Govt. of Delhi in this regard. [Case No. 3628/30/2001-2002]

During the visit of Shri Chamal Lal, Special Rapporteur to LGB Regional Institute of Mental Health, Tezpur, Assam, he came across a undertrial Machang Lalung who was languishing in Jail / mental hospital for 54 years. Pursuant to efforts of the Commission, he was released.

Custodial Justice and Reforms

Prisoners, be they undertrials or life convicts or juvenile delinquents are primarily human beings entitled to human rights as others. The Commission has been monitoring at half-yearly intervals the situation obtaining in Central jails / district jails / sub-jails in respect of the over-crowing of prisoners, expediting their trials, their medical examination and treatment, providing proper food, proper sanitation etc.

Bonded Labour – Elimination thereof

The Commission has consistently taken up the issue of elimination of forced/bonded labour. Ever since the Supreme Court entrusted the responsibility of overseeing implementation of Bonded Labour System (Abolition) Act and monitoring the compliance of directions issued by it on 11.11.1997 in WP No. 3922/45 the Commission has initiated the following measures:

Conducting State level reviews on the pace and progress of implementation of statutory provisions as also of the directions of the apex court;

Organising sensitization workshops for DMs and other officials at the State and district levels.

Undertaking extensive field visits to review on the spot measures taken by the State Governments for identification, release and rehabilitation of freed bonded labourers.

Dalits

The Commission has been actively engaged since its inception in the protection and promotion of the human rights of Dalits. The Commission has viewed its role as that of an "Equalizer": adding its weight on behalf of the vulnerable.

In 1996 a National Workshop was organized in Chennai by the Dalit Liberation Education Trust with the help of the Peoples Union for Civil Liberties (PUCL) and the Commission. The Commission has also conducted training programmes related with Dalit Rights with different NGOs from time to time. Based on Shri K.B.Saxena's Report, the Commission has made certain recommendations to the Prime Minister, 11 Union Ministers, Deputy Chairperson, Planning Commission and Chief Ministers of all the States and Union Territories for taking effective steps as regards issue of dalits.

In the meeting on Dalit issues held in the Commission on 28.6.2006, it was resolved that for the year 2006-07 the focus would be I) Eradication of Manual Scavenging and ii) Elimination of atrocities against Dalits.

Convention Against Torture

The Commission has been requesting the Government of India to ratify the Convention against Torture and other Cruel, Inhuman Or Degrading Treatment Of Punishment 1984, which was signed by India on 14 October 1997 on the recommendation of the Commission. The Commission has been urging early ratification of the said Convention. The Government has now drafted The Convention Against Torture Bill, 2006 to ratify the Convention Against Torture. The Ministry of Home Affairs had requested the Commission to send the comments on the draft Bill. The Commission has responded on 14.7.2006 to the Government and is hopeful that the Convention will be ratified in near future.

Conclusion

Having said about the work of the Commission so far done, I must say it has miles to go to reach the goal of achieving of all Human

Rights for all. Rule of law is necessary to sustain democracy. Democratic climate is essential to uphold the rule of law. Focus of both must be human beings and Human Rights. It may not be possible to prevent violation of Human Rights or eliminate them totally but by determination and dedicated efforts with the commitment of all concerned, violation of Human Rights can be minimized. In this regard, the concerted, cooperative and collective efforts of vigilant civil society, dedicated NGOs, committed and honest law enforcing agency, pro-active judiciary and objective, sensitive and constructive media are required in respecting the Human Rights of all.

All those associated with and fighting for the cause of Human Rights should themselves basically be good human beings with courage and conviction. On seeing a charming but pious lady in a big gathering, the other ladies asked her as to what cosmetics she used for looking so charming. The reply of the pious lady was – to her eyes – pity; to lips – truth; to voice – prayer; to heart – love; to hands – charity and to figure – righteousness. These are not the cosmetics of the body but of the soul. These cosmetics are essential for the soul of both men and women to shine and serve. Now it is time to move from sermon to service. The divine message "Love all, serve all, help ever, hurt never" should be the spirit of living to serve the cause of Human Rights.

One thing that is equally and without discrimination available to everyone is Time. Time cannot be stored or restored. It is only to be used appropriately. One should budget the Time in the morning and audit it at night. Growing old is mandatory whereas growing wiser is optional. Hence, it is the time for all of us in different walks of life to exercise the option of becoming wiser to commit and contribute for the welfare and development of every one in the country without any discrimination and differentiation so that individuals develop their potentialities, contribute their maximum to build happy, healthy and strong nation. If that happens, it serves in great measure the cause of Human Rights. I thank the Chairperson for giving me this opportunity and thank you all for donating your valuable time in listening to me.

2. **Justice to the kins of wrongfully cremated more than two thousand unidentified persons - allegedly killed in encounters by Punjab Police - Grant of Rs.2.5 lakhs compensation to the kins of every identified victims - And by appointing Commissioner of the rank of High Court Judge for identification of remaining 814 unidentified bodies.**

The Supreme Court took cognizance of the allegations made in the writ petitions filed before it, which in turn, drew and relied upon a press note issued on 16.1.1995 by the Human Rights Wing of the Shiromani Akali Dal under the caption "Disappear" "cremation ground". The press note alleged that a large number of human bodies had been cremated by the Punjab Police after labelling them "unidentified". The Supreme Court was disturbed by the gravity of allegations. It ordered an investigation by the CBI. Accordingly, the CBI, after completing its enquiry, submitted its fifth and final report in the Supreme Court on 9 December 1996. The Supreme Court said that the reports disclosed "flagrant violation of human rights on a mass scale". It referred the matter to the National Human Rights Commission observing, "Without going into the matter any further, we leave the whole matter to be dealt with by the Commission". Concluding, the Supreme Court in its order dated 12th December 1996, said:

> "We request the Commission through its Chairman to have the matter examined in accordance with law and determine all the issues which are raised before the Commission by the learned counsel for the parties. Copies of the order dated November 15, 1995 and all subsequent orders passed by this Court alongwith the copies of all the CBI reports in sealed covers be sent to the Commission by the Registry.
>
> Since the matter is going to be examined by the Commission at the request of this Court, any compensation awarded by the Commission shall be binding and payable."

While proceeding in the matter, the Commission noted that the nature and content of the idea of compensation in such cases today is that the public law remedies are expanded and include award of compensation for violation of Human Rights. Quoting Neelabati Behera and D.K. Basu's judgments of the Hon'ble Supreme Court, it observed that these decisions lay down the broad parameters of this emerging concept of damages in public law as part of the constitutional regime. There are also guidelines as to the nature and content of the idea of compensation in public law, its distinctiveness from the private-law remedies and of component elements in its quantification. The Commission noted that the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, which the Government of India has recently signified its intention to ratify, has this requirement in its Article 14(I):

> "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible".

Tracing the history of claims for damages for violation of Human Rights, the Commission noted that historically cases involving claims for damages for violation of International Human Rights came to be litigated in the US Courts in the last 25 years with increasing frequency. Over approximately the same period, the Supreme Court of India did pioneering judicial work for the development of Public-law standards for constitutional remedies for violation of Fundamental Rights. In one of the earlier American cases Viz., Filartiga Vs. Pena-Irala it was held that "Torture constituted a violation of a customary international law and enforceable pre-se in the national Courts". The Commission observed that in India great strides have since been made in the field of evolving legal standards for remedial, reparatory, punitive and exemplary damages for violation of human rights. In a recent judgment of a far reaching significance that will shape the future in D.K. Basu Vs. State of West Bengal, the Supreme Court said:

> "Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation".

The Commission noted that the said judgment set a humane judicial regime governing treatment of custodial prisoners and suspects and, what is more, attached for their violation the pain of committal in contempt for their violations. This is the farthest step taken in any jurisdiction anywhere prescribing such stern sanctions for violation of human rights. The Supreme Court has laid down that principles for award of compensation by the courts as a part of the public law regime which will supplement the inadequacies of the statutory law. There is, thus, an enforceable right to compensation recognised in the public law regime in India.

After hearing elaborate arguments of the parties to the scope and ambit of the subject matter before the Commission, its jurisdiction, the concept and content of the idea of "compensation" and various other issues, the Commission arrayed Ministry of Home Affairs also as a party and the Commission disposed off objections regarding jurisdiction of the Commission by quoting the following order of the Supreme Court:

> "The matter relating to 585 dead bodies (which were fully identified), 274 partially identified and 1238 unidentified dead bodies, has already been referred to the Commission which has rightly held itself to be a body sui generis in the instant case".

After the Commission's various orders on the question of identification of dead bodies and scrutiny of claims, the State Government of Punjab started to prepare statements of claims which had reached finality or which were pending determination. The counsel appearing for State of Punjab stated before the Commission that after the popular Government had come into power the previous practice of paying the compensation of Rs.50,000/- was enhanced to Rs.1 lakh and is being paid. The State Government concedes for the payment of Rs.1 lakh in each of the case but the counsel contended that it is stand of the State Government that the entire burden require to be borne by the Union of India as the Union of India is under Constitutional obligation to support the State Government in preventing internal disturbance created in the State of Punjab at the behest of the neighbouring country Pakistan and therefore an application has already been filed before the Commission which requires to be determined. On this question, the Commission observed as under:

> "We would like to reiterate that this dispute between the Government of India and the State Government on the question of liability for payment of compensation would better be left open for decision in an appropriate case and in the present case we do hope even now that some workable solution is found between the two Governments themselves".

The Commission observed that human rights of citizens are non-negotiable and non-derrogable. No compromise with violations of the same is permissible in any civilized society. These rights recognize the essential worth of a human being and acknowledge the dignity inhering in all human beings, irrespective of their race, sex or economical level of living. While this is a historical fact, it is also a reality that the cult of terrorism strikes at the very root of human rights of innocent people. Terrorism and human rights are natural enemies with no possibility of their co-existence. No person who supports human rights can support terrorism, which results in a grave violation of human rights of innocent citizens. It further observed that the Commission is firmly of the view that whereas terrorism must be countered effectively and strongly, no

democratic society can be permitted to chill civil liberties of the citizens while taking measures against the terrorists. 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. While fighting war against terrorism relentlessly, the State cannot be permitted to go over board and it effect declare a war on the civil liberties of people because the rationale of anti-terrorism measures is aimed at protecting human rights and democracy. Counter terrorism measures should, therefore, not undermine democratic values or subvert the rule of law.

Coming to the question of quantum of compensation to be paid to the next of kin of the deceased, the Commission observed that the quantum of compensation depends upon the circumstance of each case and there is no rule of thumb, which can be applied to all cases nor even a universally applicable formula. In the opinion of the Commission, the compensation has to be fair and reasonable. It should neither be punitive nor illusory. After giving careful consideration to the submissions made before the Commission by learned counsel for the parties, the Commission directed that it would be reasonable to grant monetary relief to the extent of Rupees Two Lakh Fifty Thousand (Rs.2,50,000/-) to the next of kin of the deceased who have been identified.

Regarding unidentified deceased persons and for fixing their identity, the Commission has finally considered it appropriate and expedient to appoint a Commissioner of the rank of a retired High Court Judge for receiving evidence and conducting an enquiry to fix the identity of as many dead body as possible, out of 814 unidentified deceased persons; subject of course, to the final imprimatur thereon by the Commission itself. The Commission on the recommendation of the Chief Justice of Punjab & Haryana High Court has entrusted the enquiry to Mr. Justice K.S. Bhalla, retired Judge of the High Court of Punjab & Haryana.

3. Starvation Deaths - Recommendations for Alleviation of Conditions of Starving People in the KBK Districts of Orissa

In the year 1996, when the Commission was seized of the matter regarding starvation deaths in certain districts, namely, Koraput, Bolangir and Kalahandi (in short KBK) of Orissa, it also received a letter from the then Union Minister for Agriculture Shri Chaturanan Mishra stating that during his visit to Bolangir District in Orissa, some local MLA and representatives of political parties had also complained of starvation deaths. The letter from the Minister enclosed a number of press reports regarding starvation deaths. The Minister requested the Commission to go into the details of the situation and to undertake an investigation.

A writ petition also came to be filed in the Supreme Court of India alleging death by starvation that continued to occur in certain districts of Orissa. When the writ petition came before the Supreme Court on 28.4.1997, the counsel for the petitioner pointed out that the National Human Rights Commission was seized of the matter of reported deaths by starvation in these districts. The Supreme Court consequently stated:

> "It is, therefore, appropriate that we await the final report of the National Human Rights Commission for further action in the matter. The learned Advocate General stated that all directions given by the National Human Rights Commission, even when they are of an interim nature, would be promptly complied with by the State Government."

When the matter was listed again before the Supreme Court on 26 July 1997, the Hon'ble Court passed the following Order:

> "In view of the fact that the National Human Rights Commission is seized of the matter and is expected to give its report after an enquiry made at the spot, it would be appropriate to await the report.

> Learned Counsel for the petitioner submitted that some interim directions are required to be given in the meantime. If that be so, the petitioner is permitted to approach the National Human Rights Commission with its suggestions. So far as this Court is concerned, the matter would be considered even for this purpose on receiving the report of the National Human Rights Commission.
>
> We also consider it appropriate to require the Union of India to appear before the National Human Rights Commission to assist the Commission in such manner as the Commission may require for the purpose of completion of the task of the Commission. The learned Addl. Solicitor General undertakes to ensure prompt steps being for this purpose."

The allegations of deaths by starvation and the seemingly recurrent nature of this tragic occurrence in the 'KBK districts', raised issues that were both grave in implication and contentious in substance. After examining the report of its own team and the response of the State Government, and after reflecting on the petitions submitted by the Indian Council of Legal Aid and Advice and Others, the Commission considered it important to conduct in-depth hearings on this entire matter, with the full involvement of all parties concerned. In so deciding, the Commission had in mind the need to lift the consideration of this matter out of the adversarial and contentious cul-de-sac in which it might otherwise be trapped, and to transform it into a participative and constructive endeavour designed to develop a package of measures that, within a specified time-frame, would bring perceptible improvement to the lives of the afflicted population in the 'KBK' districts'.

In the petition before the Commission and the reliefs sought from the Supreme Court essentially a series of interim measures were prayed for. The Commission's orders concentrated primarily on such

interim measures and the subsequent considerations and the views of the Commission were dealt with as 'long term issues'. The Commission also noticed the work of Professor Amrita Sen on the question of "Poverty and Famines". While considering the allegations of starvation in the 'KBK districts', the Commission recalled Professor Sen's rigorous thesis, now known as the 'entitlement approach', to better appreciate the situation under review. The Commission quoted Professor Sen as under:

> "..... the ability of people to command food through the legal means available in the society including the use of productive possibilities, trade opportunities, entitlements vis-avis the state and other methods of acquiring food",

and his further observations:

> "Ownership of food is one of the most primitive property rights and in each society there are rules governing this right. The entitlement approach concentrates on each person's entitlements to commodity bundles including food, and views starvation as resulting from a failure to be entitled to a bundle with enough food."

Thus, the Commission noted that in such a view, it is inadequate to explain starvation simply in terms of food availability decline, 'the FAD' approach, or even in terms of the shortage of income and purchasing power. While the latter may be considered a rudimentary way of trying to catch the essence of the 'entitlement approach', it offers only a partial explanation. Properly understood, according to the 'entitlement approach', a person's ability to command food depends on what he owns, what exchange possibilities are offered to a person, and what is taken away from him or her. The Commission kept this reasoning in mind in formulating its ideas on this case and, in setting out the interim measures that needed to be implemented in the 'KBK districts'.

After due consideration, the Commission arrived at the view that the interim measures should be undertaken over a period of two years subject to such periodic reviews as it may be considered appropriate and necessary and following were the interim measures suggested by the Commission vide its Order dated 17.2.1998:

A. **Monitoring Arrangements:**

The Commission recommended that at the State- level a Monitoring Committee be established under the authority of the Chief Secretary to guide and supervise the overall efforts. It was left to the State Government to establish the details of system of implementation and monitoring for the KBK districts, from the State-level, to that of the District-level and below. The Commission desired to appoint an eminent person to serve as its Special Rapporteur for the 'KBK districts' in order to keep itself fully informed of developments in respect of these districts and to interact, on its behalf, with all concerned authorities, whether at the State, district or other levels, as it may deem to be appropriate and necessary.

B. **Specificity of Programmes:**

The Commission has been keen to ensure that the interim measures that are put into effect should be as clearly specified as possible in terms of location, time-frames and quantitative targets. Thus while the interim measures were suggested for a period of two years, subject to review, the Commission – after careful discussion with all concerned – received from the State Government a specific set of commitments district-wise and programme-wise, relating to Rural Drinking Water Supply, Social Security, Soil Conservation and Primary Health Care etc.

C. **Emergency Feeding Programme:**

This was being provided, as a nutritional supplement, to some 74,545 persons, on a once-a-day basis for 25 days

a month. After reviewing the suggestions and views on this programme, the Commission was of the opinion that:

(i) The Emergency Feeding Programme, as devised, should continue on a once-a-day basis. However, the programme should be available each day of the month.

(ii) If needy persons have been inadvertently omitted from the programme, they can be added to those being fed, on the advice of the concerned gram Sabha/gram panchyat, the competent State authorities or the Special Rapporteur of the Commission.

(iii) As the present contents of the feeding programme should, according to all reports, be improved upon both in terms of the types of food offered and the calorific value of the food, the Commission recommended that the Monitoring Committee examine this matter carefully, drawing upon the best available advice of competent nutritionists and other experts in such matters, and make the necessary improvements.

(vi) The food being prepared by Anganwadi workers should continue.

(v) On the question of release of funds by the Central Government to the State Government for the continuation of the Emergency Feeding Programme, the Commission impressed upon the Government of India on the necessity of continuing the scheme until final recommendations were made.

D. **Old Age Pensions, Disability Pensions & Other Social Security Measures:**

The Commission was of the view that all those who qualify for old age pensions, disability pensions and other

social security measures under the existing criteria governing such schemes, should be included among the beneficiaries. As there have reportedly been delays in the monthly disbursement of pensions and such benefits, the Commission trusted that the monitoring system established by the State Government will ensure that such delays do not recur.

E. **Employment Generation in Agriculture, Ecological Security, Soil Conservation, Irrigation and Other Schemes:**

The Commission urged the tightening of monitoring systems. It appeared to the Commission that the benefits of many of these programmes could be maximized by linking them more consciously to employment generating projects. By way of illustration, the water-supply scheme (including the repair and maintenance of handpumps), the distribution of medicines in the Public Health Schemes, soil conservation and irrigation works, all lend themselves to such a purpose, as would afforestation programmes, which could be included in the effort, together with the revival of water-conservation installations of an earlier period which have fallen into disrepair.

F. **Drinking Water:**

The Commission felt that it need not comment on quantitative plans of the State Government fully spelt out in their various submission to the Commission, except the need to maintain and keep in good-repair the tube wells and handpumps.

G. **Public Health:**

Here too, the Commission felt that the quantitative plans have been submitted to the Commission and require no specific comment. The Commission, however, observed that it was deeply concerned at the deleterious, indeed

devastating effects of malnutrition on young women and mothers, that is taking a cruel toll on them and that is leading, in addition, to an unacceptably high incidence of low-birth weight amongst the children being born, a deficiency that in turn prevents the full development of their human potential. The Commission recommended a health-cum-nutritional survey for these districts by an independent agency, such as the Nutrition Foundation of India.

H. **Land Reform:**

The Commission accepted the suggestion that the State Government should constitute a Committee to examine all aspects of the land reform question in the 'KBK districts' and it should give its report, within a fixed time-frame.

Subsequent proceedings of the Commission reflect the status of short-term measures and on going progress of the long-term action plan renamed as **Revised Long Term Action Plan (RLTAP)** covering the period from 1998-99 onwards. 11 key sectors were expected to be covered by the RLTAP. This was done in consonance with the view taken by the Commission in its proceedings dated 17th February, 1998 wherein the Commission had indicated its intention to dovetail the **Short-term measures** into **Long-term plans** "to end the scourge of deprivation, malnutrition and cyclical starvation" in the KBK districts. Shri Chaman Lal, Special Rapporteur as per directions of the Commission visited KBK districts on various occasions to see ground reality and verify accuracy of the Performance Appraisal Reports (PAR) submitted by the State Government. Shri Chaman Lal after carrying out field study has been submitting his reports, which were sent by the Commission to the State Government for their response with specific directions as were found necessary. The suggestions of counsel of the parties and submissions made by Dr. Amrita Rangasami were also considered by the Commission to arrive at a consensus on as many issue as possible.

In the light of the submission and presentations made to the Commission, the Commission noticed the measures taken by the State Government, pointed out shortcomings and made further recommendations with regard to the factors noticed by it as under:

Rural Water Supply And Sanitation (RWSS)

The Commission noted with satisfaction the progress of implementation of the suggested revised norms or providing tube wells in the KBK districts. The Commission recorded its satisfaction in providing tube wells, introduction and efficient execution of Self-Employed Mechanic (SEM) Scheme in all the 80 Block of KBK, transfer of administrative and financial control over the SEMs to the Panchayati Raj Institutions.

Primary Health Care

The Commission showed its concern about the generally poor sate of health care facilities still prevailing in KBK region as pointed out by the Special Rapporteur with sufficient details as well as Dr. Amrita Rangasami, Director CSAR. The Commission recommended to the State Government to give its utmost attention to appointment of Medical officers in the KBK region. It further observed that implementation of the immunization Programme required to be strengthened.

Social Security Schemes

The Commission recorded its satisfaction regarding the expansion and efficient execution of various Pension Schemes as well as the Supplementary Nutrition Programme (SNP). An urgent need was felt for reviewing the locations of Anganwadi Centres and their proper management. The Commission recommended increase in the supply of quantity of rice for Emergency Feeding Programme (EFP). **The Commission requested the Government of India, though its Counsel, to appreciate the request made by the State Government and suitably enhance the allocation of BPL rice @ 35 kg per month to 50.19 lakh BPL households, until the findings of 2002 survey at present under scrutiny of the Supreme Court are finalised.** The Commission requested the Government of India (Women & Child Development Department) to pay Rs.50 Crores to the State Government

to clear the pending claims of 53,254 beneficiaries under the National Family Benefit Scheme (NFBS). The State Government's efforts for efficiently operationalise Annapurna and Anthodaya Schemes under PDS.

Soil Conservation Department

The Commission noted that the observation of the Special Rapporteur regarding the execution of NWDPRA and EAS Watershed Projects have been invariably critical of the performance of departmental works. The proper execution of such works calls for serious remedial action. The Commission appreciated that the suggestion regarding the evaluation of these projects has been accepted by the State Government and expert bodies involved.

Rural Development Programme

The Commission recorded its satisfaction regarding execution of various Rural Development schemes, such as SGSY, SGRY, IAY. It recommended allotment of targets to districts and desired that performance appraisal be made on quarterly basis.

Afforestation

The Commission noted with appreciation the generally satisfactory execution of the LTAP with people's participation.

Land Reforms

The Commission expressed its satisfaction about the amendment of Regulation 2 of 1956, which completely banned the transfer of land from tribals to non-tribals in scheduled areas of the State comprising 13 districts including districts of KBK. Commission suggested that performance of District Collectors in this regard be evaluated periodically.

ST/SC Development

The Commission appreciated the efforts taken towards improvement of educational facilities for SC/ST students. The Commission recommended that all the students in schools run by the ST/SC Department should receive the benefit of the scholarship scheme.

School Education

The Commission showed its concern regarding a single teacher in a large number of primary schools and/ or regarding single room where such schools are being run. The Commission recommended a thorough review of the educational infrastructure and position of teachers especially in predominantly tribal pockets of these districts and for taking urgent remedial steps, so that the laudable efforts of improving educational facilities are not frustrated.

Monitoring

The Commission appreciated the execution of the **Long-Term Action Plan** under various heads, which have been considered and dealt with above by the Commission. The Commission also recorded it satisfaction that an officer of the status of Chief Secretary has been posted as Chief Administrator, KBK with HQs at Koraput.

Revised Long Term Action Plan (RLTAP)

The Commission considering the crucial role of the RLTAP in achie ving the ultimate objectives of drought proofing, poverty alleviation and development saturation to improving the quality of life of the people in KBK districts recommended to the Planning Commission, Government of India, for further extension of the RLTAP March 2007. It also recommended execution of all its projects under a system of surveillance and monitoring described above.

While closing the case, the Commission directed to submit a copy of the final report to the Registrar General, Supreme Court of India in compliance of the directions of that Court.

REPORT PRESENTED AT 11TH ANNUAL MEETING OF ASIA PACIFIC FORUM OF NATIONAL INSTITUTIONS AT SUVA, FIJI*

Dr. Justice Shivaraj V. Patil

The National Human Rights Commission of India was set up on 12th October, 1993 under a Parliamentary enactment, namely, The Protection of Human Rights Act, 1993 in conformity with 'Paris Principles'. The Commission is an autonomous institution both functionally and financially with a wide mandate for better protection of Human Rights of the people of the country.

Dr. Justice A.S. Anand as Chairperson and Dr. Justice Shivaraj V. Patil, Justice Bhaskar Rao, Shri R.S. Kalha and Shri P.C. Sharma as Members of the Commission continued to serve.

During the year 2005-06, the Commission received 74,444 complaints. Against this, the Commission disposed of 80,923 complaints which included complaints carried forward from earlier years. In the first year of the establishment, the Commission received 496 complaints complaining violation of the Human Rights. The enormous increase in the number of complaints indicates the awareness of Human Rights among the people and the confidence the people have in the Commission.

On an average 93% of recommendations made by the Commission are accepted/ implemented by the Central / State Governments as the case may be.

As reported earlier, at the 10th Annual Meeting of the APF Forum at Mongolia, next of the kin of each of the 109 deceased persons were given monetary relief @ Rs. 2.5 lakhs in Punjab Mass Cremation case. During the year under report, the monetary relief at the same rate was given to the next of the kin of the deceased in 85 cases amounting to Rs. 2,12,50,000/-. This was the case remitted by Supreme Court to the Commission.

* Presented by Dr. Justice Shivaraj V. Patil on 1st August 2006

The Commission deeply concerned with better protection of Human Rights continued its work on issues like terrorism and insurgency, torture, custodial death, prison reforms, rights of disabled, health, rights of mentally challenged, food security, education, rights of minorities, Scheduled Castes and Scheduled Tribes and internally displaced persons, etc.

On 11.11.1997, the Supreme Court entrusted to the Commission the responsibility of overseeing the functioning of three mental institutions. The Commission has been continuing its work through the Special Rapporteur. Due to continuous efforts of the Commission, during the year 2005-06 there has been a significant progress. It is heartening to note that more than 90% of the admissions are voluntary admissions in these hospitals consistent with the provisions of the U.N. Principles for the Protection of Persons with Mental Illness and Improvement of Mental Health Care (1999). There has been an overall shift from custodial care to treatment and rehabilitation. Cell admissions have been totally stopped and close wards are being progressively converted into open wards.

Since December, 1996, the Commission has been dealing with complaints alleging starvation deaths in Koraput, Bolangir and Kalahandi (KBK) districts of Orissa. The issue was also raised in writ petition in Supreme Court. On learning that the Commission had taken cognizance of the matter, the Supreme Court allowed the Commission to deal with the matter and empowered it to issue enforceable recommendations and directions. The Commission after hearing the parties formulated a practical programme covering rural water supply schemes, public health care, social security schemes, water and soil conservation measures and rural development schemes. Much progress has been made in this regard due to monitoring of the programme. Shri Chaman Lal, Special Repporteur, after visiting the area has presented recently an encouraging picture of execution of theses schemes which was considered in the proceedings of the Commission dated 18.7.2006.

These remitted cases by the Supreme Court to the Commission and the Commissions proceedings clearly indicate the complementary

and cooperative role of the judiciary and the Commission in serving the cause of Human Rights.

Economic, Social and Cultural Rights

There exist massive inequalities particularly in the developing countries which render the enjoyment of Human Rights illusory. Clearly realizing that political freedom would not be purposeful for the teaming millions of people who suffer from poverty and social evils unless economic, social and cultural rights are assured to them, the Commission, during the year 2005-06 has made intense and serious efforts towards realization of economic social and cultural rights.

In the Constitution of India, Part-III and Part-IV deal with Fundamental Rights and Directive Principles of State Policy. Part III relates to civil and political rights, Part IV talks of economic, social and cultural rights. Austin aptly stated that both "Fundamental Rights and Directive Principles" constitute conscience of the Constitution. The concept of socio and economic justice embodied in the form of Directive Principles is the most dynamic, flexible and revolutionary aimed at removing inequalities among the citizens.

The Supreme Court of India dealing with number of cases under Article 21 of the Constitution of India as to life and liberty has delivered several landmark judgments meaningfully expanding the concept of "Right to Life" to mean right to live with human dignity and all that goes with it.

International Round Table on National Institutions Implementing Economic, Social and Cultural Rights

The Commission in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized a three-day International Round Table on National Institutions Implementing Economic, Social and Cultural Rights at New Delhi from 29th November to 1st December, 2005 mainly to discuss and strengthen the role and capacity of National Institutions in protecting and promoting economic, social and cultural rights (ESCR).

Twenty-four National Institutions from countries in America, Africa, Europe and Asia-Pacific participated in the Round Table. A declaration called the 'New Delhi Declaration' was adopted by the delegates at the conclusion of the Round Table.

Rights of Disabled

Clearly bearing in mind that the persons with disabilities are equally entitled to a full range of Human Rights like any other section of people, the Commission has been making efforts to create awareness at all levels of training for the administrators and other professionals. The Commission has advised Government of India and the State Governments to introduce disability components in all their training initiatives and in their development plans.

The Indian Commission has been privileged to be involved, through its Special Rapporteur on disability related issues, in the role assigned to National Institutions in the drafting of the international Convention on Disability which has made substantial progress. In June, 2006 the Commission facilitated a discussion between the Special Rapporteur and a delegation from the Irish Commission as a prelude to the next meeting of the Ad-Hoc Committee which is scheduled to meet in August, 2006.

Terrorism

It is unfortunate that millions of innocent people all over the world have been helpless victims of mindless and inhuman violence perpetrated by the various terrorist groups in recent years. Violating Human Rights by terrorist groups are a serious and major concern for the world community. The current century has begun with the emergence of international networks of terror directly targeting democratic and peace-loving States. Our Prime Minister Dr. Manmohan Singh in his address at the 59th Session of the U.N. General Assembly on 23rd September, 2004 observed:-

> "Terrorism exploits the technologies spawned by globalisation, recruits its foot soldiers on ideologies of bigotry and hatred, and directly targets democracies. And

yet it is a sad reality that international networks of terror appear to cooperate more effectively than the democratic nations that they target."

The Commission has always stood firm in its belief that the twin concepts of individual and national security are mutually compatible and attainable and not contradictory as the lay person often erroneously believes. At the same time, the Commission believes that terrorism has to be dealt with firmly and decisively. The recent killing of hundreds of innocents in Mumbai Train Blasts on 11.7.2006 can never be condoned. It has been heartening that the world has been quick and emphatic to condemn these acts of terrorism faced by India.

National Action Plan for Human Rights

The Commission has taken up the task of preparing the National Action Plan. The Commission constituted a Working Group and an Advisory Committee including representatives of various departments of the Government, NGOs and eminent lawyers to prepare a National Action Plan for Human Rights. The Working Group decided to focus on the following areas which would require a continuous dialogue and discussion before taking an appropriate shape for its documentation in the body of National Action Plan for Human Rights: Human rights education; Criminal justice system - encompassing police ; prosecution court etc; Rights of vulnerable (women, children, bonded labour, dalits, elderly, tribals, minorities, disabled etc.); Right to food, water, health and environment; Right to social security Globalization and human rights.

The Working Group has recently decided to prepare draft chapters of the proposed National Action Plan for Human Rights and these chapters will be extensively discussed with the concerned ministries/ departments of the Government of India before they are finalized.

Prevention and Combating of Child Marriage

In order to curb the practice of child marriage, the Commission recommended to the Central Government (Ministry of Women & Child Development) a number of amendments to the Child Marriage Restraint

Act, 1929. In pursuance of these recommendations, the Central Government introduced a Bill entitled the Prevention of Child Marriage Bill, 2004 in the Rajya Sabha (Council of States) on 20.12.2004 incorporating almost all the recommendations of the Commission.

The Commission, however, has continuously been emphasizing on the need for public awareness to end this evil practice of child marriage. The Chairperson of the Commission has written on 17.3.2005 to the concerned Ministries/Departments in the Central Government and all the State Governments and Union Territories to organise mass-scale awareness programmes/campaigns, in association with the field level implementing agencies so as to educate and sensitise people about the demerits of child marriage.

International Conventions and Treaties

A) Optional Protocols to the Convention on the Rights of the Child

The Commission's persistent efforts yielded dividends with the Government of India ratifying, both, the Optional Protocols. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified on 30th November 2005 with the following Declaration:-

"Pursuant to article 3(2) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Government of the Republic of India declare that:

(i) The minimum age for recruitment of prospective recruits into Armed Forces of India (Army, Air Force and Navy) is 16 years. After enrollment and requisite training period, the attested Armed Forces personnel is sent to the operational area only after he attains 18 years of age;

(ii) The recruitment into the Armed Forces of India is purely voluntary and conducted through open rally system/open competitive examinations. There is no forced or coerced recruitment into the Armed Forces".

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified by the Government of India on 16 August 2005.

B) *Convention Against Torture*

The Commission has been requesting the Government of India to ratify the Convention against Torture and other Cruel, Inhuman Or Degrading Treatment Of Punishment 1984, which was signed by India on 14 October 1997 on the recommendation of the Commission. The Commission has been urging early ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment Of Punishment 1984. The Government has now drafted a Bill to ratify the Convention Against Torture. The Ministry of Home Affairs has requested the Commission to send the comments on the draft Bill. The Commission has responded on 14.7.2006 to the Government and is hopeful that the Convention Against Torture will be ratified in near future.

Spread of Human Rights Awareness

Creating Human Rights awareness is considered important and useful for better protection and promotion of Human Rights. With this in view, the Commission has organized/supported several workshops, training programmes and seminars for sensitizing the stakeholders on Human Rights issues consisting of academicians, activists, NGOs, civil servants, etc. In the year 2005-06, twenty-five training programmes were conducted addressing problems of human rights and prevention of atrocities against the weaker sections, legal literacy for the women, mental health education, combating trafficking in women and children, child rights, are a few to mention. As the country is vast, the Commission has tried to reach all the regions of the country.

Corruption being one of the key violators of human rights, a two-day **National Conference on "Effects of Corruption on Good Governance and Human Rights"** was organised in the month of May 2006. The main objective of the Conference was to explore the factors responsible for precipitating corruption in India as well as ponder over strategies that could contain the problem of corruption in the country.

This Conference was inaugurated by President of India and the concluding address was delivered by the Chief Justice of India.

The Indian Army also organized sensitization workshop on Human Rights at Kargil on 22.5.2005 and Leh on 15.4.2005 which were chaired by Member Dr. Justice Shivaraj V. Patil and Member Shri P.C. Sharma respectively.

The Commission conducted summer internship programmes from 15.5.2006 to 14.6.2006 to create awareness in Human Rights among the students of various law colleges and universities.

The Commission published / encouraged to publish the following books for creating awareness in Human Rights during the year 2005-2006:-

1) "Know Your Rights" Series (Booklets)
2) Disability Manual – Human Rights Disability and Law
3) Report of the Proceedings of the International Round Table on National Institutions implementing Economic, Social and Cultural Rights
4) From Bondage to Freedom : An Analysis of International Legal Regime on Human Trafficking
5) Hand Book on Human Rights for Judicial Officers
6) Handbook on Employment of Persons with Disabilities in Government of India

Trafficking in Women and Children

The Commission had conducted an Action Research on Trafficking to know the trends, dimensions, factors and responses related to trafficking in women and children in India. It had also organised a National Workshop on 27th & 28th February, 2004 to Review the Implementation of Laws and Policies Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy. In order to ensure implementation of the recommendations made in the Action Research as well as the National Workshop in true spirit, the Commission formulated a Plan of Action to Prevent and End Trafficking in Women

and Children in India and has disseminated the same on 18th July, 2006 to all concerned for necessary action.

Juvenile Justice in India

Poor implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 by the States and Union Territories, necessitated the Commission to review the status of implementation of the Act all over the country. For this purpose, the Commission is collecting information from all the State Governments and Union Territories. The Commission has also undertaken a research study on the subject. The study is on the verge of completion.

Exchanges and other Interactions

A number of dignitaries concerned with Human Rights and of the National Institutes from different countries visited the Commission and there was sharing of experiences.

Abolition of Manual Scavenging

The Commission has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country.

The Commission has held a number of meetings with the State Governments. The last such meeting was held on 25th February, 2006 on Eradication of Manual Scavenging with the representatives of the Central and State Governments and other stakeholders. On the basis of detailed deliberations follow up action is being taken.

Pursuant to the efforts of the Commission, the Prime Minister made an announcement for abolition of manual scavenging. The Planning Commission accordingly formulated a National Action Plan for Total Eradication of Manual Scavenging by the end of 2007.

Financial Contribution to the APF

The Commission has remitted an amount of US $ 100,000 as its contribution to the Asia Pacific Forum during the year 2005-06

Right to Health

The Commission has been concerned with the prevailing unsatisfactory system of emergency medical care in the country, which results in the loss of many lives. To look into this issue, the Commission constituted an Expert Group headed by an eminent medical specialist. The report of the Group revealed the lacunae which exist in the present system and made a number of recommendations for implementation, in the short term as well in the long term. These include enunciation of a National Accident Policy, establishment of Centralized Accident and Trauma Services in all Districts of all States / Union Territories etc. These recommendations were sent to the Government for taking necessary action on 12th May, 2004.

In addition, a National Action Plan to operationalise the Right to Health Care was proposed. The objectives of the National Action Plan include : explicit recognition of the Right to Health Care; delineation of essential health services and supplies; legal enshrinement of the Right to Health Care; initiation of mechanisms for joint monitoring etc. The recommendations of Regional Public Hearing and National action Plan were communicated to the Government in March, 2005.

Right to Food

The NHRC has consistently maintained that right to food is inherent to living a life with dignity. It has also expressed that right to food includes nutrition at an appropriate level. To deliberate on the food situation in the country as well as ways and means to make the right to food a reality to the common man, the Commission reconstituted its Core Group on Right to Food and met on 13 January 2006. The Group dwelled on issues relating to food security, monitoring of existing schemes and reforms in Public Distribution System, starvation deaths/ suicides including the State's response to these occurrences, need for up-gradation of scientific and technological measures in the country and the spreading of awareness among the masses that all of them were entitled to get two square meals.

Health Awareness Week for the Older Persons

A health awareness week for the elderly was organised by the Commission along with an NGO working for the older persons from 20-24 March 2006 in New Delhi. The weeklong initiative was an attempt to address the crucial needs of the elderly that are not fully understood by them and their caregivers and to spread awareness of diseases that affect the elderly.

Visit to Prisons and Mental Hospitals/Institutions

The Chairman and Members of the Commission have been visiting prisons and mental hospitals/institutions from time to time with a view to seeing the prevailing conditions therein and to make recommendations for improving them and for providing necessary facilities.

Best Bakery Case

On 27.2.2002, some of the compartments of the Sabarmati Express Train were set on fire by a mob. Fifty-eight persons were burnt alive and more than 40 passengers received injuries. The Commission took suo motu cognizance of the news report and approached the Supreme Court as reported at the 10th Annual Meeting of the APF.

The Supreme Court directed retrial of the case in Mumbai i.e. outside the State of Gujarat. The victims of the Best Bakery Case finally got justice by the Mumbai trial court on 21.2.2006 when the Court convicted and awarded life imprisonment to 9 out of 17 accused. The court also issued show cause notice to all the witnesses, including Zaheera Shaikh, who had turned hostile asking them to show cause why they should not be prosecuted for perjury.

Honda Motor Cycle and Scooters Workers Case

On 25.7.2005 the police brutally assaulted the agitating workers of Honda Motor Cycle and Scooters India at Gurgaon. The Commission took suo motu cognizance of the news item and recommended to the Government of Haryana to take effective steps for getting an independent enquiry preferably by CBI.

In response the State Government of Haryana informed (1) that certain cases have been registered at the Police Station against the workers and (2) the State Government had sanctioned payment of Rs. 20,000/- to each of the persons injured in the incident. The matter is under investigation.

Conclusion

These are turbulent times in many parts of the world. It becomes apparent that in many ways the world has become complicated, to say the least. The destinies and interests of nations and its peoples have become interlinked to such an extent that invariably the actions of one have adversely affected the other, leading to strife and suffering. In all such tragic situations, it has been the common people, men, women and children who have their rights violated. Martin Luthar King said – "Injustice anywhere is threat to justice everywhere." This is the greatest challenge which all of us are faced with. In the constant endeavour for a better future, nations and its people should always respect the human rights of the people who could be affected in the process. But experience has shown that more often this is not so. The result is that innocent people all over the world, irrespective of their colour, religion and creed have suffered devastatingly.

The existence of the national institutions has to be seen in the above context. Every nation/State has its own priorities and goals. However, there can be minimum standards which can rightfully be expected to be fulfilled by all to meet their international obligations and the larger world order. The 'Paris Principles', adopted by the General Assembly is the edifice on which national institutions have to be set up. National institutions set up on the basis of these principles survive. A free and fully autonomous national institution, is the best guarantor for the protection of human rights within the country and the National Human Rights Commission of India is fully conscious of the same.

BOOK REVIEW

1. THE FUTURE OF HUMAN RIGHTS
By Upendra Baxi

Review by: Prof. (Dr.) Ranbir Singh

While most books on the subject enumerate existing rights in international and national law, 'The Future of Human Rights' takes a different approach and avoids lawyers' law. It maps current trends in human rights theory and practice and raises several questions on its future and past in order to inspire a social theory of human rights. The preface proclaims the principal message of the book – original authors of human rights are people in struggle. Another recurring theme in the book is the distinction between politics 'of' and 'for' human rights.

'The Future of Human Rights' critically examines the contemporary discourses on the nature of 'human rights', their histories, the myths that are embedded in them, and contributes an alternative reading of those histories by placing the concerns and interests of the 'people in struggle and communities of resistance' at centre stage. It examines the cold reality that despite the last century being justly described as the century of human rights, the 'rightless and suffering peoples' still remain. It carefully analyzes the gulf between the actuality and possibilities for the future. It elucidates the significance of the UN and the Universal Declaration of Human Rights and carries out the study of the more contemporary issues such as women's struggle to feminize the understanding and practice of human rights, the post-modernist critique of the universal idiom of human rights and- most pertinently for the current world scene- analyzes the impact of globalization on the human rights movement. The new edition includes a detailed discussion of the proposed United Nations norms regarding much talked subject of human rights responsibilities of multinational corporations and other business entities.

Baxi has intelligently chosen to use the phrase "'modern" human rights to describe what most other commentators would call natural rights. His distinction between 'modern' and 'contemporary' notions of human rights is central to his thesis and it is apposite to rehearse the argument here. Modernist rights unabashedly excluded slaves, colonized people and women at different periods and provided justifications for imperialism and racism. In contrast, 'contemporary' human rights have rejected racism and apartheid through conventions and *jus cogens* (this may be roughly defined as the 'higher law' upon which international law is based) sought to outlaw discrimination against women, among other profound declarations. Baxi distinguishes this fine line of argument in a rather logical than a rhetorical style. The book also argues that contemporary rights are not exclusivist and rather proclaims that 'all human rights are universal, indivisible and interdependent and interrelated.' The impact of the Cold War in both 'naturalizing violation' as well as creating global consensus on rights is also discussed.

While outlining the actors and their attitudes in the practice of contemporary human rights, Baxi traces the history and importance of NGOs and concedes the difficulty in mapping their number.. Baxi's forte is to classify previously unclassified ideas, primarily the attitudes with which human rights are approached. The notions and issues that are intelligibly categorized are as divergent as – human rights are a moral mistake, symbols of western progressive Eurocentrism, wariness of the violated, ethics of dialogue between perpetrator and victim, human rights as civil religion, and the dangers of bureaucratization and professionalisation. In the analytical frame, the book questions if there are too many or too few human rights. It points out that the many human rights are soft law and there remain many areas that are as yet untouched (such as the emerging right of sexual minorities). Influential theoretical challenges to human rights from the perspectives of identity politics and relativism are addressed elegantly. In addressing conflicting rights due to identity, Baxi, in his characteristic style, avers that such conflict can arise only if universal human rights are firmly in place.

One of the unique contributions of the book is the introduction of the metaphor of the market to explain the commodification of human

suffering. Funding agencies and NGOs are not the only bodies exemplified in the process; academics and what Baxi calls NGIs (non-governmental individuals) also form inseparable agencies. There is an excellent enumeration, once again, of previously unclassified phenomena – this time the techniques of commodification of suffering. The market metaphor is skillfully extended to the issue of regulation of actors in the human rights world.

Baxi asserts that the stage is now set for the announcement of a third category of rights – trade related market friendly human rights. The concerned chapter states that corporate appropriation of human rights is a reality where each domain promises the greatest common good, as evidenced by the right to food being interpreted as the rights of agribusiness, or right to health being interpreted as sanctioning increased protection of the pharmaceutical industry. Baxi, while carving out serious arguments, incorporates some black humour in imagining a 'draft charter of human rights of global capital.' He also lays emphasis on the ways in which massive risks have been normalized, be it in the context of nuclear energy and weaponry or in the creation of genetic databanks and a *corporate heritage of mankind.*

Baxi warns that this book raises more questions than it answers. The positions that the author differs from are stated in detail, and this forms as a major strength of the book. The meticulous footnotes and a vast bibliography serves as an excellent guide for the curious reader to delve deeper into the profound issues and has paved way for future avenues of research in this area. Finally, the book urges 'dissenting academics' and activists to converse and evolve more creative approaches to the challenges thrown by the processes of LPG, viz., liberalization, privatization and globalization.

It is well known that human rights and globalization discourses interrelate in a number of ways. Universalism of human rights is the centre of the controversy regarding globalisation. A variety of discourses see a virtuous link between globalisation, the growth of international human rights instruments and national implementation of those instruments in the countries of the South, economic development and

the relief of poverty. On the other hand, this approach has been subjected to rigorous criticism. Subjects like the nature of human rights; globalisation and the market in human rights; global identities; development and global commons; recognition; redistribution; values and voices of social justice; social, political and gender activism; labour, gender and society; care, justice and family systems, naturally assume a high significance in the present era. Human rights seem to have become so central to our thought that we are struggling to find alternative vocabularies of moral or political critique. Any social movement that wishes to be taken seriously in the prevailing political climate will have to express its claims, and, frame its own self-understanding in terms of either one or more of those rights already widely accepted as "human," or of an attempt to get a "new" right accepted into that general and privileged canon. Human rights, in this sense, are not understood as merely being the products of a certain political or legal framework. Rather, they have come to be viewed as guides to the proper functioning and content of politics and law themselves.

If, on the other hand, some notion of human rights is now widely accepted by most states in the world, even to the point of approaching their oft-proclaimed and celebrated "universality," the same cannot be said about the attempts that have been made to provide some sort of sound theoretical basis to support the allegedly emerging consensus. Indeed, even if the political agreement on human rights goes no deeper than the most superficial level, it is nonetheless striking that such agreement was at all possible in the absence of any sound and widely accepted theoretical understanding of the concepts involved. (Although it may, of course, be suggested that superficial accord is easier to reach when the deeper, philosophical implications remain contested). The various failures to date of the theoretical endeavour have elicited an equally varied set of responses from theorists working in this field. Some have endeavoured to continue in pursuit of the elusive prize, whereas many others have simply come to the conclusion that human rights do not "exist." (From Bentham's "nonsense on stilts" to McIntyre's "witches and unicorns.") Others, however, have proposed different ways of approaching the problem, suggesting that the whole debate over the

theoretical foundations and ontological status of human rights is misguided and futile, on the grounds that, for example, the "human rights phenomenon renders human rights foundationalism outmoded and irrelevant." However blurred the chosen scholastic response be, one thing seems clear- the gap between theory and practice in international human rights is an important issue, and threatens to undermine both sides if some sort of *rapprochement* is not achieved. From a theoretical standpoint, failure to engage seriously, successfully, and convincingly with a concept that has now assumed paramount importance globally, may lead eventually to the marginalisation of philosophical concerns from ethical, political, and legal life. While, on the other hand, a skin-deep consensus on the existence and content of human rights, without a stronger body of theory to rely upon, loses much of its critical potential, and is thus far more susceptible to being appropriated by the powerful in order to sustain the global relations of domination prevailing today.

The attempt to affect such a *rapprochement* is one of the main themes of Baxi's complex and wide-ranging book.. Although the book itself is some two years old at this point, it is worthy of attention not merely because it has, perhaps, not received the critical attention that one would expect for such an author, but also because it deals directly with issues of enduring importance to human rights and international law more generally.

After indicating the hostility of the so-called, safe and eco-friendly industries and human rights, Baxi, with burning cynicism, projects an acerbic criticism: "The amniocentesis of human rights was thus predetermined by patterns of state-industry collaboration, which normalised risk-analysis to the point of industry-oriented, rather than human rights-oriented, risk analysis and management. Movements, both social and human rights specific, were thus constrained, from the start, by the logic of this state-industry combine. Pitted against the state/ technoscientific combine, social movements, including human rights movements, were reduced to confrontation over locale decisions, nuclear waste disposal, and eventual decommissioning public choice decisions. The might of the state-industry combine has proved, however, overwhelming for human rights theory and action."

The book "seeks to decipher the future of social action assembled, by convention, under a portal named human rights. It problematises the very notion of human rights, the standard narratives of their origin, the ensemble of ideologies animating their modes of production, and the wayward circumstances of their enunciation." These are the twin opening passages from Baxi's tough work. He takes human rights seriously and the reader must take him with utmost seriousness if he/she is to understand his diction and not flounder halfway through the book. The brilliant writer leaves you dazed unless you share his purposeful perspective on "people in struggle and communities of resistance", that is so uniquely different from any standard scholarship.

Therefore, as Justice A.S. Anand would aptly remark, "*universality of human rights demand eradication of global inequalities and to achieve this, the importance of right to development has to be emphasized. Human rights are inter-dependent and inter-related and have a direct relationship with Human Development.*" With reference to the wide global disparities in different parts of the world, Baxi has stressed that they are linked to varying level of human development and must be minimized to ensure that minimum needs of everyone throughout the world are met.

The 'Future of Human Rights' seems like a step towards a social theory and history of human rights as Baxi has constantly outlined areas for future research. These include the role of non-western cultures in the authorship and ownership of rights, need for replicating a comprehensive social history of rights, and encouraging a dialogue across identities by narration of social histories of suffering, histories of structures of terror that aim at destroying agency and the ways in which resistance to domination is constructed before and after human rights.

This book which is a revised and updated edition examines the paradigm of Human Rights and offers a fresh line of thinking on the entire discourse of Human Rights. It will be a useful reading for academics, students, NGO's and all connected with the Human Rights movements in India and elsewhere. The only difficulty which the reader might face would be with the difficult language of the book which may be beyond understanding of an ordinary reader interested in Human Rights.

BOOK REVIEW

2. POVERTY AND HUMAN RIGHTS- SEN'S 'CAPABILITY PERSPECTIVE' EXPLORED

By Polly Vizard

Review by: Prof. B.B. Pande

Poverty as an extreme human condition has always evoked immense social interest. It remains not only the central theme of some of the best literary and philosophical works, but also the most extensively researched and studied theme for a lot of political scientists, economists, psychologists, sociologists and, in the recent times, even the legal scientists. Such diverse disciplinary focus has led to its extensive exploration in terms of the existential realities, genesis and causes, remedies and strategies of alleviation and ideological dimensions etc[1]. *The book* under review by Polly Vizard[2] is a worthy addition to the poverty literature, with a difference that it, perhaps for the first time, tries to draw a relationship between poverty and human right. Also that here the poverty and human rights pairing is done in the light of yet another under-explored thesis, the 'Capability Approach' of Amartya Sen. Thus, *the book* has focused attention on poverty, human rights and Sen's 'capability approach', more or less simultaneously.

The Book (a revised version of a Ph.D. thesis in economics from the London School of Economics) has conducted the discussion of the core theme in seven chapters that run into 275 pages. Chapter one provides a broad over-view of the core theme: Poverty, Human Rights and Sen's 'Capability Approach'. Chapters two, five and six contain a rich, at times terse, discussion of the political theory and jurisprudential analysis, which is followed by an account of the decisions of the Indian

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[1] In the Indian context, one of the earliest and most sustained poverty research line, in the field of economics, was propagated by Sardar Tarlok Singh in his pioneering work Poverty and Social Change (First published in 1945 and a reappraisal in the second edn. In 1969). In the preface to the first edn it is categorically stated: "*The book* has a single purpose: to examine the conditions upon which we may hope to free our masses from their poverty". It is significant that till his death in 2004 the author passionately pursued this mission, only.

[2] Poverty and Human Rights – Sen's 'Capability Perspective' Explored, OUP(2006) (hereinafter *the Book*)

and South African apex courts. Chapters three and four are specifically devoted to Sen's contribution to ethical and jurisprudential debate, as well as his contribution to economic debates on poverty. Chapter seven is more like a concluding part of the research that tends to provide a working model of international accountability relating to poverty-human right. Presently we propose to comment on *the Book* in terms of three main issues, namely (i) jurisprudence of poverty and human rights, (ii) Sen's 'capability approach' and its distinctivity for poverty human rights debate, and (iii) standardization of poverty alleviation initiatives at the global level.

(i) Jurisprudence of Poverty and Human Rights

Polly Vizard begins the debate in chapter two thus: "Discourses in ethics and political theory in both the libertarian and liberal traditions have often excluded basic forms of deprivation and impoverishment, including hunger and starvation, pre-mature mortality and 'excess' morbidity, and illiteracy and inadequate lack of educational attainment from the domain of fundamental freedoms and human rights".[3] This conclusion is supported by elaborate discussion of negative and positive freedoms contained in the writings of Hayek, Nozick, Berlin, Pogge and O'Neill. Particularly informative is Vizard's discussion relating to Pogge's extension of the negative approach that treats 'severe poverty as a violation of negative duties' by maintaining that: "social institutions have a causal role in generating insecure access to objects of human rights....Given (a) the proposition that institutions have a causal role in the generation and persistence of poverty and (b) the proposition that individuals have responsibility (albeit collectively) for the creation and perpetuation of such institutions, he maintains that fundamental freedoms and human rights can be used as giving rise to negative obligations of individuals and collective agents to refrain from being viewed not in terms of the failure to assist and aid those who are in desperate need, but in terms of causal responsibility for the generation and persistence of poverty."[4] According to Vizard the principles of justice as fairness set out in Rawls thesis is not adequate for protection

[3] *The Book* at p. 24
[4] *The Book* at p.39
[5] *The Book* at p.53

to positive freedoms associated with conditions of hunger and poverty.[5] However, Kant's 'Fundamental principles of rights' does provide space for including far reaching positive obligations to assist those in need.[6] The extension of Kantian scheme of obligations in O'Neill's typology of obligations in Table 2.2 is informative and useful.[7] Vizard has succeeded in exposing the futility of maintaining a rigid dichotomy between negative and positive freedoms.

The Book in chapters five and six presents forceful arguments for projecting freedom from poverty as a basic human right, first, by drawing support from the U.N. Charter, Declaration, International Treaties, standard setting Resolutions, Regional Agreements, National Constitutions and judicial pronouncements[8],and, second, by using deontic logic that would develop a more systematic approach to the incorporation of a full range of the type of rights and duties that arise in moral and legal discourse – including the possibility of the development of a complete typology of 'right-types'. *The Book* contains a very useful discussion centering round the writings of Kanger, Lindhal, Van Hees etc. in pages 197 to 234. Particularly Box 6.1 (at p.205), Box 6.10 (at p.218), Box 6.12 (p.221), Box 6.13 (at p.229) and Box 6.14 (at p.230) are very innovative and illustrative.

Despite *the Book's* strong advocacy for a right to freedom from poverty, there appears that the author has deliberately attempted to undertone the dominant line of western jurisprudential discourse that holds that basic needs or freedom from poverty were historically never a part of human rights or legal rights and that it was only in the middle of the 20th century that certain basic needs were for the first time recognized as welfare rights conferred on identified weaker sections. Similarly despite the author's optimistic assessment of Indian Supreme Court's response to positive obligation to 'right to food', one can see the same kind of doctrinal ambivalence is reflected in the Indian Supreme Courts' response to the food petitioners (Kishan Pattanayak case (1989,

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[6] *The Book* at p.59

[7] *The Book* at p.64

[8] *The Book* , Box 5.1 at p.143

[9] Pande, B.B. "The Constitutionality of Basic Human Needs: An Ignored Area of Legal Discourse", (1989) 4 SCC (Jour) at p.1.

Suppl. 1 SCC 258)[9], Indian Council for Legal Aid and Advice case (W.P. (Civil) No.42/97) and PUCL case (W.P. (Civil) No.196 of 2001). The Court has in repeated petitions, neither recognized a general right to food nor even a right to food for the destitute and starving population. Though in the PUCL Case Order II and IV they have expressed an anxiety and pious hope that poor and destitute do not suffer from hunger and starvation.

(ii) Sen's 'Capability Approach" and its Distinctivity

The 'capability approach' grows out of Sen's general critique of the western legal system that is well documented in his entitlement approach. Sen supported the entitlement approach on the basis of the empirical evidence gathered in the light of the frequently occurring phenomenon of famines in Bengal and other parts of India during British rule[10]. The core thesis of 'entitlement approach' is that famines and starvation arise so much on account of lack of availability of food grains but more on account of lack of legal entitlement to foodgrains on the part of the poor and destitute population. This enabled Sen to develop his thinking about freedoms in terms of : (a) Process aspect of freedom, which is concerned with the ability and freedom of a person to take decisions himself, including freedom from interference by others and autonomy in individual choices, and (b) opportunity aspect of freedom, which concerns with the actual freedom to achieve things that a person values or enjoys. Explaining 'capability approach', Vizard states: "The 'capability approach' provides an elucidation of the opportunity aspect of freedom. The term 'capability' refers to the opportunity to achieve valuable combinations of human functioning.....The class of 'capability freedoms' focuses on a set of freedoms relating to the things that a person is able to do and be; and provides the basis in Sen's work for the elucidation of a sub-class of fundamental freedoms and human rights."[11] Further, giving example of general class of 'capability rights' Vizard states; "if a person (x) has reasons to value life without hunger and would choose such a life then the capability of this person to achieve

[10] Sen., A.K., Poverty and Famines : An Essay on Entitlement and Deprivation, Oxford, Clarendon (1981)

[11] *The Book* at p.68

adequate nutrition is directly relevant to her real opportunity to promote her objectives and expand her freedoms. Conversely deprivation in the capability to achieve adequate nutrition restricts x's real opportunity to promote her objectives, and is admissible as 'freedom restricting' condition"[12] *The Book* further illustrates Sen's capability framework through a useful and illustrative diagrammatic presentation in Box 3.1 Explaining 'capability approach' further: "By focusing attention on correspondence between the valuable states of being and doing that are formally guaranteed in the domain of fundamental freedoms and human rights, and the things that people can do and achieve in practice, the 'capability approach' supports the analysis of (a) individual preferences broadly defined, taking into account of values, meta-rankings, and counterfactual desires and choices; (b) the results that people *can* actually achieve (i.e. the capabilities that are within a person's reach) and (c) the results that people *do* actually achieve (i.e. a person's realized functionings)."[13]

The special value of Sen's approach lies in his propagation of a consequence sensitive framework that is likely to support positive obligations to alleviate poverty and other forms of basic deprivations such as hunger, starvation, ill-health and illiteracy. Sen's approach is described by Vizard in chapter four of making similar significant contribution to economic discourse by introducing new variables and concerns into the theoretical and empirical domains such as notion of individual entitlement, capabilities and functioning, freedom choice, new forms of civil, political, economic and social rights, freedom of choice and opportunity freedom etc.[14]

(iii) Standardization of Poverty Alleviation Initiatives at the Global Level

Vizard's very useful and well rounded theoretical exercise concludes in yet another valiant exercise in attempting a 'Working Model' that would fix international responsibility and accountability for capability expansion to ensure freedom from poverty as a basic human

[12] *The Book* at p.71
[13] *The Book* at p.75
[14] *The Book* at p.97

right. The author goes about spelling out the components of such a 'working model', which places heavy reliance on 'capability approach' as improved upon by Nussbaum's unique list of ten basic and central capabilities and reinforced by the international human rights law. Vizard quotes Nassabaum to remind the world community's obligation to uphold the basic and central capabilities or 'fundamental entitlements' thus: "Humanity is under a collective obligation to find ways of living and cooperating together so that all human beings have decent lives. Now, after being clear on that, we begin to think about how to bring that about"[15](emphasis supplied) Vizard takes a position that both Sen and Nassabaum's thesis falls short in providing precise duties in respect of 'capability expansion'.[16] Vizard opines that international human rights law can play a positive role in this respect by forging a comprehensive scheme of 'capability framework'. The underlying links between 'capability approach' and international human rights law have been explored by the author in pp. 241-246. Vizard ends up with this hopeful conclusion. "this emerging body of international standards provides basis for extending and applying the 'capability approach' as a 'Working Model' of international responsibility and accountability in the field of global poverty and human rights"[17]

But with the evidence of growing incidence of absolute poverty in African continent and increasing relative deprivation in some of the newly developing economies of Asia, it is too naïve to believe that there is a total agreement in mankind: "that all human beings have decent lives and that the world community would, first, agree on precise duties for capability expansion, and second, the standards would be enforced without fear or favour. That apart, Polly Vizard deserves all commendation for writing such a well researched and logically argued book. *The Book* will certainly enjoy a distinguished place in the poverty literature.

[15] *The Book* at p.241
[16] *The Book* at p.241
[17] *The Book* at p.247

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