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CHAIRPERSON
NHRC

PREFACE

The Commission has, under Section 12 (h) of the Protection of Human Rights Act, 1993, a statutory responsibility to "spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means".

In pursuance, the Commission has been undertaking various activities including conduct of training programmes, seminars and workshops, circulation of newsletters and special reports. In 2002, the Commission started an Annual Journal to facilitate sharing of ideas, experiences and information on human rights issues, both national and international. By facilitating research and publication, the Commission sought to create an important platform for building a body of high quality scholarship on human rights and a community of human rights scholars.

It was thought the Journal should be devoted to a single theme and from this year the Commission will make beginning. Accordingly, globalization has been chosen as the theme. While globalization is a potent force, it is also a fact that its benefits have not been shared equitably and there is recognition that countries which are already poor and underdeveloped should not become further marginalized and dispossessed. The Journal seeks to review various facets of globalization and its implications for human rights.

Scholars have emphasized the need for a paradigm shift from a narrow markets based approach to a broader social justice based approach for protecting the rights of the poor, marginalized and deprived. All countries of the world, international and inter-governmental organizations and civil society have to play an important role in this regard and ensure that private sector, businesses and multinational corporations comply with their Corporate social responsibility obligations.

As in earlier years, there is a section on important Statements of the Commission which includes, among others, recommendations made by it on missing children, juvenile justice and effects of corruption on good governance and human rights.

I sincerely hope that the Journal will stimulate thinking and research and also spread awareness about Human Rights issues.

28th November, 2007

Justice S. Rajendra Babu
(Former Chief Justice of India)

Globalization and Human Rights

*Justice S. Rajendra Babu**

After the Berlin Wall was broken and Soviet Russia disintegrated, the whole world opened up. The extraordinary explosion of information technology has considerably reduced the dual concepts of time and space. After the industrial revolution, the greatest evolution that has taken place in the world for man is in the information technology. The information technology (IT) has emerged perhaps as the most dominant force in the global system of production, although the significant ramifications are equally important in all other spheres of contemporary human existence. Thus, political events and developments in technology have shrunk the world into global village and the stage was set for globalization. The concept of globalization is not economic alone but includes other fields also.

The contribution of IT and the attendant forces on the global economy is significant. There is a new economic dimension of globalization that stands over other human values or phenomenon, indeed, infact, above the basic conditions of human beings themselves. The unfortunate consequence is to denigrate the social, cultural and political roots and ramifications of the phenomenon of globalization. It is notorious that it is a serious mistake to think of globalization only as a result of market forces alone, for the boundaries within which the market operates are defined politically, in direct negotiations between governments in multilateral forums, including World Trade Organisation. In all such negotiations the power game is always present which are dictated by very few actors. The impact affects the vast majority and in consequence, understanding the political and other dimensions of the phenomenon of globalization is necessary to the development of a rational and considered view.

The recognition of human rights and the weaving of a web of globalization are probably the most important political developments of our times. The slow, quiet power of human rights pressures and aspirations helped bring down the Soviet empire, transform long suffering Latin America, and construct unprecedented international institutions, like the

* Chairperson, National Human Rights Commission (Former Chief Justice of India).

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United Nations. The world is also more connected by trade, more susceptible to neighbours' weapons and distant wars, more bound together by the very vanishing air that we breathe and the microbes it carries across the border. Globalization in all these forms affects human rights conditions for better and for worse and at the same time spread of human rights ideals and institutions affects the shape of international integration. It would have probably touched one's conscience when one reads about the mass graves or of women threatened with mutilation or about the victims of latest wars. Tens of thousands of Muslims are rescuing their lives in Bosnia, Afghanistan and Iraq and we now believe that atrocities of desperate regimes make our own world more dangerous. After the concept of globalization has taken roots, world has become small after all but often a very brutal and a desperate one. Understanding these connections is the key to building a small world worth living in.

Globalization and human rights both have roots in the powerful ideas of liberalism which includes the dignity of the individual, the desirability of freedom, the superiority of reason over belief and the possibility of progress through exchange. With the end of Cold War, most international interactions, from negotiations to lower tariffs to appeals against torture, shared the common elements of third worldview. However, by the end of the twentieth century, the relationship between globalization and human rights had become too complicated and at times even contradictory. The first generation of rights inscribed in international treaties and institutions protect the individual's life, liberty and bodily integrity from persecution and discrimination. The second generation of social and economic rights was introduced to international debate by developing countries. One significant result of this is the new trade agreement granting poor countries free access to patented pharmaceuticals which seems to be the legal basis for the right to health claimed by African AIDS patients. New challenges such as environmental devastation and new movements such as indigenous peoples' campaigns raise questions of a third generation of collective and cultural rights, which may be necessary to counter fundamental threats to survival and self-determination not captured by individual civil liberties. Human rights promise the first half of the liberal vision through principle and law but each of these kinds of rights is sometimes threatened by globalization's promise of progress through exchange.

Both promoters and protesters of globalization often equate it with trade. But globalization is actually an interconnected process of institutional, demographic and cultural connection and not just economics. The desire for more consumers goes on cultural flows and the customer best depends on social exchanges resulting in more migration, more transnational boycotts and organizations and even more international law. Although previous waves of globalization have occurred, the current era is distinguished by the strength and combination of four elements- connection, cosmopolitanism, communication and commodification. Connection is

greater traffic in bodies, goods, services and information across borders. Cosmopolitanism describes the growth of multiple centers of power and influence above, below and across national governments, international organizations, grassroots groups and transnational bodies. Communication is an increase in technological capacity that strengthens transnational networks of all kinds from multinational corporations to non-governmental organizations to terrorists and diffuses ideas and values more quickly and broadly. Commodification is the expansion of world markets and the extension of market-like behaviour across more states and social realms. Increase in global capital flows, privatization of formerly state-owned enterprises and increased employment of children.

These disparate aspects of globalization help to explain why it is double-edged sword for human rights. If connection can bring human rights monitors to Latin America, it also brings sex tourists to Thailand. Cosmopolitanism creates UN Human Rights Council and countless NGOs to condemn China's abuse of political dissidents. Yet commodification makes China the United States of America's second leading trade partner.

Although contradictory, these patterns are not random, research can help some factors that enhance or diminish the impact of globalization on rights. In general, interstate forms of international connection, such as conflict and migration, are threatening human rights. But commodification and markets have a more mixed effect, sometimes providing employment and mobility but often fostering economic exploitation which also may generate coercion and violence by businesses, smugglers and corrupt governments. Moreover, human rights are strengthened by the growth of cosmopolitan connections and global civil society, from international courts to transnational social movements. However, important exceptions to these trends exist.

Then what kinds of rights are being affected? Civil rights are often enhanced by the connection, communication and cosmopolitanism of globalization. The whole world is watching and it will block trade if it is with a nation indulging in torture of well-known political prisoners or in child labour. But economic rights are often undermined by commodification and other forms of connection. Under pressure to service foreign debts, governments cut basic entitlements or ignore labour rights to attract foreign investors. Indigenous peoples are able to modify international projects that imperil their land, livelihoods and cultures in Brazil but not in China.

Globalization increases the importance of degree and direction of national governance. By combining these factors of the forms of globalization, the type of rights affected, and the citizenship of the recipients, we can more accurately gauge the probable impact of globalization on rights. Many human rights activists use global communications to capture the hearts and minds of global public who will pressure governments from the grassroots. They provide information on global suffering, affecting images

that promote identification with victims. They must also construct cosmopolitan institutions at multiple levels, including global, regional and sectoral organizations. To enforce the international standards on global and private actors, activists participate in global civic initiatives that bypass governments such as codes of conduct for multinational organizations. Most of the leading threats to human rights today reflect insufficient global governance. In the least-developed corners of the globe, certain states resist universal standards and international law even as they seek global trade and security support. Terrorism flourishes in societies experiencing an unhealthy and unsustainable imbalance in these aspects of globalization.

Cold War gave rise to the question of priority of human rights. While International Covenant on Civil and Political Rights recognized rights relating to participation in public life and freedom from governmental interference in matters of conscience etc, the other Covenant enumerates social and economic rights such as right to food, clothing and shelter, health, education, work, social security and safe and fair conditions for work. In addition to these Covenants, a large number of conventions and declarations dealing with specific issues such as torture, minority rights, social discrimination, children rights and the elimination of all forms of discrimination against women. A third type of rights were also recognized which may be classified as group or collective rights which includes the right to self determination, right to development, right to peace, right to food, right to disarmament, indigenous rights and minority rights. There is a great deal of debate about the true position of these rights and modes of their enforcement.

The States which had been parties to all these Conventions have always given priority to one category of rights over the other. It may sound intriguing but the stark reality is that most states are more responsive to the needs of MNCs and investment firms than to the needs of the poor, powerless and voiceless segments of their populations. The welfare state has not been able to narrow the gap between rich and poor without the power to impose real redistribution on economic elites and any redistributive policies will come inevitably at the expense of macro economic health because they will be financed through inflationary spending rather than through real redistribution. Thus, there is a lukewarm attitude of states towards social and economic rights which require huge investment and heavy deployment of manpower for their realization. Quite often, these rights are more important than civil and political rights because without adequate food, free speech or right to vote is meaningless. Considering the existing mechanisms for protecting human rights in the context of globalization, both human rights law and the implementing machinery should be strengthened. It is necessary to develop more precise definitions and standards for these rights to develop enforcement strategies on both national and international levels. International economic organizations, the transnational corporations and banks and investment firms by and large

operate outside the rule of law and seldom care for human rights. In as much as these organizations are creations of the States, if there is political will, it will not be difficult for them to make them to be responsive to human rights norms and hold them accountable under the rule of law. States can govern their own institutions or organizations but the MNCs themselves may not be bound to do so. Thus, there is an urgent need to address human rights concerns but for that purpose, the existing international legal system cannot be relied upon because it is still weak and inadequate and there is a lack of political will necessary for rapid innovations. One approach might be to recognize transnational organizations as an organ of the society and take note of the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations to the end that every individual and every organ of the society shall strive by teaching and education to promote respect for these rights and freedoms. Every possible approach should be to treat the MNCs as accountable under the international law. Considering the fact that MNCs themselves recognize the importance of certain human rights as key to the success of their business, the civil society organizations should persuade them to make a binding legal commitment to implement human rights standards for a common purpose. This commitment could take the legal form of a multilateral treaty among MNCs which would oblige them by virtue of the good faith principle, to implement their commitment in practice.

What emerges from this discussion is that the major economic players must be subject to universal international law because unless all states are bound, an exempted recalcitrant state could act as a spoiler for the entire international community. As these players control such vast flows of capital, it is only the system of international law which can hold them accountable in a comprehensive and meaningful way. International law has proved its enduring capacity to expand, change and adapt itself according to the pressing needs of time.

The multiple and contradictory consequences of globalization and new challenge that they pose for observance of human rights have potential to undermine the traditional mechanisms for the protection of human rights. The decline in power of the state and its capacity to control in economic matters and to some extent to political matters on the one hand and the backlash against the homogenization of culture in the context of globalization as manifested in the assertion of ethnic and other identities and the rise of religious fundamentalism, excessive nationalism, ethnic cleansing and terrorism which also seem to be fuelled by the process of globalization will thus not only weaken the regulatory capacity of states which are traditionally expected to protect human rights but also present serious threats to human dignity and human rights. The effect of globalization is that it has miserably failed to prevent widespread deprivation of human rights of the world's poor. The failure of international law to regulate the principal agents of globalization has serious implications

for developing countries and in particular the poor. As international law is the only legal system with the potential to regulate these major economic players, it is a serious challenge for all concerned to find ways to ensure the observance of the rule of law and human rights by these entities. For this purpose new theory, new concept, new procedures and new international legislation are required. As globalization appears to be an irreversible process, the only way to tackle this problem is to promulgate standards, streamline procedures and to develop enforcement strategies on both national and international levels.

It cannot be seriously disputed that globalization has a potentiality to offer a host of opportunities for economic growth, employment generation and the well-being of all people but the present trend is limited to trade and culture and does not cover globalization of labour and knowledge. Even economic globalization has not yielded the kind of benefits envisaged earlier; it has not led to markets becoming genuinely free. Further market forces by themselves can neither deliver the desired economic growth nor can it be expected to perform those social welfare activities which were earlier done by the state because their main concern is to earn huge profits and not to address the social objectives. If the financial crises as a result of globalization have introduced risk and uncertainty in trade, industry and finance, the world-wide struggle for competitive advantage has had detrimental impact on environmental protection. Ensuring a claim for poor countries and poor people in the global forums is very much needed to make international law responsive to their concerns.

The problem now before us is to make globalization authentic and genuine so that its benefits can reach equitably poor countries and to poor people within the developing world. It requires a political, economic, ethical and spiritual vision based on respect for human rights, human dignity, equality, peace, democracy, mutual responsibility and corporation and full respect for the various religious and ethical values and cultural background of people. Therefore, the world's leaders must come forward with strong commitment on these aspects.

Undoubtedly, despite these challenges, globalization provides space, the rise of transnational society, ideas and methodologies represented by good governance and democratic entitlement provide new opportunities to re-structure the international human rights system and shape the structure and practice by humane governance.

In the era of globalization, defending human rights means more than condemning distant dictators but means tracing global connections, acknowledging global responsibilities, and rethinking national interest. In a small world, the rights you save may someday be your own.

Human Rights Dimensions of Uneuqal Trade

*Professor A. Jayagovind**

INTRODUCTION

There exist more than one hundred bilateral and multilateral treaties on human rights and overwhelming majority of states have accepted obligations thereunder. Hence we can conclude that there exists an "inalienable core" of human rights and this "inalienable core" has become "erga omnes obligation of jus cogence nature"[1]. This is so notwithstanding that states still hold divergent views on precise scope, meaning, priority and jus cogence nature of specific human rights. During the period of Cold War, there used to be heated debates regarding the relative priority to be accorded to civil and political rights on one hand and socio-economic rights on the other. However, as twentieth century was closing on, there was greater appreciation of the unified nature of human rights. The Vienna Declaration on Human Rights, 1993, categorically asserts that all human rights whether first, second or third generation are "universal, indivisible, interdependent and inter-related". The inalienable core refers to the essence of all these rights and jus cogence nature of this inalienable core has been accepted by the international community despite the absence of an authoritative interpretation of this inalienable core. It is against this background that we have to explore the possibility of developing a human rights approach to International Trade Law with a view to addressing the problems of inequities in international trade.

The interface between human rights and international trade is mainly discussed under two heads:

(a) Impact of free trade on economic development and distributive justice;
(b) Use of trade policy to promote human rights in a positive and effective way.

* Vice-Chancellor, NLSIU, Bangalore

[1] Ernst Ulrich Petersman, "Trade and Human Rights", in Patrick Macrory et al (ed) The World Trade Organisation: Legal, Political and Economic Analysis Volume II (Springer U.S.A. 2005), pp. 628-29.

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As for (a), the case for free trade as expounded by classical economists rests on the assumption that it would promote all round economic prosperity in the long run despite some initial hardships. This assumption has been contested by quite a few thinkers from time to time. The moderate version of this opposition, mainly represented by Keynes and others, holds that while free trade is by and large beneficial, governmental intervention may be required from time to time to correct distortions. The Post-War international economic organization is mainly based on this view. The radical version however rejects free trade option altogether and there are very few subscribers to this radical view.

As far as (b) is concerned, the issue is debated as a contest between free trade and fair trade. The developed countries often accuse developing countries that they indulge in production processes involving the violation of human rights; and the consequent reduction in production cost gives developing countries unfair advantages. In the context of the World Trade Organisation (WTO), the issue is articulated in terms of the inclusion of social clauses into the WTO Agreement.

Human rights dimensions of the present international trade regime can be understood by a detailed consideration of the issues raised above.

UNEQUAL TRADE

Free trade and free market presuppose free competition which in turn assumes some basic equality among the participants[2]. Equality is not to be understood in terms of relative economic strength, but in terms of vulnerability relevant to the given situation. For example, in Indian Law of Contract, only adults with sound mind can enter into contractual relations. In other words, minority and lack of mental ability are considered as vulnerability factors. Similarly in the context of international trade, developing countries sought to highlight their vulnerability in terms of structural deficiencies of their economies. They argue that equality would be equitable only when applied among equals and so viewed, international trade would be equitable only when their special vulnerable situation is properly acknowledged and provided for.

The concept of unequal trade in the context of international negotiations was articulated by Raul Pribisch. He propounded his Centre-Periphery Theory to explain the unequal nature of international trade. The Centre here stood for developed countries while the Periphery referred to developing countries. He pointed out that due to structural deficiencies, the developing countries were not in a position to absorb new productive technologies effectively and accumulate required capital to promote economic development. Primary goods produced by these countries had

[2] Gunnar Myrdal, Economic Theory and Underdeveloped Regions (London : Harper Touch books, 1971) pp. 50-51.

low price elasticity which in turn necessitated the substantial reduction in price to maintain the demand. As a result, the terms of trade had been going against developing countries; and Prebisch and another British economist Singer demonstrated this declining trend empirically through the data for the period between 1870 and 1930. Based on export pessimism engendered thereby, Raul Prebisch advocated the strategy of import substitution to promote industrialization in developing countries[3].

Raul Prebisch as the first Secretary-General of the United Nations Conference on Trade and Development led the movement for the reformation international economic institutions to address the concerns of developing countries. In his path-breaking report: Towards a New Trade Policy for Development, he explained the nature of unequal trade as follows:

> These rules and principles are based on the abstract notion of economic homogeneity which conceal great structural differences between industrial countries and peripheral countries with all their important implications. Hence the GATT has not served the developing countries as it has served the developed countries.[4]

Prebisch believed that market forces, if properly harnessed, would promote economic development and his reform proposals were based on this assumption. Through UNCTAD, he advocated international commodity agreements to stabilize commodity prices and Generalized Scheme Preferences (GSP) to give a boost to the exports from developing countries. In the decades of sixties and seventies, quite a few international commodity agreements were concluded, but they soon hit the road blocks. In retrospect, they proved to be of limited use. The concept of GSP was introduced into the GATT through the Enabling Clause, 1979. All the leading countries such as the U.S.A., the EC, Japan, Canada etc adopted the GSP idea but in retrospect, it was found that these schemes were heavily qualified and quantitatively small.[5]

Unequal nature of international trade continued, notwithstanding the concerted efforts of developing countries to change the system. The moves such as the Declaration of New International Economic Order and the Charter of Economic Rights and Duties, 1976 were of limited value. When the Uruguay Round of Negotiations were launched in 1986, the developing countries were not enthusiastic about them, but soon they were sucked into it. The outcome in 1994 was far from satisfactory from their point of view.

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[3] Research and Information System for Non-Aligned and other Developing Countries, Raul Prebisch and Development Strategy (New Delhi, 1987), pp. 245-46.

[4] Raul Prebisch, New Trade Policy for Development U.N. Document : E/Conf. 46/3. 1964 p.6

[5] Ratnakar Adhikari, "LDCs in Multilaterial Trading System" in Patrick Macrory et al (ed) supra no.1 p.346.

Under the Uruguay Round, developing countries as a whole increased the percentage of bound tariffs from 21% to 73%. They also undertook additional commitments in respect of intellectual property rights and investment measures. Somewhat costly obligations such as improvements of customs valuation, import trade etc., were imposed upon them without providing for any financial facility for these purposes. But in return, they got precious little. As T.N. Srinivasan put it :

> A fairly strong case can be made that the Uruguay Round Agreement was unbalanced; the developing countries undertook many costly commitments, and in return obtained only a few commitments by industrialized countries to phase out GATT-inconsistent MFA quotas and engage in liberalization of GATT-inconsistent intervention in agricultural trade.[6]

Even in relation to textile trade, the liberalization was heavily back loaded in the sense that 49% of liberalization took place in the final year. As the liberalization process was on, the developed countries often resorted to antidumping duties on textile imports from countries like India.[7] Despite the elaborate agreement on Subsidies and Countervailing Measures, the U.S.A. continued to subsidize cotton and other agricultural products. Despite the WTO ruling against upland cotton,[8] the USA has not withdrawn these subsidies. It is against this background that the developing countries wanted a new trade round to discuss their problems of economic development. At their instance, the Ministerial conference held at Doha was designated as Doha Development Round. Para.2 of Doha Development Round read:

> The majority of WTO members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in the Declaration. Recalling the Preamble to Marrakesh Agreement, we shall continue to make positive efforts designed to ensure that developing countries, especially the least developed countries among them, secure a share in the growth of world trade commensurate with the needs of their development. In this context, enhanced market access, balanced rules and well- targetted and sustainably financed technical assistance and capacity programmes have important roles to play.

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[6] T.N. Srinivasan, "Emerging Issues in World Trading System" in Ratnakar Adhikari and Prema-Chandra (ed). Developing Countries in the World Trading System : The Uruguay Round and Beyond (U.S.A.: Edward Elgar, 2002), p.32.

[7] EC: Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India (WT/DS/141/ R. 2000.

[8] U.S. Subsidies on Upland Cotton (WT/DS/267/R.2004

The Declaration mandated that the negotiations thereunder must be concluded by 1 January 2005, and the Ministerial meetings held in between must take stock of the progress and give appropriate directions. But in reality the deadlines were missed several times and the deliberations are still continuing. The central issue pertains to the agricultural subsidies maintained by the U.S.A. and the EC in contravention of the spirit of the WTO Agreement if not the letter thereof.

HUMAN RIGHTS DIMENSIONS

The GATT-WTO regime sought to establish right to trade as human right. Though the Agreement speaks in terms of free movements of goods and principle of non-discrimination in respect of goods irrespective of their origin, the relevant provision could be well interpreted in terms of human right to trade. The right to trade pertains to traders as well as producers. The intention of the WTO is that a producer should have right to sell his product anywhere in the world for the best possible price. Similarly, a buyer should have a right to buy his requirement from anywhere in the world. In so far as trade is essential for livelihood, the unequal trade impinges upon right to livelihood of the people from developing countries.

The impact of unequal trade on livelihood of people in developing countries has been well-documented. Agricultural subsidies which are at the centre of the present impasse in Doha Round negotiations have tremendous impact on the livelihood in developing countries. According to the study commissioned by International Labour Organization, between 1980 and 2000, the world prices for 18 commodities fell by an average of 25% in real terms. The fall was specially significant in the case of cotton, i.e. 47%.[9] It is estimated that if this subsidy is removed, the price would increase by 13%, which would in turn benefit the most vulnerable sections of population in Western Africa.

International Covenant on Economic, Social and Cultural Rights, 1966 affirms that all individuals irrespective of their nationality are entitled to certain basic socio-economic rights. At several places, it imposes obligation on states to take appropriate national and international measures for the realization of these rights. It is well accepted that civil and political rights will have no meaning in the absence of minimum social and economic security. From this point of view, right to livelihood may be considered as the "inalienable core" referred to earlier. All states are under a legal obligation to ensure at least a minimum sustenance to all human beings.

Article 2 of International Covenant on Economic, Social and Cultural Rights, 1966 reads:

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[9] *The World Commission on the Social Dimensions of Globalization. A Fair Globalization : Creating Opportunities for All* (ILO, 2004), para. 375.

> Each State Party to the present Covenant undertakes to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures.

The implication of the above provision is that a state's obligation to protect economic, social and rights extends beyond its borders. The 'legislative measures" refer to accepting appropriate treaty obligations. In other words, whenever states meet to negotiate various economic and commercial treaties, they have to fully realize and act as the protectors of human rights. Various inequitable features of the WTO system have already been highlighted and the Doha Round which is intended to correct the distortions and deficiencies has not made any substantial headway. The legal case in this connection can be made out by reference to right to livelihood which permeates the entire covenant on Economic, Social and Cultural Rights.

SOCIAL CLAUSES

In the ongoing debate between developed and developing countries, developed countries often accuse developing countries of "social dumping", i.e. unfair means of production extensively used in developing countries confer upon the manufacturers thereof undue cost advantages; and the cheaper goods so produced are dumped in developed countries' markets causing material injury to their economy. Lax labour and environmental standards prevailing in developing countries are often cited as examples "unfair" trade practice. The arguments used by developed countries can be of summed up as follows:

(1) Lax environmental and labour policies confer cost advantages and thereby increase the competitiveness of industries in developing countries;

(2) Lax standards in developing countries may attract investment to developing countries and this may lead to the "race to the bottom";

(3) Because of constraints imposed by the WTO such as banning of quantitative restrictions, a country following proper labour and environmental standards cannot protect its industries from unfair competition from abroad;

(4) The free trade regime of WTO will make it difficult for like-minded countries committed to higher standards to use trade as a weapon to force other countries to follow "fair policies".

The developing countries retort by putting forth the following arguments:

(a) Developed countries use these agreements only as a cover-up for their protectionist policies. Just as so-called human rights violations are used selectively by developed countries in international politics, certain industries such as textiles, wherein developing countries have certain competitive advantages, are selective targetted by developed countries.
(b) Developed countries are using these arguments to thwart the efforts of developing countries to industrialize their economies.[10]

From a larger perspective, there is a consensus that certain core labour standards such as minimum wages, banning of child labour, equal pay for equal work and right to collective bargaining ought to be followed by every country. But any arbitrary imposition of them from outside may cause more harm than good. For example, banning of child labour in poor countries may result in pushing working children to streets. There are already organizations such as International Labour Organisation proving appropriate forum for these issues.

If domestic experiences are of any indication in this regard, higher labour and environmental standards are normally adopted with the rising national income. Therefore in so far as free trade contributes to the rising income, there is a better chance for higher labour and environmental standards.

The present clamour for introduction of social clauses into the WTO will be of use only if such a move is followed by closer international economic cooperation. The Havana Charter of 1948 could be a good example in this regard. Article 7of this Charter provided:

> All countries have a common interest in the achievement and maintenance of fair labour standards related productivity and thus in the improvement of wages and working conditions as productivity may permit.

The "common interest" referred to in the above quote was reflected in close international cooperation between developed and developing countries envisaged therein. It is instructive to note that all those altruistic aspects of Havana Charter were outright jettisoned. Therefore, there is no point in talking about social clauses in the present juncture, when there is sharp clearage between developed and developing countries.

TRIPS AND PUBLIC HEALTH

Pharmaceutical industry is a good example for unequal trade. Practically all major pharmaceutical companies are from developed

[10] Arnab Basu et al , "Labour Standards, Social Labels and the WTO" in Ratnakar Adhikari et at. (ed). Supra. No.5, pp.116-30

countries and they have their branches and subsidiaries in developing countries. India at the time of Independence realized that its pharmaceutical industries were controlled by foreign companies leading huge outflow of foreign exchange; and the Patents Act, 1970 was a decisive move to reorganize pharmaceutical sector with a view to promoting public health. This was one of the successful legislations in the sense that it facilitated the growth of indigenous industry and availability of basic medicines to the common people. When India became a party to the WTO, the concerns were expressed about the impact of TRIPs on public health services in India.

The developing countries were given ten years time to implement the TRIPs Agreement. As the deadline of 2004 was approaching, serious concerns were expressed about the impact of TRIPs on public health system in developing countries. The issue was raised in Doha deliberations and declaration on TRIPs and Public Health was issued as part of Doha Declaration. The important aspect of this declaration was the assertion of the right of governments to issue compulsory licences in the event of what they consider as national emergency. Paragraph 5 of the Declaration reads:

> Each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics can represent a national emergency or other circumstances of extreme urgency.

The issuance of compulsory licence will not be of any use, if there is no domestic technological capability to utilize such licence. Paragraph 6 of Doha Declaration recognizes this problem and it directed the TRIPs Council to find some solution. One solution, floated in the TRIPs Council, meeting was that the government of the country which does not have the necessary technological capability should be able to issue compulsory licence to an industry located in another country having such capability. The U.S.A. opposed this proposal and the TRIPs has not yet come up with any viable solution so far.

Right to health is an important component of right to life and livelihood; and governments especially in developing countries have a duty ensure reasonable health care to the general public. This is reflected in Article 8 of the TRIPs:

> Members may, in formulating and amending their laws and regulations, adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of their Agreement.

It is clear from the above provision that the members of the WTO can use compulsory licensing provision to solve the public health crisis. Issuing compulsory licence to an enterprise outside the national territory can be one option in this connection and the latest amendment to Indian Patents Act provides for this contingency.

CONCLUSION

Globalization has no doubt contributed to economic prosperity, but the question is: prosperity for whom? While elitist sections have benefited from globalization everywhere, vulnerable sections continue to be in miserable position. Human rights approach to trade requires us to evaluate the benefits of globalization from global point of view: how mankind as a whole has benefited from this phenomenon. The extreme view that whole process of globalization should be jettisoned is to throw away the baby with bathwater. On the other hand, the moderate view advocated by people like Raul Prebisch, Joseph Stiglitz, Jeffrey Sachs and others is that we have to focus upon the reforms of the existing institutional structure.

Our experience with import substitution and other socialistic measures drive home the point that distributive justice, without adequate attention to production, would end up in redistributing poverty. In so far as globalization can contribute to production, we should adopt open economy policies and at the same time, every effort should be made to empower the people to reap the benefits of globalization.

Globalisation and the Indian Constitution

Prof. Ranbir Singh[*]

Globalization refers to the current hyper-acceleration of communication and trade across geopolitical borders, though its roots can be traced back to European conquest and colonization on several continents. The two dominant forces that have shaped globalization are trade and war. Both have become increasingly intertwined, since they depend on access to communication and media. The 'development' that invariably goes hand in hand with globalization can be an expression of genuine human progress or can mask the cynical profit seeking of governments, corporations, and their shareholders. The challenge for rights discourses is to promote sustainable development that is decided, directed, and controlled by the local community, whose long-term commitment to the region ensures responsible stewardship of the environment, Global sustainability is the guarantee for enduring human rights and genuine human development."

Conceptualizing the pertinent issues...

The very first Article of the Indian Constitution reads, 'India, that is, Bharat shall be a Union of States' which speaks volumes about the fact that the unity and integrity of the Nation are indestructible. The Preambular values of Equality, Liberty and Justice further enhance the democratic content of the Constitution. It is in this background of a detailed and well written constitution that India has managed to survive as the world's largest democracy, despite suspicions about the same from all quarters at the eve of Independence.

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[**] **The Concise Guide to Global Human Rights** by Daniel Fischlin, Martha Nandorfy Oxford University Press, 2007.

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In this day and age, when the forces of globalization have dramatically changed the face of the world, the significance of having a constitution that guarantees the rights of the citizens and provides for institutions to realize these guaranteed rights in practice cannot be over-emphasized. The lack of constitutional guarantees, either in theory or practice, is synonymous with arbitrariness.

In the words of eminent legal scholar, Prof Baxi, "The Indian Constitution's remarkable persona manifests itself in massive normative assault against dominant institutions of civil society. In a society marked by millennial conception of hierarchical equality, the Constitution proclaims all citizens as free and equal. For a society almost irredeemably patriarchal in character, the Constitution asserts values and rights of gender equality casting (since 1976) an obligation by way of citizenship on all to renounce practices derogatory of women. In contrast to the Hindu society's valorization of 'purity' and 'pollution', Article 17 of the Constitution prohibits, as a matter of fundamental right, the notion and practice of "untouchability". Through Article 23, a fundamental right against exploitation, the Constitution outlaws bonded labour, beggar, and other forms of servitude in a society slow to emerge from semi feudal relations of agrarian production. Proclaiming a charter of rights to conscience and religion, the constitution mandates reform of Hindu religion. In these, and many related vital respects, the constitution declares a war on social practices and beliefs deeply rooted in Indian society and culture.

The symbolic significance of all these normative aspirations is immense, even when sonorous words written on parchment do not by themselves transform material social relations. But, as development since its adoption have shown these texts of justice and rights has helped to energize state action, to defeudalize public discourse on power, to sustain momentous scope for rigorous redirection of the Indian future. The constitution provides basis as much for legitimation of power as for its delegitimation.

To this inaugural dimension of Indian constitutionalism must be added the departures its theory of rights marks in terms of the classical liberal theory of human rights. This occurs in a least five distinct ways. First, the Indian constitution is practically unique in the annals of world constitutionalism in recognizing basic human needs as human rights, whose progressive realization is a constitutional obligation of the state. Formulated as Directive Principles of State Policy, unenforceable in principle by courts (but now being gradually enforced by activist jurisprudence), the Constitution of India anticipates by two decades the bifurcation of international human rights conventions into the International Covenant on Civil and Political Rights and the sister covenant on Social, Economic and Cultural Rights. Second, the fundamental rights are subject to limitations (reasonable restrictions) placed by legislation, subject to judicial

review. Third, and perhaps most critical, the constitution does not merely conceive of human rights as a corpus of constraints on state power but also addresses them to institutions in civil society (notably through constitutional outlawry of untouchability and semi-slavery); what is more, the constitution creates offences (a task normally assigned to criminal law) in the part enunciating fundamental rights and overrides federal principles by providing on obligation on Parliament to enact further suitable legislation. Fourth, the constitution provides not just for affirmative action programmes for the scheduled castes, scheduled tribes and other backward classes but also provides for a scheme of reservation of seats in state legislatures and Parliament providing secure modes of access to political power and principle now extended to grassroots governance in villages and cities, extending the reservation to women, by the commonly known as Panchayati Raj amendment to the constitution. Fifth, the fifth and the sixth schedules to the constitution provide for autonomy to Hill District Councils, such that they have the power not merely to declare that the state law is inapplicable but also the Federal law may not operate in the indigenous areas."

The Indian constitutionalism extends conceptions of rights, innovatively, to civil society, embraces social and economic rights, provides of rights to political participation for the "weaker" sections of society, and reconfigures 'positive' and 'negative' liberties.

However, as Indian state assumed various roles over the years, it was expected that there shall be a bitter discord within the state and its organs as the constitution written 60 years back may fail to accommodate the requisite changes and may thus become redundant.

The majority of fears however proved to be unfounded. Today India is emerging as one of the biggest capital markets of the world. It is regarded as one of the greatest success stories for times to come. The multinational exposure of the Indian firms can be gauged from their growing foreign clientele, mergers and acquisitions, listings on foreign bourses, burgeoning forex reserves on account of investment inflows, etc. But still, more than two-thirds of India's population is dependent on agriculture and almost unaffected by the achievements of globalization. The point being made here is that it is well recognized that India has tremendous potential to excel in all fora, yet it needs to be ensured that such potential should not be annihilated; instead, these sources should be tapped for economic growth and for equitable distribution of the fruits of globalization.The wealth generated from globalisation should be distributed and reach all legitimate recipients. Globalization and liberalization have become the order of the day. But if we are able to accommodate our own inherent, indigenous and unique features, then we can give a new, improvised model of economic development based on the true spirit and ethos of India.

As the openness of the economy and the country's foreign orientation undergo a dramatic shift, various kinds of conflicts may take shape, which

might prove difficult to solve within the ambit of the constitutional mechanisms. To begin with, rapid globalization and liberalization have led the union government to sign several international treaties with little or no consultation with the states. Conflicts arise when the interests of the centre differ from those of the states. Though treaty-making power lies with the centre, it needs to consult the states before signing agreements that affect state jurisdiction under the Constitution. Moreover, the process of consultation needs to be institutionalized in the federal polity. In view of the growing trend of federalization in India wherein "province" or "state-building" has captured the psychology of provincial leaders, and coalition building at the centre has become a governing mode of administration, it is fortunate that foreign relations particularly having to do with trade treaties, agreements and conventions with foreign countries, even though enumerated exclusively under the centre's jurisdiction, should be conducted on a broad-based consensus between the centre and the states through a well-institutionalized process of mutual consultation and negotiations. In the absence of such a mechanism, it is likely that the centre will face more and more challenges to its treaty-making powers from the state governments. So far, the Supreme Court has recognized that the treaty-making power of the centre overrides the normal federal-state jurisdictional lines, according to the Constitution, in the limited number of cases it has dealt with (except in the Berubari case29, where the court called for a constitutional amendment for the cession of Indian territory to another country), but the centre's power is not absolute. International treaties and other agreements can be challenged in the court of law if these are in violation of fundamental rights of the people but more so if they are not in line with the "basic structure" of the Constitution. First, enunciated in the Keshavananda vs State of Kerala (1973),30 the doctrine of "basic structure" as developed by the Supreme Court gives the court the power to review the constitutionality of any legislative and executive action if it is not in conformity with the basic structure of the Constitution.

This doctrine is still in the making, but federalism has certainly been recognized as falling within the ambit of "basic structure". Before treaty making and treaty implementation, conflicts become the burden of the Supreme Court of India to settle, it will augur well for centre-state relations if some cooperative mechanism is put in place whereby the state governments become partners with the centre in concluding international treaties, accords and agreements.[1]

Similarly, another example outside the economic sphere which can be cited is, in the current era of globalization, almost all the Indian languages have been cornered to a position of helpless defense, because the shield is lifted away from them and as English takes centre stage in all fields, they

[1] Rekha Saxena, "Treaty-Making Powers: A Case for 'Federalisation' and 'Parliamentarisation,'" Economic and Political Weekly January 6, 2007.

run the risk of being marginalized. How they are going to defend their own territories and continue a meaningful existence is the question that we should ponder in the near future. Whether positive or negative, the effect of globalization on all languages is not uniform. It varies from language to language. It is dependent on the status ascribed to that language. The effect on the different domains of language use in a language is also different. Some kinds of language use get more benefit from the processes of globalization and industrialization, but other kinds of language use may not benefit at all. Language use in the domain of mass media, for example, is bound to benefit, but, as explained earlier, the language use in the area of medium of instruction may be threatened by these developments.

The widespread arbitrariness evident in India indicates that there are fundamental constitutional deficiencies - either in the conception of rights as contained therein or the enabling mechanisms emanating from the constitutive law[2] The post-1991 period has seen notable changes in India's macroeconomic policies, with the result that the Indian economy today is far more open and far more integrated with the global system than anytime since the 1960s. External trade has been considerably liberalized. Import substitution which was the centerpiece of the country's development strategy has been substituted by export orientation. Industrial licensing system has been abolished. The erstwhile limitations on foreign investment and capital and technology flows have been erased.[3]

Globalization, however, is a complex process that is having a massive impact on living standards across both the developed and developing world. In general, the balance of evidence suggests that globalisation is helping to reduce poverty and raise living standards. There is also, however, evidence that globalization has deleterious consequences as well. For example, in India, inter-regional inequality appears to have widened during the globalization era. The challenge before India is in many ways unique. It is a country rich in knowledge and the production of technology. Historically, it has not, however, seen this knowledge as a commodity. In recent decades this has changed somewhat, and India has rapidly increased its integration with the global economy. Indeed the World Bank recently judged India to be one of the world's 'fast globalisers'. Despite the large steps taken by India recently, the rest of the world must recognize that India's democratic tradition, and its history of diverse views, mean that the reforms will continue to be implemented unevenly, and slowly. India will, however, get there in the end.[4]

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[2] "One Country, One Polity Constitution Seminar III", Los Angeles, November 21, 1999, 'It Is Time For The People To Write Their Own Constitution.'

[3] 'Impact of Globalization on Cities and City-Related Policies in India' Om Prakash Mathur.

[4] 'Indian Federalism, Economic Reform and Globalization', Nirvikar Singh, T.N. Srinivasan, in UC Santa Cruz and Yale University Revised Draft May 20, 2002.

The advent of globalisation presents a new series of challenges to the administration. Activated by technological improvements, a new international relationship of our interests across issues and boundaries has come into being. Trade and financial developments have tightened to mesh of economic linkages across boundaries and regardless of preferences. The new state of affairs just cannot be wished away but must be engaged with. We should build up expertise to ensure that the interests of our country and the people are not overwhelmed by the forces of globalization and that our interests are properly served. We must evolve our foreign and domestic policies to control our future and serve our interests better.

Excessive Deference to the Executive-The observed shift from Activist to Active

> *"It is discernible that the strength of a judiciary is proportionate to the weakness of the executive."* [5]

The judiciary's strength has always shown the potential to withstand the political tides. It is more than ironic that judicial activism really grew to being an almost conscious activity of the Court in the post emergency period, when there was an extremely weak government at the Centre.[6] On the other hand, in periods of stronger government, the judiciary has played a more restrained role. However, in recent times the judiciary could do more to capitalize on political turmoil and coalition governments at the Centre to bring judicial activism to the heights it had reached earlier.

Interfering in Functioning

The Court has periodically used doctrines like lifting the corporate veil and an expansion of 'state' for the perspective of fundamental rights to interfere in the functioning of autonomous bodies. In very recent times, it has done the very same things with private educational institutions and even the BCCI(full form). This certainly depicts an activist disposition of the Court, but it has also been deferring so much power to the Executive, in the name of not interfering with the economic policy of liberalization[7]. In the early phase of activism, the judiciary sought in numerous cases to take over the management of certain companies, ordered CBI investigations, tried to prevent corruption etc. However, in very similar circumstances in the liberalized era the Court has taken markedly different positions. For instance, in the case *State of Karnataka v. Arun Kumar*[8] the Karnataka High Court had ordered a CBI investigation into the circumstances under which

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[5] 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

[6] This was the Janata Party who came to power and ruled till 1979

[7] Azadi Bachao Andolan, (2003) 8 SCALE 287

[8] (2001) 1 SCC 210

a power project had been approved in the state. However, the Supreme Court chose to make short shrift of the elaborate high court judgment by holding that, "...none of the 13 circumstances noticed by the high court can be characterized as giving rise to any suspicion, much less the basis for investigation by a criminal investigation agency."[9] In the past, in very similar circumstances CBI investigations had been allowed. Similarly, the Supreme Court dismissed the plea for an independent investigation into the Government's decision to sell developed off shore gas and oil fields from ONGC to a joint private venture.[10] Thus, they have chosen instead to support the Executive, by simply not interfering.

Disallowing Challenges to Economic Reforms

It will be seen that the Supreme Court has almost without exception negated all challenges to any element of the economic reforms package of the government when such challenges were based on specific violations of law or evidence of corruption.[11]

In the much criticized case of *BALCO Employees Union v. Union of India,*[12] the Supreme Court refused to accept the petition of B.L. Wadera on the ground that he was not directly affected by the disinvestments of BALCO. [13] This was inspite of the fact that there existed sufficient grounds to show that there was a contravention of existing laws and procedures. This effectively means that the public cannot challenge by way of PIL the misuse of the public exchequer, unless she/he was personally affected. It is significant that these observations were made in a case involving a challenge to an element of the so-called 'economic reforms' of the government. The Court very emphatically stated,

"*...public interest litigation was not meant to be a weapon to challenge the financial or economic decisions which had been taken by the government in exercise of their administrative power... The decision to disinvest and the implementation*

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[9] (2001) 1 SCC 210 at p. 223

[10] See Centre for Public Interest Litigation v. Union of India, (2000) 8 SCC 606; Vishal Jeet v. Union of India, (1990) 3 SCC 318

[11] It is ironic to note that when locus standi was expanded, the Court took a completely different line, claiming that the person approaching the Court need not have any interest in the proceedings at all. He/she only needed to feel solidarity with the cause of the people concerned. However, they should not be pursuing any personal motives.

[12] (2002) 2 SCC 343. This decision is also in stark similarity to the decision taken in Cogentrix case

[13] In this instance, the main petition had been filed by the Employees Union of the Government who were challenging the disinvestment of BALCO on various grounds, including arbitrary and non-transparent fixation of its reserve price. These were extremely valid grounds as the challenge to sell off the PSU was based on completely non-transparent and arbitrary valuation of the company conducted in less than a week by a valuer of immovable property having no experience in the valuation of companies. The Court refused to examine this challenge, stating that the valuation had been done by a known method. See, Bhushan, Prashant, op. cit, p. 1771

thereof is purely an administrative decision relating to the economic policy of the state and challenge to the same at the instance of a busy body[emphasis added] cannot fall within the parameters of public interest litigation."

When the validity of Enron was being challenged as violative of the Electricity Supply Act while trying to set-up the Dhabol power plant,[14] the Supreme Court refused to examine the challenge to the project itself on the ground that they did not think it to be in public interest to go into the validity of a project, which had been substantially set up against which several previous challenges had been rejected by the courts. This was said despite the fact that construction of Phase 2 of the project (which was more than twice the size of phase 1) had not even commenced at the time, and that none of the previous challenges to the project were on the based on the grounds and materials on which this challenge was based.[15]

In a starkly similar vein, in *Delhi Science Forum v. Union of India*[16] wherein the petitioners had challenged the award of telecom licenses to private companies on various grounds, including that one of the companies HFCL, which had made the highest bids in nine circles had a very small net worth which made it ineligible. The Court observed, while dismissing the matter it had been evaluated by the tender evaluation committee and there were no allegations of malafides against it. The challenges were repelled on the ground that they amounted to challenging the economic policies of the government which was not permissible.

Cases such as *CPIL v. Union of India,*[17] where the Supreme Court actually allowed challenges to purported implementation of the new economic policy[18] are indeed a rarity and an exception to the current trend. The judiciary has decided to take. The judiciary has chosen to not to allow questioning of the economic policy. Though these decisions may in some way be technically correct, it is difficult not to get the feeling that they were influenced by their own approval of the policies of liberalization, privatization and globalization.[19] While a policy of non-interference is definitely to be appreciated in certain circumstances, this stance is giving the Executive a completely free hand to carry out liberalization irrespective of its conformity to constitutional mandates. The current trend of cases cannot be referred to as judicial restraint being practiced by the Court.

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[14] CITU v. State of Maharashtra (2004) 3 JT 71; They rejected the claim that this would be ruinous to the finances of the state electricity board and that there was adequate circumstantial evidence of corruption in the sanction of the project.

[15] Bhushan, Prashant, op. cit., p. 1772

[16] AIR 1996 SC 1356

[17] (2003) Supp 1 JT 515

[18] It was here that the government oil companies nationalized by acts of parliament which specifically mandated the companies to remain government companies could not be privatized without amending the acts and thus taking the approval of Parliament.

[19] See Bhushan, Prashant, op. cit., p. 1772

Pro-Development Stances

The 1990's have been the decade where it has been said that the activism of the Supreme Court has been concentrated on its involvement with protecting the environment. The Supreme Court has been particularly active especially in those instances involving the urban environment or deforestation. Thus, the Court has taken sweeping, bold steps to move polluting industries out of Delhi.[20] However, it must be noted that in a number of cases where the cause of the environment was pitted against 'development projects' such as large dams, or even hotels and housing colonies, the cause of the environment gave way to the interest of such development. It is important to note that in many cases, the legal soundness of the case was also evident from the fact that some of the judges gave dissenting judgments or that the Court went against the advice of its own expert committees.

This attitude showing the Court favouring 'development' over the rights of oustees or the environment is most clearly evident in the manner in which the court has sought to push the mega project called the 'interlinking of rivers'.[21] Similarly in *Narmada Bachao Andolan v. Union of India,*[22] the majority judges[23] still went on to approve the project and allowed it to go on without any comprehensive environmental impact assessment that was necessary even according to the government's own rules and notifications. There are several passages in the majority judgment extolling the virtues of the development brought in by large dams. This is extremely ironic as the Narmada Bachao Andolan had been disallowed from making any submissions with regard to the advantages and disadvantages of big dams. The judgment even goes on to gratuitously emphasize the myth that the Bhakra dam was responsible for the Green Revolution in our country. They also made disparaging remarks against Narmada Bachao Andolan being an anti-development organization. In the recent judgment in *N.D. Jayal v. Union of India,*[24] the majority did not ensure compliance with the conditions

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[20] Bhushan, Prashant, op. cit., p. 1772

[21] This project had its origins in the President's speech in 2003. A claim was advanced that the problems of floods and drought could be solved through the interlinking of rivers. A short application was filed praying that the Court direct the government to take up this project which the Court allowed by issuing notices to all the states and the centre. Orders were passed which are now being treated as directions of the Court and thus enforceable law. Only the Union of India and the State of Tamil Nadu had filed responses, and the Court presumed that all the other states were in approval, in spite of the Union of India's submission that the project would cost the government Rs. 5, 60, 000/- crore and would take 43 years to complete. The court stated that since this was in national interest, funds could not be claimed as a constraint and the project should be completed in 10 years. See Bhushan, Prashant, op. cit., p. 1773

[22] (2000) 10 SCC 664

[23] Inspite of a strong dissent by Justice Bharucha, which pointed out that the Sardar Sarovar project was proceeding without a comprehensive environmental appraisal and without even the necessary environmental impact studies having been done, as was very evident from the documents of the government itself.

[24] (2003) 7 SCALE 54

of environmental clearance of the project. In fact, the government's own expert committee had come up with an elaborate report depicting a series of violations of conditions on which environmental clearance had been granted.

Developmental Activism?

Where spaces exist in the Constitution, it is easy for activist judges to read rights in. However, even for activists it becomes extremely difficult to accede to social demands requiring them to render constitutionally invalid, in the title of human rights or human violation, 'development' projects that violate the integrity of environment or the projects of economic liberalization that elevate the rights of multinational enterprises over the human, constitutional rights of the Indian citizens.[25] Hence this has led to a situation wherein the Court may be passing a range of activist decisions on one hand, but negating their effect when they have more pressing compulsions in the form of development. This could in a way be described as activism, but would one want to describe it so? However, it is all broadly referred to as judicial activism and this slant becomes problematic because it fails to differentiate between several meanings that could be attributed to judicial activism.

It must be borne in mind that terms such as activism and restraint are very subjective terms. There is no clear definition on what is activism (as mentioned earlier). However, in order to determine the legitimacy in decisions, it might be pertinent to utilize criteria that helps to differentiate between the 'good' and the 'bad' in judicial activism. Although we may not be able to agree on whether particular decisions are good or bad, we may be able to agree on the criteria for making that evaluation and how it should be used.[26] A very useful set of criteria is as follows:

- How closely does the ruling adhere to the constitutional text?;
- History of the practice;
- The extent to which the Court has imposed affirmative obligations on the political branches; and
- Consistency with precedent[27]

While *per se* these decisions might appear to fulfill the above criteria, a closer look clearly depicts that it fails on most counts. The Court has at several instances (some of which have been enumerated above) to conform to the rights and duties laid down in the Constitution. On the second count, it is admitted that they have set up some of these practices only a couple of

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[25] Baxi, Upendra, "The Avatars of Indian Judicial Activism: Explorations in the Geographies of [In]justice", Verma, S.K., and Kusum (ed.), "Fifty Years of the Supreme Court", 2001, p. 169

[26] This is a concept that has been borrowed from the jurist Aurther Hellman. For more details see, Hellman, Aurther D., op. cit.

[27] Hellman, Aurther D., op. cit.

decades past, but they still have deviated from the practice for no real explicable reason. For instance, they relaxed the rules of *locus standi* in earlier cases, but took a more restrictive stand in later cases.[28] The Court has not imposed much affirmative obligations on the political branches and has maintained a relative amount of consistency with precedent. From this, it is easy to conclude that this is 'activism' that is not sufficient.

This kind of decision-making can be better described (in terms borrowed from Baxi) as judicial activity rather than judicial activism.[29] When the court is 'active' it acts as a trustee of state regime, power and authority. Therefore it defers to the executive and the legislature and shuns any appearance of policy making, supports patriarchy and other forms of violent social exclusion and promotes stability over change. However when a court is 'activist', it holds judicial power in a fiduciary capacity for civil and democratic rights of all peoples, especially the disadvantaged, dispossessed and the deprived.[30] Baxi says that an activist disposition makes a judge want to remedy the situation before them, but an activist ideology wants them to systematically improve the state of affairs.

Straying from Commitment to the Masses

In a developing country, the legal process tends to intimidate the litigant. A poor person who enters the legal stream, whether as a claimant, a witness or a party, may well find the experience traumatic.[31] The early phase of the working of the Supreme Court was marked by the distinct absence of a huge portion of the population. Unaware or distrustful of the Court processes, several claims were not even brought before the judiciary. However, with social movements and the emergence of PIL, this was all to change. The Supreme Court was to become the Court for the masses, especially poor and illiterate litigants.

Judicial Activism in the area of human rights has been facilitated in considerable measure by PIL. In fact, the guarantees of fundamental rights and the assurances of directive principles, described as the 'conscience of the Constitution',[32] would have remained largely empty promises for the majority of the illiterate and indigent citizens under adversarial proceedings. The PIL has served as a conscious attempt to transform the promise they offer into reality."[33] This is exemplified by the active concern the Court

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[28] It is admitted that there has been an over-burdening on the Court in the form of PILs, but this is not an adequate means of dealing with the issue. Either proper rules relating to locus standi should be put into place, or standard norms should be followed.

[29] Baxi, Upendra, op. cit., p. 165

[30] Baxi, Upendra, op. cit., p. 165

[31] Desai, Ashok H., and Muralidhar, S., op. cit., p. 162

[32] Austin, Granville, "The Indian Constitution: Cornerstone of a Nation", Oxford University Press, New Delhi, 1999, p. 50

[33] Desai, Ashok H., and Muralidhar, S., op. cit., p. 159

showed in the early phases of PIL in articulating the rights of detenues and undertrials[34] including arbitrary arrests, custodial violence and extra-judicial killings, conditions in prisons and other custodial institutions like children's home, women's homes, mental asylums, encounter killings in Punjab, and the rights of victims of crimes.[35] Even compensation was provided for in certain instances. At a slightly later point of time, changes in employment law and laws of tenancy were also to prove reflective of the Court's intention of upholding the Directive Principles of State Policy and the Constitutional philosophy.[36] Thus, judicial activism in favour of the weaker classes was promoted and became the constitutional culture.[37] While 'special reasons' are bound to differ from judge to judge depending upon his value system and social philosophy, it was a distinct trend that all laws were sought to be interpreted keeping in view the word socialist in the Preamble of the Constitution and the Directive Principles which echoed the language of socialism.

This position was to change in a later period during the phase of economic reforms, which seems to have coincided with an apparently decreased sensitivity of the Court to the rights of the poor. This is evident from the attitude that the Court has displayed towards slum dwellers, oustees and workmen.[38] Coming at a phase, where there exists a tremendous amount of constitutional faith and belief in the judiciary, precipitated by the initial judicial activism, people have great expectations which the judiciary may not always be able to fulfill.[39]

Originally, when PIL emerged locus standi was relaxed for the sake of those people who would otherwise not be able to approach the Court. Now some PILs are being admitted against these very people. One of the starkest examples is that a PIL was admitted to prevent begging, almost reducing poverty to a crime.[40] Similarly, when polluting industries were being shut

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[34] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81 and D. K. Basu v. State of West Bengal, (1997) 1 SCC 416

[35] This is just a small selection of cases on Human Rights, but aptly characterizes the extent of the rights laid down by the Courts. However, it is by no means exhaustive, as there are a plethora of decisions of the Court in the last few decades.

[36] For example, all termination was held to be retrenchment, giving workmen a right to compensation of their services being terminated. Similarly, the law of landlord and tenant was interpreted in favour of the tenants on the ground of Rule of Law.

[37] Das, Gobind, op. cit., pp. 25-26

[38] Bhushan, Prashant, op. cit., p. 1773

[39] Baxi, Upendra, op cit., p. 156

[40] The Delhi High Court order to clear the capital of beggars is a clear example of completely ignoring destitute people and the problems they face. It has not been uncommon in the past for vagrancy to be a crime and beggars to be shifted out of cities to 'clean' them up.

The PIL flied before the Court described beggars and the homeless as the 'ugly face of the nation's capital' See Gopalakrishnan, Amulya, "Poverty as a Crime", Frontline, November 9th-22nd, 2002, http://www.frontlineonnet.com/fl1923/stories/20021122004703000.htm

The Kerala High Court had also passed similar orders in Kerala Leprosy Patients Organisation Committee v. State of Kerala, AIR 1992 Ker 344.

down, the workmen were not even heard. Earlier, the workmen were always given at least a hearing. Previously, the court had been particularly supportive of the rights of workers in companies that were being wound up, allowing challenges to the sale of a plant by the management and had even disallowed the sale as it drastically affected workers rights.[41] Similarly, in regard to big developmental projects, the oustees and displaced persons are not even consulted

It is acknowledged that the entire process of PIL has faced a great deal of opposition over the last decade. It has been suggested that when courts become engaged in social legislation, almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored. There has even been a move to restrict and regulate the filing of PILs [discussed earlier]. However, at the end of the day, it must be borne in mind that while it might not be possible for the Courts to right every wrong, irrespective of how genuine it might be, it is still important for them to play a truly activist role in trying to reform the social scenario, at least through the creation of rights. They might not be able to exercise any control over implementation as that is completely out of the purview of their jurisdiction, but they can certainly continue to articulate and sanctify the rights envisaged in our Constitution.

Any judiciary can become strong only when people repose faith in it. For the judiciary and its actions, whether activist or restraintivist, to obtain legitimacy the people must necessarily derive faith from such institution or actions. Thus, while validity might be a legal concept, legitimacy is very much a sociological one. The legitimacy of a court is built on a feeling among the people that the decisions of such a court are principled, objective and just and, therefore, a constitutional court has to strive to sustain its own social legitimacy and accountability through a concern for the poor, disadvantaged and powerless minorities.[43]

The legitimacy of the Indian judiciary had its origins in the increasing pluralisation of the Indian polity, the need for a counter-majoritarian check on democracy and the relative erosion of the high profile political leadership that prevailed before independence.[44] As the judiciary grew more powerful, so did its legitimacy with the people. In the 1970's and 1980's, the higher judiciary had created a new jurisprudence which had worked to develop and strengthen the rights of the poor and disadvantaged and also maintain a balance between law and equity.

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[41] Fertilizer Corporation Kangar Union v. Union of India, (1981) 2 SCR 52; National Textile Workers Union v. R. R. Ramakrishnan, (1983) 1 SCR 922

[42] Wallace, J. Clifford, op. cit.

[43] Sathe, S.P., op. cit., pp. 22-24

[44] Sathe, S.P., op. cit., p. 6

Conclusion-Reaffirming Faith

For the ordinary citizen the changed outlook and values displayed by the judiciary in recent times is a matter of serious concern and it has to be borne in mind that the casual nonchalance with which India is being pushed to a course will have unparalleled and unprecedented, financial, social and environmental consequences. Economic globalization seeks to make the world safer for the foreign investor and hence this world, more than any other, requires the state to step up for the protection of civil and democratic human rights. This onus falls more on the judiciary than any of the other institutions of the state, making it vital for it to play an activist role.[45]

This activist role will have to be a vibrant and dynamic one. They will be required to attract as well as admonish social petitioners. Hence neither activism nor restraint can be sought in absolutes, but more in the form of gradations of the two.

As the guardian of the Constitution, the Court is needed to reclaim its old role and continue along the path of activism that it tread so willingly in the past. It is acknowledged that this aggravated state of affairs described is largely subjective, just like the concept of judicial activism is. It is not uncommon for several critiques to arise in one era, because people find the legislatures more congenial to their political preferences than the courts only to swing around at a later point of time when the winds of opposing political influences blow. A judicial doctrine that waxes and wanes with the political tides is unworthy of the name 'philosophy.' It is nothing more than a rationalization of a willingness to use whatever means are expedient to reach one's preferred results. Regardless of one's political or social view, one should reject such a judicial approach.[46]

It is true that globalization, liberalization and privatization are here to stay, but the Court is still the guardian of a constitution that proclaims a welfare state and the socialist philosophy. The onset of economic reforms does not detract from this duty. The mechanism of PIL was put into place for the disadvantaged and downtrodden and should not be abused. There is a need to foster judicial respect. While the judiciary is need to play an activist and not merely an active role, it should delineate the limit of activism to ensure respect for the other organs in the system of checks and balances. Judicial activism does not mean governance by the judiciary. It is a counter-majoritarin decision on democracy. It must function within the limits of constitutional democracy.

Thus, a reopening of constitutional spaces is a crying need and this needs judicial activism in its truest sense. In the midst of rapid liberalization and development the judiciary can make efforts to promote sustainable

[45] Baxi, Upendra, op. cit., p. 159

[46] Wallace, J. Clifford, op. cit.

development which will take into account various competing factors, rather than purely economic development. No longer can the process of development be viewed a dichotomy of black and white. It is the task of the judiciary to find the shades of grey that will promote the economic development of our country, while still driving it to achieving the status of an ideal welfare state in tune with constitutional ideals enshrined in Art.38 which reads:

> *"the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life".*

Impact of Globalization on the Vulnerable Groups

Aruna (Limaye) Sharma

For the purpose of analyzing the impact of globalization on the vulnerable, it is important to understand the two terms i.e. globalization and vulnerable groups. This essay is focusing on analyzing the visible and invisible impact of globalization on vulnerable groups in India. The essay highlights the issue whether the adverse impact on the vulnerable groups is an outcome of globalization regime or is it more an impact of the failure within the country to invest in improving capacity and capability of the vulnerable groups so that they can actively participate and make informed choices to take advantage of globalization.

The positive impact of globalization is India being visualized as a threat due to its army of skilled professionals (Prestowitz 2005 and Friedman 2005).Thus it is a case of skilled large population becoming an asset. 35% of India's population is under the age of fifteen. The global profile of India is one of rising economic and political power (Nayar and Paul 2003) with young population but, on the other hand, India has challenge to ensure basics like food security, primary education, health care and sustainable livelihood to more than one-forth of its population. India's citizens are poor and impoverished. 104.6 billion in 2006 (16.9 per cent of the world population) has 26 per cent of its people below the national poverty line. (Poverty estimates). At macro level 26% do need clarity, but at cutting edge the need to ensure that the most vulnerable are not missed out. The actual list in any village have many discrepancies and it is sad that widow, orphans, elderly persons with no one to support, disabled do get left out from the list and thus become out of focus. A lopsided growth rate is not what is committed in our constitution, where equity of opportunity is reiterated in both fundamental rights and directive principles of state policy. Globalization is not just a process "integrating economy", but it also integrates issues related to competence, technology and governance. In a globalize world, as technology becomes its main motor, knowledge assumes a powerful role in production, making its possession essential for nations. **Thus, the challenge is to increase the knowledge base i.e. skilled and trained manpower to compete the new markets.**

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When we define vulnerable groups, the common factor among such groups is that they are those who are unskilled, malnourished, illiterate and poor. They are not equipped to encase the opportunities triggered by globalization. Thus, either they miss the bus or perpetuate the vulnerability. Thus, when we analyze the impact of globalization on vulnerable groups, it is assessment of not only those who are currently poor but also those who are likely *to be* poor in the future (Chaudhuri 1994, 2000, Chaudhuri, Jalan and Suryahadi 2002). The focus of vulnerability assessment thus should be on following three groups in context of our country.

(i) those who are currently poor and permanently poor (dalits, tribals and poorest of poor)
(ii) those who are likely to become poor in future due to lack of skills to compete for opportunities thrown by globalization. (Children who are missing formal education, malnourished and those who are in poverty trap).
(iii) those who are likely to become poor due to false and high aspirations from globalization (instances of heavy indebtedness of farmers).
(iv) those who are reaping benefits today will miss out due to failure of India to come up with their own 'brand'.

India's year-to-year growth rate could well hit double figures at some point in 2007, and the country may even grow faster than China. Today, GDP grew by 9.2% and average annual pace is more than 8%, compared with around 6% in the 1980s and 1990s, and measly 3.5% during the three decades before 1980. The government's eleventh five-year plan 2008-2012 has an ambitious target of 9% average annual growth. Indians are rightly proud of the huge global success of firms such as INFOSYS and that of Tata Steel's 5.8 billion pounds acquisition of Britain's Corus. However, on the other hand, it is a fact that more than 60% of India's labour force is engaged in low productivity activities like farming, subsistence agriculture, wage employment and seasonal employment. The biggest obstacle is lack of infrastructure, poor quality of public services and not so effective delivery system. World Bank in its report stated, "when systems are failing, it is not enough to fix the pipes, one needs to fix the institutions that fix the pipes".

While globalization creates enormous potential for economic advancement, it also creates new vulnerabilities and insecurities. The massive problem of continuing absolute poverty and rising inequalities in India arises out of a basic asymmetry between growth of the national product and the source income of the majority of India's population (Sinha, Aseema 2003) The share of manufacturing and service sector show an increase which is a positive trend, but the percentage of labour force in agriculture, informal and unorganized sector continues to show increasing trend. This makes the advantages of high GDP lopsided. The employment in organized

sector has "declined significantly" (Srinivasan and Tendulkar 2003). This scenario is potential for perpetuating the vulnerability and poverty.

India is visualized, becoming a competitor to most developed countries by 2020, but it can be realized not by just having a consistent high growth rate but focused public policies to build capacity of the vulnerable. The first vulnerable group is those who are poor and constituted majority from discriminated class like dalits, tribals and disabled. Effectiveness of targeted interventions toward these groups depends upon both design and implementation. The approach to reducing poverty over the past half a century has evolved in response to a variety of experiences and deepening of understanding of complexity of development process itself. Village is the basic unit for development. It is, therefore, imperative that to enable 'life with human dignity' is made a reality. The focus of implementing agencies is to make the vulnerable groups access the various targeted intervention for them. It is equally important to ensure that the amenities are available. Government, through its various schemes and agencies, create a platform to translate the resources to the beneficiaries. How effective is this platform? The reduction in poverty is not showing the decline to the desired levels. The NFHS-3 report states that 28% of rural population is in the lowest wealth quintile. India is targeting to become super power in coming two to three decades, and inbuilt advantage is having young population. **However, the real challenge is the young population, whether it is malnourished, illiterate and unskilled or educated, healthy and skilled.** The need of the day is, therefore, to converge all the resources that are available at the cutting edge i.e. the district. The challenge is for the government, NGOs, corporate sector, thinkers, and philanthropists to intervene to improve the management of execution by in building the system of converging these available resources.

The vulnerable i.e. the poor, small and marginal farmers, labourer in informal and unorganized sector are not equipped because of lack of education, continued existence at subsistence levels and access to even basic needs. Thus, they are not participant in the growth process. Much can be argued that the increase in GDP would make sufficient resources available to improve infrastructure and opportunities for vulnerable. This argument is based on assumption that the continued 26% of population below poverty line and increased employment percentage in unorganized sector is more because of lack of financial resources. However, the truth lies elsewhere. India on date is providing not less than 1,200 crores to each district for developing infrastructure and also ensuring improvement in quality of life by providing food security, health care and education. Plethora of schemes is targeting to improve skills and entrepreneurship so as to increase sustainable livelihood opportunities. Thus, the problem is more of improving the management of these available resources than arguing on trickle down impact of increase in GDP.

The question of impact of globalization on vulnerable groups can be better addressed if we analyze the mechanisms and linkages between the rising growth rates on the conditions of vulnerable populations. India adopted planned economy and interventions through line departments to assist vulnerable to move into better income areas and sectors. The study of inter state impact of growth rate itself show the discrepancy. The percentage of rural poor has increased in the vulnerable states like Bihar, UP, MP, West Bengal, Orissa and Assam, and Ravallion and Chaudhuri (1997) have analyzed that "India's economic growth has not been occurring in states where it would have the most impact on poverty nationally. Growth has concentrated in states like Gujarat, Maharastra, Rajasthan, Tamil Nadu and Karnataka (Ahluwalia 2000, 2002; Bhattacharya and S. Sakthivel 2004; Shetty 2003). This reiterates the argument that the impact on vulnerable groups is more because of failure in improving the capabilities of these states to participate in the process of globalization than the increase in poverty as a derivative of the globalization process. Negative impact of globalization is aggravated due to failure of execution of basic programs of the government. The issue is therefore to improve the management to ensure access to the 1200 crores, which is available in the district per annum to the vulnerable groups.

The second category is of those children (the future of India) who will miss opportunity due to delay in execution of compulsory education, food security, health care and immunization program. NFHS-3 has surveyed that only 83% of primary school children attend school. Thus 'there is still a major 17% left out who are potential vulnerable who will fail to participate in the process of globalization. Similarly, the Infant Mortality Rate (IMR) continues to be 57 deaths before the age of one per 1000 births, reflecting on the insufficient mechanism for delivery of health care. The children who are born and survive are also neglected as only 44% of children are fully vaccinated for six major childhood illness. The graph of improvement from NFHS-1 and NFHS-2 is not something to indicate that necessary steps have been taken to improve the management of execution, even though sufficient quantities of vaccines are available. The nutritional status among children as highlighted by NFHS-3 is almost half of children under age of five who are stunted, and 20% are wasted. Thus this category, which have to face the future challenges of global competition, is the victim of poor management and delivery system failure of the development programs. **The impact on these vulnerable children because of globalization will be more a case of missing opportunity.** Arguments holding globalization responsible for the impact on vulnerable is more inclusive when one looks at the middle classes in India. It is at the same time more exclusive in nature when one looks at the lower classes in society. Globalization has created a situation where it has become more the rule than the exception that production is separated from the markets, and labour from capital. On one hand India boasts of the skilled manpower on par with the world's best in terms of technology,

medical tourism, software companies and IT sector. We also have high standard educational institutions producing the best manpower. But on the other hand, we are not able to provide even basic primary education to 100% children in age group of 6 to 14, the IMR and MMR continues to be high and we still have a high percentage of malnutrition. It is not globalization which is responsible for this dichotomy but failure of our management of these programs.

The third category is of new vulnerable groups; deep recession in the power loom sector in Tamil Nadu, shift from product patenting to process patenting, a crisis in the edible oil industry after the slashing of import tariffs, collapse in coffee prices and farmer suicides in Kerala, Andhra Pradesh and Maharastra. Bankruptcy among the cotton farmers and farmers in Andhra Pradesh and Maharastra is leading to an increase in farmers suicides (Sainath 2002), the displacement of traditional fishing by commercial shrimp farmers in Kerala and Orissa are the illustration of ill informed choices made by the individuals. The false presumptions of productivity, external factors of WTO regime, and shift to commercial crops without sufficient forward and backward linkages, all have led to new category of vulnerable groups. The absence of regulatory system in terms of cheap loans, adequate technical knowledge, non-listing of risk factors, and deterioration of infrastructure has resulted in these vulnerable groups resorting to suicide.

The solution argued is more by advocating either for India to leave the WTO or protection from competition from imports as well as foreign takeovers. i.e. protection for inefficiency in terms of high cost of manufacture, poor quality of products and low productivity. The argument to impose protectionist duties on milk powder and garments produced in other Third World countries and the demand for deregulation of the labour market to face the increased competition resulting from trade liberalization is again an attempt to not accept the real problem of improving the technology and skills among the labour but perpetuating the inefficiency. The exports do face stiff competition from cheaper and/or better quality products from countries like Taiwan, China and South Korea with considerably higher labour standards than India. The interventions in India have, therefore, to be for better labour standards than making of case of continuing to depend the advantage in competition on cheap labour. It is unfortunate that whether it is IT sector or pharmaceuticals, the focus is more of improving the skill levels of Indians and no efforts to develop a brand name. The danger is falling in the trap of history repeating itself (Chitnis Shekhar June 2005). When East India Company came in India 500 years ago, large ships were allowed western exploration and direct access to the best products and labour of the East. Traders bought the best of Indian products at premium (thus more income to middle class) but sold them under their own brands. In turn the traders did set up modern system of distribution, education and communication. Are we falling in the same trap? In spite of globalization

today, cotton and tea equals software services and BPO, East India Company can draw parallel to multi national brands and companies and the communication to that of IT infrastructure. The focus on branding is still taking back seat. The small scale industries have been captivated by Chinese goods and retail small shops by the malls and organized sale points. We have only 20 year of window of opportunity, and next opportunity may be 500 years away, can we take this challenge?

The vulnerable groups identified and special interventions listed for them in the eleventh plan are to be targeted to improve their capability and equip them to take up the competition than resorting to protective policies. Globalization does give opportunity to the best and thus skilled manpower, research, efficiency; infrastructure will decide the impact on the vulnerable groups. Failure to focus on the same will relapse these vulnerable groups into vicious cycle. The adverse impact on the vulnerable groups is more of a failure to invest in developing their capability than an outcome of globalization. The challenge is therefore to converge the available resources and effectively manage the delivery system targeting to enhance the living conditions, exposure and opportunities of the vulnerable groups.

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Globalization, Human Rights and the Courts - The Indian Experience

*Dr. K.N. Chandrasekharan Pillai**

Generally speaking, globalization refers to a process by which the Earth is considered to be one single unit where social and economic interactions among the people are based on interdependence. World becomes a society with global values. It involves flow of information, capital and goods. Different societies with different value systems confront each other. These are efforts made by each to have integration. But they are not successful. Notwithstanding the failure the efforts continue unabated and the conflicts also continue. The conflicts could be located in areas wherefrom the sovereign states have been constrained to withdraw. This situation has created a division of opinion with reference to globalization. While one side argues that globalization brought with it prosperity and quality of human life the other side argues that globalization has resulted in denial of human rights.

The emergence of globalization is the result of serious efforts made by liberal western countries to bring the whole world under one market-oriented economic order. The multinational corporations having their head offices in various western capitalist countries have become power centers replacing the sovereign governments. The states leave a vacuum in this respect in the matter of protection of human rights. This situation has been gradually brought forth by a continuous process of creating inter-dependence among the various states and multinational entities like World Bank and International Monetary Fund etc. No country in the world could successfully resist the tempo of creation of interdependence resulting in globalization.

It may not be correct to argue that globalization has brought forth only chaos. It has on the contrary made itself successful in improving the quality of human life socially economically and culturally. But it cannot be denied that globalization ruined the national structures evolved for the protection of human rights. This is because the citizens are now required to approach

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authority structures other than their own sovereigns. In such a situation every developing country is required to be watchful before globalization of its economy is permitted. India is in such a situation wherein it has to permit globalization by a slow and steady process failing which it may experience the adverse impact of globalization on a large scale.

Developments preceding globalization of Indian economy will show that it was in the wake of external repayments liability crisis in 1991 that the Indian government took a turn towards globalization. Import licensing was abolished; tariffs on imports were removed. India started favoring FDI. Foreign investment by Indian companies was encouraged. Capital market Reform was effected by setting up of Securities and Exchange Board of India. Monopolies by public sector undertakings was not encouraged; on the contrary the economy started encouraging competition. In sum, competitive market solution to economic issues was being tried. This situation has resulted in the reduction in the governmental role in economic management. India has had an impeccable record of human rights protection in terms of its constitution and practice. Naturally the limited role now being played by the governmental agencies makes India to experience the stress arising out of the vacuum.

The UDHR defines in its preamble "a common standard of achievements for all peoples and nations, to the end that every individual and every organ of society shall strive.... to promote respect for these rights and freedoms". These words underline the importance of the UDHR for non-state actors as well. In this situation it is the rule of survival of the fittest, which has sway. The week and the meek can assert their rights only if the state authorities help them. But as discussed, they can hardly pay heed to this obligation in the changed circumstances. There is therefore tension in the Indian context giving rise to a debate with regard to the role of courts. This is quite frequently reflected in the judgment of the Supreme Court.

Recently in *State of UP v. Jeet S. Bisht*[1] conflicting opinions were expressed indicating the tension experienced by the state agencies in the context of globalization. The question was whether it was proper for the judiciary to issue directions to government for setting up consumer court in the State of U.P. Justice Markandey Katju opined that the judiciary is not entitled to issue such directions.

He asserted thus: -

> "Thus the above decision (Deok Nandan Aggarwal, 1992 Supp (1) SCC 323) clearly lays down that in the garb of affirmative action or judicial activism this court cannot amend the law as that would be a naked usurpation of legislative power. This court must exercise judicial restraint in this connection".

[1] (2007) 6 SCC (Cri.) 586

We regret to say that the directions are really an encroachment into the legislative and executive domain. Whether there should be one state consumer forum or five more state consumer forum is entirely for the legislature and executive to decide.....

We are constrained to make these observations because in recent years it has been noticed that the judiciary has not been exercising self-restraint and has been very frequently encroaching into the legislative or executive domain. We should do introspection and self criticism in this connection"[2].

These observations invited a sharp reaction from Justice S.B. Sinha who said thus:

> "With the advent of globalization, we are witnessing a shift from formalism to a value-laden approach to decimation of law as purely an autonomous discipline (with the emergence of cross-cutting realms such as law and Economics, Law and Philosophy, law and Society, IPR et al) we see that laws embody a goal which may have its provenance in the sciences other than law as well. It is no more the blank letter in the law which guides the interpretation but the goal which is embodied by the particular body of law, which may be termed as the rationality of law"[3].

The trend shown by Justice Katju in the above case has been the consistent position of the Supreme Court. In *R.K. Garg v. Union of India*[4], questioning the validity of Bearer bonds, the court observed: -

> "There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid".

It disowned interpretation of import policy in *Liberty Oil Mills v. UOI*[5] on the plea that it has no competence to do so. It declared: "Obviously courts do not possess the expertise and are consequently incompetent to pass judgment on the appropriateness or adequacy of a particular import policy"

In *Balco Employees Union v. Union of India*[6], the court okayed disinvestments resorted to by the government and said:

"In matters relating to economic issues, the government has, while taking a decision, right to trial and error as long as both trial and error are bona fide and within limits of authority".

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[2] *Ibid* 607-609
[3] Ibid 616-617
[4] (1981) 4 SCC 675
[5] (1984) 3 SCC 465
[6] (2002) 2 SCC 333

In *Dhampur Sugar (Kashipur) Ltd. v. Uttaranchal*[7] the court okayed the orders passed by the State Government giving effect to a change in the policy of giving license to an industry which was under the earlier law rejected. The Supreme Court took the position that the court does not have any jurisdiction to decide the desirability of changing a policy by the executive and the legislature.

This attitude of non-interference with the executive or legislative act even if it runs contrary to the human rights seems to be a fall out of the globalization syndrome to which India along with other developing nations came to be trapped. It is however heartening to note that there is still an urge to intervene in such matters from a section of the judiciary by way of advancing arguments enabling the judiciary to assert power and fill the gap left by the state machinery.

The debate in *State of UP v. Jeet S. Bisht*[8] is referred to the CJI for reference to a larger bench. It is hoped that our judiciary may be willing to fill the gap left by the absence of sovereign state. So far so good.

[7] (2007) 8 SCC 418
[8] (2007) 6 SCC (Cri.) 586

IMPORTANT STATEMENTS/DECISIONS/OPINIONS OF THE COMMISSION

1. Recommendations of NHRC on handling cases related to Missing Children

INTRODUCTION

The brutal killing of several innocent children in Nithari village of Noida district in Uttar Pradesh shook the nation's conscience. It sparked off nationwide indignation on the abuse to which the victims were subjected and gross violations of their human rights. In order to put an end to gross violations of rights of children and also to prevent more lives from being lost in similar crimes, the National Human Rights Commission constituted a Committee on February 12, 2007 headed by Shri P.C. Sharma, Member, NHRC to look into the issue of missing children in depth. The Committee was asked to examine the problem of missing children and bring this issue to the forefront as a National Priority. The Commission felt that missing children remained a neglected, low-priority intervention area for everyone other than those who have lost their children. The Committee was also asked to evolve simple and practical guidelines so that the Commission could come up with appropriate recommendations.

The Committee held wide ranging consultations with various stakeholders in Government, including the Ministry of Home Affairs, Ministry of Women & Child Development, Ministry of Labour, Ministry of Social Welfare, Delhi Government, Delhi Police, National Crime Records Bureau, UNICEF and leading NGOs in India working in this field and also experts having in-depth knowledge of the subject.

After carrying out intensive consultations, the NHRC Committee came out with the following recommendations which were approved by the Commission:

Recommendations

The NHRC Committee after interacting with the stakeholders has proposed the following recommendations/suggestions to contain the problem of missing children:

1. **PRIORTY ISSUE :** Irrefutably, the problem of 'Missing Children' is a grave matter which is also a human rights issue. It is acknowledged that it

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has not been received the attention it deserves from the government and society at large. Therefore, this issue needs to be made a "priority issue" by all stakeholders, especially the law enforcement agencies. The Directors General of Police of States should take appropriate steps to issue police orders/circulars/standing instructions etc., sensitize all officers in this regard and also make them accountable.

2. **MISSING PERSONS SQUAD/DESK IN POLICE STATIONS:** The Committee recommends that every Police Station across the country should have Special Squad/Missing Persons Desk to trace missing children. This Squad/Desk should have a Registering Officer who should be made responsible of registering complaints of missing children. He/she should maintain complete records of efforts made by them to trace missing children as well as by the Special Squad. The Registering Officer should also write incident reports and keep them on record in Station Diary/case diary, as the case may be. In addition to this, the Registering Officer should also work as an Enquiry Officer whereby he/she should be made responsible for following up the entire procedure of tracing/tracking the missing child. The JAPU (Juvenile Aid police Unit) can, if required, be utilized for addressing the issue of missing children, even though the children who are missing can never be labeled as juveniles, but are, in fact, children in need of care and attention. The functioning of this unit/squad should be regularly monitored/ reviewed by Senior Officers and wherever necessary timely instructions and assistance should be provided to the Registering-cum-Enquiry Officer.

3. **COURT DIRECTIVES :** There is a need to reiterate the implementation of the Supreme Court Guidelines given on 14/11/2002 in Writ Petition (Cri.) No 610 of 1996 filed by Horilal Vs. Commissioner of Police, Delhi & Ors. in all police stations across the country. This would entail prompt and effective steps for tracing missing children.

As per the directions given by the Delhi High Court, a Cell relating to missing persons/children was set up in the Central Bureau of Investigation (CBI). This Cell has been functioning ever since but due to lack of adequate resources, desired results could not be achieved. Since the CBI is a Central investigating agency having powers and jurisdiction to take up cases of inter-state and international ramifications, it would be desirable to strengthen this Cell to enhance its capacity to coordinate and investigate criminal cases relating to missing children and persons.

4. **ROLE OF DISTRICT ADMINISTRATION :** The legislation enjoins upon the district administration in the country to get places where children are employed, periodically inspected. The Committee notices with deep anguish that in this task the district administration all over the country has failed. This is evident from the fact that even today, the number of children found engaged as domestic help and bonded /child labour is enormous. Again, it is a matter of concern that in the identified cases of child labour

and bonded labour in which prosecutions are launched against the employer the conviction rate is not even 1 per cent which obviously has resulted due to lack of supervision. Such an apathy towards this vital issue has to be curbed in favour of a proactive approach. The Committee urges the authorities concerned to hold district administration accountable for dereliction in discharging this responsibility.

The Committee is of the opinion that this exercise of regular inspections, if undertaken with all earnest, will ensure linking back a large number of children missing from their homes.

5. **MANDATORY REPORTING :** The State Police Headquarters should evolve a system of mandatory reporting whereby all incidents of missing children across the country should be reported to the newly constituted National Commission for Protection of Child Rights (NCPCR) within 24 hours of occurrence. Failure to report promptly would give rise to the presumption that there was an attempt to suppress the incident. The reporting should be done promptly and the procedure could be the same as is being followed by the concerned authorities for reporting custodial death cases to the NHRC.

6. **INVOLVING PANCHAYAT RAJ INSTITUTIONS (PRIs) ETC :** In order to make the investigative procedures concerning missing children more transparent and user-friendly, it would be preferable for the police investigating team to involve the community at large, such as representatives of Panchayati Raj Institutions / Municipal Committees/ Neighbourhood Committees/Resident Welfare Associations, etc, in addition to existing help lines. This will enable the community to get fully involved along with the police in tracing missing children. The Directors-General of Police should seriously consider taking full advantage of these agencies in the task of not only investigating crimes relating to children but also in tracking down missing children. The role of Panchayats and such bodies should be extended to:

- Prompt reporting of missing children;
- Prompt dissemination of intelligence, if any, to the law enforcement agencies;
- Rendering assistance to law enforcement agencies for tracing children;
- Provide timely feed-back to the law enforcement agencies about the return of the child..

7. **INVOLVING NGO's :** In places where vulnerable groups of children are found in large numbers, there is need for enforcement agencies to evolve some kind of a mechanism in partnership with non-governmental organizations and social workers, whereby apart from rendering counseling to them, awareness raising activities are also carried out. This would not only instill confidence in them but also strengthen them and give them

special protection so that they are in no way lured by external agencies/ factors. This initiative could be taken by the Missing Children Squad/Cell in the Districts. The DGPs need to ensure action on this initiative.

8. **NATIONAL DATABASE AND MONITORING :** NCRB should establish a National Tracking System that would encompass the grass-root level in locating and tracing missing children. There should be prompt reporting of not only missing children cases, but also of return/rescue/ recovery. All instances where children are rescued from places of exploitation including places of sexual exploitation and also exploitative labour, should be dovetailed into the NCRB data base. The database should be updated on a regular and systematic basis. This also involves revising the reporting format with respect to the rescue and recovery of persons who have been trafficked. The Director NCRB should liaise with the Project Coordinator, Anti Human Trafficking UNODC, New Delhi and workout the format as the UNODC is working in the field of empowering law enforcement agencies and developing appropriate projects etc. with respect to Anti Human Trafficking and related issues. This could be made effective through web-based and other intra and inter State networking linkages. The information that is gathered ought to be appropriately disseminated. It is suggested that the NCRB evolve one-page useful position papers that has information with regard to various crimes, including the relevant statistics. This could be useful and accessible tool for different agencies that are dealing with a particular problem. For example, relevant information relating to missing children, if it is put in a page or two will be far more accessible and readable for all stakeholders than information complied as part of a voluminous report prepared by the NCRB.

9. **SCRB/DCRB :** There is an urgent need to revive State/District Crime Records Bureax. The database on missing persons, their return and the processes involved should be properly documented. The State Missing Person's Bureax (MPB), needs to be revamped, made functional and strengthened. The officers should be well trained and knowledgeable to address the issues in an analytical manner and from the perspective of Human Rights. The SCRB and the MPB should have proper liaison between them, so that the database of SCRB and NCRB are dovetailed to the functioning of MPB and the Special cell/ squad to be set up in the Police Stations. The MPB data should be specifically updated with the data of rescued children from trafficking crimes.

10. **HELPLINE :** There is a need to establish a Child Helpline through NGOs/PRIs/other agencies with adequate support from Government in all the districts. The Department of Women & Child Development, Govt. of India, may take the initiative to set up such a national network.

11. **OUTSOURCING PRELIMINARY INQUIRY TO NGOs :** The NHRC Committee came to know about several instances where NGOs are actively functional, delivering the best results, in tracing missing children and also

documenting them. Such efforts and initiatives have supplemented the work of the law enforcement agencies. The synergy of police and NGOs can be of immense help in addressing this issue and in providing tremendous support to the police agencies who are preoccupied with several other tasks, especially in those places where the police station strength is very poor. Therefore, Preliminary Inquiry into missing persons could be outsourced to NGOs, who are willing to undertake this task. MHA may issue appropriate guidelines to the States in this regard. Each State can identify a few such NGOs and notify them if required. As of today nothing stops NGOs from causing such inquiries and many are already doing this work. Therefore, the best option, in the given situation, is to develop synergy between the law enforcement agencies and the NGOs and institutionalize this partnership.

12. COGNIZABILITY OF THE EVIDENCE : As of now the issue of missing children is not a cognizable offence and the very fact of missing of a child does not convey occurrence of a crime. However, some States like Andhra Pradesh, Tamil Nadu allow police to register FIRs and take up investigation. In order to facilitate proper enquiry/investigation, it is advisable that an FIR is registered by the police with respect to the issue of missing children. However, experience shows that in many cases a child may not have gone missing and the panic reaction of the parents or wards lead to such reporting. Therefore, all such issues may not warrant registration of an FIR immediately. Nevertheless, it is advisable to register FIR if a missing child does not come back or is not traced within a reasonable time. The State Governments are advised to consider issue of appropriate directions to the law enforcement agencies to set a time limit of 15 days from the date of reporting that if a missing child is not traced back within 15 days, a presumption may be made of some malafide and an FIR registered with respect to all such issues of missing children.

13. SENSITIZATION OF STAKE HOLDERS : There is a need to sensitize all ranks of police personnel and other stakeholders to the issue of missing children. For this a two-day module be designed by BPRD, so that uniform training is imparted to all concerned. Along with this, there is a need to prepare suitable reading material that includes good practices about missing children from other States/Union Territories as well as other countries.

14. RESCUE OF CHILDREN IN NEED OF CARE AND ATTENTION : There is a need to identify "run away children", "abandoned children" "neglected children" and such "vulnerable children" who are often found roaming around places where they are particularly exposed to abuse and exploitation such as railway stations, traffic junction etc. Their vulnerability increases due to a lack of support structures - family or otherwise. Proper identification, provision of care and support, and a 'safe place' is vital for them. These children are, under the JJ Act, are the children in need of care and attention which they should be given. This can be achieved by producing them before CWC and ensuring proper care in the concerned

Homes. If Government Homes are not available, Government agencies should support appropriate NGOs to set up such Homes. The State Governments are called upon to notify such NGOs immediately so that they can become functional without delay. States should ensure that such notifications are done on a time frame of one month from the date of application by the NGOs.

15. I-CARD FOR CHIDREN : The local administration should facilitate the schools to keep a watch on their children, especially when they become untraced or become dropouts. Schools and old teaching institutions should introduce photo identity cards of children, so that tracing is possible. All such photos with identity particulars be documented and data base be developed urgently. The State Governments and the Central Government should take initiatives in this regard. Schools should embark on a programme of empowering the children on their rights, legal strengths and defence mechanisms in case of need.

16. POVERTY ALLEVIATION MEASURES : It is acknowledged that poverty is one of the main factors in pushing children into inhospitable conditions and making them vulnerable for exploitation. The Central and State Governments have introduced several schemes to be implemented at Gram Panchayat level with the object of providing job opportunities to the poor and the disadvantaged and elevating them from the poverty line. All these programmes, especially concerning children welfare should be properly planned at the Gram Sabha level following the Antyodaya approach. Schemes such as Mid-day Meal Scheme, Sarva Siksha Abhiyaan, Health Immunization etc. deserve to be properly monitored for achieving optimum results. Proper implementation of these poverty alleviation programs are indeed a human rights approach. If such schemes and programmes of the Government are implemented it can be reasonably expected that the vulnerable sections will become empowered to resist exploitation that often takes place now.

17. ROLE OF STATE COMMISSIONS : There is a need to involve State Human Rights Commissions, Women Commission of State/ Centre etc., with regard to the issue of missing children. Such bodies have tremendous overarching influence on all stakeholders in addressing the issues appropriately in their respective jurisdictions.

18. ROLE OF MEDIA : In view of the current dreadful situation, the media can play an important role in increasing public awareness of missing children and the plight of the thousands of hapless families whose children are listed as untraced. This could be achieved as follows:

- At the newsroom level, crime reporters and metro editors need to include the category of missing children as a regular beat and as part of their daily news grind.
    - These stories need to be followed up and tracked regularly just like other stories of murder, human trafficking, etc. A LOST and FOUND series could be commenced. The cases of missing

children being traced/returned home should be treated as the ``good news" stories which will also encourage the police/local authorities to step up their actions.

- The large picture story on the enormity of the continuing malaise of missing children, could coincide with Human Rights Day, Children's Day and so on.
- Newspapers can make a separate section in their classified sections on missing children. The notices and advertisements on missing children need to have a better display and be given more prominence and space in newspapers and TV bulletins.
- Just as some newspapers carry a daily/weekly count of say, victims of terrorism, a new slot of missing children in the city/country can be commenced.
- Newspapers or TV channels with an emphasis on local news can have an arrangement with either the police or a local NGO, which has worked in the area to print without charge announcements and advertisements on missing children.
- The missing child story should also be picked up for the daily crime shows many TV channels have commenced. Just as investigative stories are done on the flesh trade, on organ smuggling etc. case studies of how missing children end up in brothels or factories can be carried. Cases can be picked from solved cases or; where children were smuggled across borders. Identities can be masked if need be.
- Media organizations like media unions, the women's press corps and so on can collaborate with agencies like the NHRC and other NGOs working on children's rights issues to hold seminars and symposiums on the subject.

19. **ATTENTION TO TRANSIT POINTS OF TRAFFICKING :** There is a need to keep special vigils at railway stations, bus-stands, airports, sea-ports and such other places, which act as transit points for missing children, including children who run away or are made to run away. In this context, the Government Railway Police, the Railway Protection Force, Airport and Seaport authorities needs to be oriented about the issue of missing children.

20. **MISSING CHILDREN FROM ACROSS BORDER :** This is a grey area, which largely remains unaddressed. It has been reported that several foreign children who have been trafficked into India have been punished as illegal immigrants and are made to suffer. NHRC recommends the state governments to undertake review of all such cases and provide relief to such children, as all trafficked children, irrespective of their nationality, are children in need of care and attention. Moreover, there is a need of developing a Protocol on this issue. It is learnt that UNODC in its anti human trafficking project can provide the required technical assistance. In this regard the Ministry of Women and Child Development can utilize the technical assistance of UNODC and in close coordination with the MEA,

develop a protocol on this topic. The Project Coordinator, UNODC may provide the required technical assistance.

21. **SURVEY AND RESEARCH :** The world of missing children is unknown and there is no proper study or research on this issue. Even today the exact figures of missing or traced children are not available. The existing legislation requires the State and district authorities to periodically carry out inspections/surveys of places where children are employed with a view to identifying missing children and those engaged in bonded labour/child labour. This task has remained a low priority area. There is an urgent need for the State administration to undertake micro studies especially at the places where children are reportedly vulnerable.

A village-wise survey of all children who have gone missing or even recovered is an urgent need to understand the realistic dimensions of the problem. Studies by academic institutions into various factors behind the vulnerability of children are recommended in order to generate right response.

2. Recommendations of the National Conference on Juvenile Justice

INTRODUCTION

The National Human Rights Commission has been deeply concerned about the plight of Juveniles. The Juvenile Justice Act, 1986 had a more treatment oriented and humanistic approach as compared to earlier Laws in this regard. However loopholes in terms of separate trials, confidential court proceedings and age determination still existed. This Act which was amended in 2000 included uniform definition of Juvenile irrespective of gender, use of better terminology, community placement options and counselling to families of children in conflict with law. The 2000 Act however overlooked the inclusion of certain substantive and procedural due process rights. An amendment to the 2000 Act was brought in 2006 to cover the gaps but questions are still being raised concerning the implementation of this law. With a view to analyze the existing status of Juvenile Justice in the country, the Commission organized the two-day National Conference on Juvenile Justice System in India on 3rd and 4th of February 2007 at the Indian Institute of Public Administration, New Delhi.

Objectives:

The main objectives of the Conference were (i) to analyze the existing situation of children in especially difficult circumstances; (ii) to analyze the existing status of juvenile justice in India with regard to human rights standards; (iii) to critically appraise the emerging issues in juvenile justice system and suggest alternate measures in terms of investigation, adjudication, disposition, care, treatment and rehabilitation; and (iv) to develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare and development of children in need of care and protection or those in conflict with law.

Recommendations:

Based on the deliberations, the Commission made the following recommendations:

1. There is a need to strictly enforce the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its subsequent amendment carried out in 2006.

2. There is a need to ensure that appropriate adjudicatory bodies (Juvenile Justice Board/Child Welfare Committees) are constituted in each and

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every district of all the States/Union Territories within the stipulated time frame prescribed in the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Since the 2006 Amendment Act was notified on 22 August, 2006, it would imply that the entire adjudicatory structure has to be in place by 21 August, 2007. This needs to be monitored vigorously by the NHRC.

3. The adjudicatory bodies should also ensure that enquiries regarding juveniles in conflict with law and children in need of care and protection are completed within the required time frame as prescribed in the Act. The Conference perceived that the Juvenile Justice Boards across the country should protect 'the best interest of the juveniles' and in no way function as a criminal court. Similarly, the Child Welfare Committees should ensure protecting 'the best interest of children'. It was opined that a direction/guideline regarding this could be sent by the NHRC to all concerned.

4. Section 62 A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, mandates constitution of a Child Protection Unit in each State/Union Territory, and such Units for every District, consisting of officers and other employees appointed by the concerned State Government/Union Territory Administration with a view to ensure the implementation of the said Act, including the establishment and maintenance of Homes, notification of competent authorities in relation to these children and their rehabilitation and coordination with various official and non-official agencies concerned. However, since no time frame has been mentioned in the Amended Act, 2006 for constitution of these Child Protection Units across the country, the participants felt that the NHRC should take-up the responsibility of monitoring the implementation of this clause in the Act.

5. Similarly, there is a need to bring about improvement in the standard of services of the existing homes/institutions by the State Governments/Union Territory Administrations.

6. Taking into consideration the fact that amendments to the Juvenile Justice (Care and Protection of Children) Act 2000 were brought in the year 2006 and there were still many State Governments/Union Territories that had till date not framed Rules under the principal Juvenile Justice Act, 2000; the NHRC should give a direction to all the States/Union Territories to expeditiously frame the required Rules so that the best interests of concerned juveniles/children is taken care of.

7. No juvenile or a child under any circumstances is to be lodged in a jail. Further, it is to be ensured that in every police station at least one police officer is designated as the 'Juvenile or the Child Welfare Officer' and is imparted appropriate training and orientation to deal with juveniles or children. Not only this, the designated police officer or

the Special Juvenile Police Unit is to report immediately to the Board/ Committee as well as inform the probation officer and parents/ guardian of the juvenile/child who is placed under their charge.

8. The delegates opined that NHRC should take the lead in directing the Juvenile Justice Boards of all States/Union Territories to review all pending cases of juveniles in conflict with law who till date were found to be languishing in Observation Homes and correspondingly pass appropriate orders in the interest of such juveniles.

9. Since majority of the juveniles in conflict with law and children in need of care and protection were from the poor sections of the society, the participants were of the view that the family support system of this 'at risk' population needs to be strengthened. This task, they felt, could best be accomplished with the coordination of the Government/ corporate sector/NGO/Community support system. Besides, emphasis is to be laid on other 'preventive aspects' as well, such as, ensuring that every child from this population goes to school. This apart, the infrastructure of these schools also needs to be strengthened so that each of these schools could in itself function as Child Protection Centres.

10. The delegates of the Conference opined that there is need to define the concept of 'community service' as given in the Act. Besides, there is need to evolve minimum standard(s) of services for various community services for juveniles/children.

11. The delegates felt that there is need to ensure free legal aid and advice to juveniles in conflict with law as well as children in need of care and protection. Not only this, these children need to be given a patient hearing in all legal proceedings against them by taking into account their dignity and best interest.

    It was suggested that the Legal Services Authority Act, 1987 has made it obligatory for the State to provide legal services to a child. As such, the State/District Legal Services Authority should take appropriate steps in rendering legal aid services to children. However, the NGOs already involved in this field should continue to render their services.

12. The delegates opined that the number of homes/institutions, catering to the needs of juveniles in conflict with law and children in need of care and protection across the country, had no co-relation whatsoever in terms of the budget allocated to them and the number of beneficiaries. Besides, the amount spent on their education, vocational training, recreation and health was negligible. The need of the hour, therefore, is to increase the budgetary allocations proportionately as well as bring convergence of resources.

13. The Conference recommended that adequate importance should be given to the overall role of probation in the juvenile justice system. This is because probation plays a significant role in the treatment and rehabilitation of juveniles. In fact, it was reiterated that probation could be used as an effective alternative method rather than sentencing or institutionalizing the juvenile.

14. It was recommended that to check violations and delay in adjudication, the District Legal Services Authority should be involved and immediately informed about the arrest of a juvenile. Further, there was need to create a Special Unit of Probation Officers to assist the Juvenile Justice Board. Besides, there should be effective networking between District Probation Officers throughout the country.

15. It was strongly recommended that the formal age enquiry should be dispensed with where a person apparently is a juvenile.

16. The delegates recommended that variety of dispositional alternatives as suggested in the 2000 and the amended Juvenile Justice Act, 2006 should be effectively executed as it would ensure better care and rehabilitation.

17. There is a need to evolve an effective child tracking system that should be web-enabled so that information could be exchanged between all those working for the best interest of juveniles/children.

18. There is a need to build-up/strengthen the capacities of various categories of professionals/personnel responsible for the implementation of the juvenile justice system in the country in conformity with the new trends in the field. Accordingly, there is need to develop specialized training modules for different categories of professionals/personnel involved in the implementation of the juvenile justice system. All concerned must be given specialized knowledge about the philosophy of juvenile justice and scheme of the Juvenile Justice (Care and Protection of Children) Act under which they operate. Likewise, they need to be imparted knowledge about international human rights standards and instruments relating to administration of juvenile justice.

19. Simultaneously, there is a need to develop standardized study material in consultation with experts. This material should encompass international/national instruments/laws/rules on juvenile justice, judicial decisions, case studies, good practices in juvenile justice and the like. These steps would enable the concerned officers/personnel to discharge their duties effectively under the required Act.

20. It was suggested that there is need to evolve Practice Directions for conducting proceedings related to juveniles/children keeping in view various provisions of the Constitution, JJA and other laws.

21. It was also recommended that there is a need to prepare Bench Books/ Manuals/Hand books containing guidelines about:
    - Process of Institutionalization.
    - Role of professionals/ other cadres involved in the juvenile justice system.
    - Child as a witness.
    - Case Management of juvenile before trial.
    - Case Management of juvenile during trial.
    - Child as a victim/plaintiff.
    - Child as an accused.
    - Release, rehabilitation and reintegration.
    - Role of Advisory Boards/visitors
    - Community Based Practices, etc.

3. NHRC's order on atrocities committed by Joint Special Task Force in Karnataka and Tamil Nadu constituted to apprehend forest brigand, Veerappan.

INTRODUCTION

The Commission received a number of representations from non-government organsiations and individuals regarding atrocities committed by the Joint Special Task Force set up by the States of Karnataka and Tamil Nadu to apprehend the forest brigand Veerappan.

Taking cognizance of the complaints, the Commission constituted two-member panel of inquiry comprising Hon'ble Mr. Justice A.J. Sadashiva, former Judge of Karnataka High Court as Chairman and Mr. C.V. Narasimhan, former CBI Director as Member to inquire into the matter and make its recommendations to the Commission. The panel during its inquiry recorded the statements of 243 persons, including 193 alleged victims, 4 representatives of NGOs and 38 police officers.

The inquiry panel submitted its report on 1 December 2003 and the Commission sought comments of the two States on the report.

The Chief Secretaries, Govt. of Tamil Nadu and Additional Chief Secretary, Govt. of Karnataka appeared before the Commission and conveyed that both the governments are ready and willing to respect the decision/ recommendation to be made by the Commission with regard to the interim relief to the victim of atrocities alleged to have been committed by the Joint Special Task Force. The Chief Secretary, Govt. of Tamil Nadu also stated before the Commission that the Government of Tamil Nadu had already dispersed a sum of Rs.20 lakh to 12 victims/next of kin. The Commission directed that the amount already paid by the Government of Tamil Nadu shall be adjusted while making payment of interim relief recommend by the Commission.

Recommendations:

Vide proceedings dated 15 January 2007, the Commission recommended immediate interim relief to 89 victims amounting to Rs. 2 crore and 80 lakhs. These victims included women victims of repeated rape, women subjected to assault, application of electric current and outrage

of modesty, persons who suffered illegal detention, assault and electric shock, persons who suffered permanent disability as a result of torture, persons unlawfully detained as well as 36 persons allegedly killed in suspicious encounters by the Special Task Force. The Commission recommended interim relief varying between one lakh to five lakhs to these 89 persons to mitigate the suffering and hardship suffered by them or their families.

The Commission also clarified that the Government of Tamil Nadu shall pay interim compensation to those victims who live in Tamil Nadu and the Government of Karnataka shall pay to the victims living in Karnataka.

The Commission further opined that both the State Governments in their discretion may consider taking development activities, such as laying roads, establishment of schools, hospitals etc. in the affected tribal and border areas of both the States.

4. Strategy to speed up disposal: Special Camps held by the Commission at Lucknow and Patna

INTRODUCTION

In order to dispose complaints expeditiously and also deal and deliberate upon other related issues, the Commission in its meeting held on November 21, 2006 decided to hold its sittings in the State capitals. It was felt that such a meeting would help to get information about the status of the complaints to the parties, help receive fresh complaints and sensitize the state functionaries on the issues concerning Human Rights. It will also help review the progress made by each State on the recommendations of the Commission, particularly those related to Economic, Social and Cultural Rights.

The Commission's first sitting was held at Uttar Pradesh (U.P), Lucknow from 18 to 20 January 2007. During its three day sitting, the Commission drew the attention of the UP authorities to a number of issues including failure to file FIRs, delay in compliance with its recommendations and delay in sending requisite details or reports on custodial deaths.

In its special meeting with Chief Secretary, Secretary Home, Secretary Health, Additional Director General Police (Human Rights), DG (Prisons), U.P. the Commission asked the officials to expedite the compliance of sending reports such as magisterial inquiry and viscera report of those who died in custody. The State Government was directed to complete all pending magisterial inquiries within three months. It was also decided that all future inquiries be completed within three months and in exceptional cases within six months.

The Commission also expressed deep concern on the inadequate action taken against erring revenue officials found guilty of manipulation of records, in the context of several cases of living landholders being declared dead for usurping their property. The Commission suggested a survey to trace such cases and issuing of public notices inviting petitions/complaints from affected parties in such cases. It has also directed the Uttar Pradesh Revenue Secretary to submit a comprehensive report of all such incidents in the state by March 12, 2007 and to send a full status report on the action taken against the erring persons in such cases.

The Commission said it was a matter of concern that the number of Juvenile Justice Boards, Child Welfare Homes, Observation Homes and

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Special Homes were far below the number of districts in the State. Juvenile Justice Boards have been set up in only nine districts and Protective Homes in 51 districts. Child Welfare Committees were still being set up and information regarding setting up of Children's Homes for infants in 63 districts, for boys in 56 districts and girls in 67 districts were still awaited, the Commission expressed concern. With regard to the status of juvenile observation homes the Commission said it was disturbing due to lack of hygiene, opportunities for education.

The Commission also discussed the plan of action adopted by the State to prevent and end trafficking of women and children. The Commission recommended revival of the system of board of visitors in jails. The Commission drew the attention of the State authorities to repeated instances of bonded and child labour in the State. During discussions, the Commission expressed concern at the high infant mortality rate, maternal mortality rate and malnutrition. However, it expressed satisfaction that the State government had completed the Chaitanya Vihar Phase-II in Vrindavan for destitute women.

In the three-day sittings, 32 cases of Full Commission and 150 cases of Single Members were disposed of. Nearly 1000 cases were listed for these three days. The Commission impressed upon the State authorities to expedite responses and reports. The State authorities in some cases furnished reports in Lucknow itself and assured that the responses and reports will be expedited within the timeframe.

Second Camp Commission at Patna from May 17-19, 2007:

The Second Camp Commission was held at Patna from May 17 to 19, 2007. Before proceeding to Patna, the Commission carried out a special drive from February 1 to May 15, 2007, wherein 1678 cases were disposed of.

In its three-day sitting in Patna, 30 cases of Full Commission and 125 cases relating to Single Members were disposed of. On consideration and disposal of the cases, the State Government made payment of Seven lakh Sixty thousand rupees (7,60,000) to the concerned victims of violation of human rights in 6 cases and submitted proof of payment. This includes 2 cases of custodial deaths wherein One lakh rupee each was paid to the next of kin of the two deceased.

The State Government, further, undertook to file proof of payment in 4 cases. Thus, a sum of Six lakh and sixty thousand rupees (Rs. 6,60,000) is likely to be disbursed to the victims of violation of human rights or to the next of kin of the deceased.

The Commission also recommended interim relief to the tune of Fourteen lakh twenty five thousand rupees (Rs.14,25,000) in 10 cases. It

includes 8 cases of custodial deaths wherein a total amount of Eleven lakh and twenty five thousand rupees (Rs. 11,25,000) has been recommended to be paid to the next of kin of the deceased.

The Commission after considering the reports and giving hearing to the representatives of the State Government at Patna, was prima-facie of the view that human rights of citizens had been violated in 19 cases. The Commission proposes to issue notices to the Chief Secretary/DGP on interim relief in this regard.

On account of sensitization, the Commission during the course of hearing at Patna, received reports in respect of Custodial deaths and non-Custodial deaths, pending with the Commission. This would help to dispose of these cases which were pending for long for want of reports from the State authorities.

During the course of hearing, the Commission also called for additional information in 50 cases.

Regional Review Meeting

After the three- day camp sitting, on May 20, the Commission held a regional review meeting with the Chief Secretaries and DGPs from the States of Bihar, West Bengal, Orissa and Jharkhand. A detailed discussion on the status of compliance to the recommendations given by NHRC and other issues of concern were deliberated upon. The subjects taken up during discussions included Juvenile Justice, prisons, trafficking of women and children, manual scavenging, right to health and education. The Commission expressed its concern on poor compliance by the States of West Bengal and Orissa. NHRC also expressed its concern on the need for micro-level monitoring of Kalahandi, Bolangir and Koraput districts in Orissa.

The Commission during the Camp Sittings and the review meeting observed that:

- A number of children in conflict with law are under detention in observation and special homes.
- The Commission asked the Bihar government to release funds for Ranchi Institute of Neuro-psychiatry and Allied Sciences (RINPAS) and also asked Jharkhand to release amount due to RINPAS.
- The Commission expressed concern on the issue of trafficking in women and children. It called for appointing special officers to sensitize police personnel and also work out a systematic programme for rehabilitation of such victims. The Commission observed that Bihar, Jharkhand and Orissa are the place of origin

for trafficking whereas West Bengal is the destination. It asked for greater alertness at the place of origin to protect women and children from becoming victims of trafficking.

- The Commission strongly voiced concern to ensure complete eradication of Manual Scavenging. It asked for resurvey by an independent agency in all these states. The Commission also emphasized that an effective rehabilitation and reintegration programme should be vigorously persued to bring Manual Scavengers into the main stream.

The Commission asked the State Governments to put in extra efforts so that right to health is not denied to any person. It emphasized that education as a right is mandatory and development can be possible only when this right reaches everyone.

5. NHRC's recommendations on the effects of Corruption on Good Governance and Human Rights

INTRODUCTION

India has made significant progress in various areas of national concern viz. science & technology, health, education, infrastructure development, etc. having a direct bearing on the development. However, these gains are being off-set by corruption. Corruption leads to below-par infrastructure, poor regulation, day-to-day hassles for the common man, loss of revenue for the Government, ineffective services, in-efficient subsidies, lack of accountability, gross wastage of taxpayer's money and so on. Corruption has a direct bearing on the realization of economic, social and cultural rights. The National Human Rights Commission, therefore, organized the two-day National Conference on Corruption and Good Governance on May 9 and 10, 2006 in New Delhi.

Recommendations:

Based on the deliberations of the National Conference, the Commission made the following recommendations:

1. There is an urgent need to generate greater awareness among the people of India about economic, social and cultural rights and highlight the manner in which corruption impairs and affects their rights. The awareness generation programmes should correspondingly equip the people about the services being provided by the Government and its related organizations. (Union of India/ States/ UTs).

2. There is a need to lay emphasis on Human Rights value education through awareness and sensitization programmes all over the country. In this regard, the NGOs and the civil society be inducted and they could play a major role and act as a bridge between the citizens and the public services institutions thereby replacing the existing intermediaries. (MHRD, MSJ & Emp., all State Government/ UTs/ Leading NGOs)

3. There is a need to ensure that the laws that deal with the problems of corruption are interpreted, implemented, executed effectively and expeditiously in the country by the legislature, the judiciary and the executive. Simultaneously, there is need to enforce prompt and effective punishment for act(s) of corruption. All this could eventually lead to

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accelerate the grievance redressal mechanism and good governance. (MHA, Ministry of Law & Justice/ States/ UTs)

4. There is a need to set up an exclusive fast track courts to deal with cases of corruption. Similarly, there is also a need to review the existing laws and enforcement mechanisms that deal with the scourge and corruption and remedial improvements/ amendments, if necessary, may also be carried out to the existing law in this regard. (Min. of Law & Justice/ States/ UTs/ Supreme Court of India & High Court of India)

5. There is a need to evolve a system of providing immunity and witness protection to all those who expose cases of corruption, i.e. the defenders of human rights. One way of ensuring this is to enact an Act for their safety, e.g. whistle blowers Act etc. (MHA, Ministry of Law & Justice/ States/ UTs)

6. Need for bringing about technological advancement in all public institutions and departments of the government by introducing toll-free lines, websites, e-governance, transparent, time bound actions and SMS based applications to reduce corruption. This should, as a matter of principle, be extended to cover all areas of public services in a time bound manner. (DOT/ DOPT/ States/ UTs/ ARC)

7. Corruption is a serious violator of human rights, hence the NHRC should play rather more proactive role in bringing the issue of corruption at center stage. It should also act as a catalyst in creating good governance and corruption-free society. One way of doing this is to develop a Vision Plan for prevention, control and reduction of corruption in the country by requesting each Ministry/ Department of the Central/State Government to prepare action points (simplifying procedure, introducing e-governance etc.) delineating the manner in which good governance could be facilitated in their respective Ministries. (NHRC/ SHRCs)

8. There is a need to amend the Constitution of India by adding one more clause to Article 51A that deals with Fundamental Duties stating therein that nobody should indulge in any corrupt practices. (Ministry of Law & Justice)

REPORT

Interventions made by NHRC on behalf of ICC at the meeting of the UN Human Rights Council and Resolution adopted by the Council

The United Nations Human Rights Council adopted a Resolution for the Universal Periodic Mechanism and Special Procedure for National Human Rights Institutions at a meeting in Geneva last month. Smt Aruna Sharma, Joint Secretary NHRC was nominated to represent all the NHRIs at the meeting. The Chairperson Justice Shri S. Rajendra Babu and the Secretary General Shri R. K. Bhargava participated in the subsequent sittings of the meeting and made interventions.

The Resolution on Institutional Building adopted by the Council [copy annexed] has not only endorsed inviting National Human Rights Institutions (NHRIs) to participate in all agenda items of the Council but also a first recourse for complaint remedy. With this Resolution, the importance and responsibility of the NHRIs in the task of protecting and promoting human rights has enhanced.

On Universal Periodic Review (UPR) mechanism, the Resolution said that UPR should complement and not duplicate other human rights mechanisms. It should ensure participation of all relevant stakeholders, including Non-Governmental Organizations (NGOs) and National Human Rights Institutions (NHRIs), in accordance with General Assembly (GA) Resolution 60/251 and Economic and Social Council Resolution 1996/31, as well as decisions that the Council may take in this regard. The Resolution also said that the documents on which the review should be based are - information prepared by the state concerned. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders. In the review, the Council should also take into consideration additional credible and reliable information provided by other relevant stakeholders to the UPR.

On Special Procedures, the Resolution said that following entities may nominate candidates as special procedures mandate-holders: a) Governments; b) Regional Groups operating within the United Nations human rights system c) International organizations or their offices (e.g.:

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Office of the United Nations High Commissioner for Human Rights (OHCHR); d) Non-Governmental Organizations (NGOs); e) other human rights bodies; f) individual nominations.

On Human Rights Council Advisory Committee, the Resolution said that the Committee, consisting of 18 experts acting in their personal capacity will function as a think-tank to the Council and work at its direction. The establishment of this subsidiary body and its functioning will be executed according to guidelines. All members States of the UN can propose or endorse candidates from their own region. When selecting their candidates, States should consult their National Human Rights Institutions and civil society organizations and, in this, regard, to include the names of those supporting their candidates. In the performance of its mandate, the Advisory Committee is urged to establish interaction with States, National Human Rights institutions, NGOs and other civil society entities in accordance with modalities of the Council. However, the Committee shall not establish subsidiary bodies unless the Council authorizes it.

The Resolution strongly talked about strengthening the Complaint procedure. A complaint procedure would be established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. The National Human Rights Institutions (NHRIs), when they work under the guidelines of the Paris Principles including in regard to quasi-judicial competence, may serve as effective local remedies.

On the Special Session of the Council, the Resolution said that the Members of the Council, concerned States, observer States, specialized agencies, other intergovernmental organizations and National Human Rights Institutions, as well as non-governmental organizations in consultative status may contribute to the session in accordance with the rules of procedures of the Council. The participation of and consultation with observers of the Council will be governed by the rules of procedure established by the Committees of the General Assembly, the Resolution added.

Participation of National Human Rights Institutions in the UNHRC shall be based on arrangements and practices agreed upon by the Commission on Human Rights while ensuring the most effective contribution of these entities, the Resolution said.

ANNEXURE

Human Rights Council

5/1. Institution-building of the United Nations Human Rights Council

The Human Rights Council,

Acting in compliance with the mandate entrusted to it by the United Nations General Assembly in resolution 60/251 of 15 March 2006,

Having considered the draft text on institution-building submitted by the President of the Council,

1. *Adopts* the draft text entitled "United Nations Human Rights Council: Institution Building", as contained in the annex to the present resolution, including its appendix(ces);

2. *Decides* to submit the following draft resolution to the General Assembly for its adoption as a matter of priority in order to facilitate the timely implementation of the text contained thereafter:

"*The General Assembly,*

"*Taking note* of Human Rights Council resolution 5/1 of 18 June 2007,

"1. *Welcomes* the text entitled 'United Nations Human Rights Council: Institution Building', as contained in the annex to the present resolution, including its appendix(ces)."

9th meeting
18 June 2007

[Resolution adopted without a vote.][1]

[1] See A/HRC/5/21, chap. III, paras. 60-62.

ANNEX.

UNITED NATIONS HUMAN RIGHTS COUNCIL: INSTITUTION-BUILDING

I. UNIVERSAL PERIODIC REVIEW MECHANISM

A. Basis of the review

1. The basis of the review is:
   (a) The Charter of the United Nations;
   (b) The Universal Declaration of Human Rights;
   (c) Human rights instruments to which a State is party;
   (d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council (hereinafter "the Council").

2. In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.

B. Principles and objectives

1. Principles

3. The universal periodic review should:
   (a) Promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
   (b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
   (c) Ensure universal coverage and equal treatment of all States;
   (d) Be an intergovernmental process, United Nations Member-driven and action oriented;
   (e) Fully involve the country under review;
   (f) Complement and not duplicate other human rights mechanisms, thus representing an added value;
   (g) Be conducted in an objective, transparent, non-selective, constructive, non confrontational and non politicized manner;
   (h) Not be overly burdensome to the concerned State or to the agenda of the Council;
   (i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;

(j) Not diminish the Council's capacity to respond to urgent human rights situations;

(k) Fully integrate a gender perspective;

(l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;

(m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard.

2. Objectives

4. The objectives of the review are:

(a) The improvement of the human rights situation on the ground;

(b) The fulfilment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State;

(c) The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned;

(d) The sharing of best practice among States and other stakeholders;

(e) Support for cooperation in the promotion and protection of human rights;

(f) The encouragement of full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights.

C. Periodicity and order of the review

5. The review begins after the adoption of the universal periodic review mechanism by the Council.

6. The order of review should reflect the principles of universality and equal treatment.

7. The order of the review should be established as soon as possible in order to allow States to prepare adequately.

8. All member States of the Council shall be reviewed during their term of membership.

9. The initial members of the Council, especially those elected for one or two-year terms, should be reviewed first.

10. A mix of member and observer States of the Council should be reviewed.

11. Equitable geographic distribution should be respected in the selection of countries for review.

12. The first member and observer States to be reviewed will be chosen by the drawing of lots from each Regional Group in such a way as to ensure full respect for equitable geographic distribution. Alphabetical order will then be applied beginning with those countries thus selected, unless other countries volunteer to be reviewed.

13. The period between review cycles should be reasonable so as to take into account the capacity of States to prepare for, and the capacity of other stakeholders to respond to, the requests arising from the review.

14. The periodicity of the review for the first cycle will be of four years. This will imply the consideration of 48 States per year during three sessions of the working group of two weeks each.[a]

D. Process and modalities of the review

1. Documentation

15. The documents on which the review would be based are:

(a) Information prepared by the State concerned, which can take the form of a national report, on the basis of general guidelines to be adopted by the Council at its sixth session (first session of the second cycle), and any other information considered relevant by the State concerned, which could be presented either orally or in writing, provided that the written presentation summarizing the information will not exceed 20 pages, to guarantee equal treatment to all States and not to overburden the mechanism. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders;

(b) Additionally a compilation prepared by the Office of the High Commissioner for Human Rights of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed 10 pages;

(c) Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.

[a] The universal periodic review is an evolving process; the Council, after the conclusion of the first review cycle, may review the modalities and the periodicity of this mechanism, based on best practices and lessons learned.

16. The documents prepared by the Office of the High Commissioner for Human Rights should be elaborated following the structure of the general guidelines adopted by the Council regarding the information prepared by the State concerned.

17. Both the State's written presentation and the summaries prepared by the Office of the High Commissioner for Human Rights shall be ready six weeks prior to the review by the working group to ensure the distribution of documents simultaneously in the six official languages of the United Nations, in accordance with General Assembly resolution 53/208 of 14 January 1999.

2. Modalities

18. The modalities of the review shall be as follows:
    (a) The review will be conducted in one working group, chaired by the President of the Council and composed of the 47 member States of the Council. Each member State will decide on the composition of its delegation;[b]
    (b) Observer States may participate in the review, including in the interactive dialogue;
    (c) Other relevant stakeholders may attend the review in the Working Group;
    (d) A group of three rapporteurs, selected by the drawing of lots among the members of the Council and from different Regional Groups (troika) will be formed to facilitate each review, including the preparation of the report of the working group. The Office of the High Commissioner for Human Rights will provide the necessary assistance and expertise to the rapporteurs.

19. The country concerned may request that one of the rapporteurs be from its own Regional Group and may also request the substitution of a rapporteur on only one occasion.

20. A rapporteur may request to be excused from participation in a specific review process.

21. Interactive dialogue between the country under review and the Council will take place in the working group. The rapporteurs may collate issues or questions to be transmitted to the State under review to facilitate its preparation and focus the interactive dialogue, while guaranteeing fairness and transparency.

22. The duration of the review will be three hours for each country in the working group. Additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council.

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[b] A Universal Periodic Review Voluntary Trust Fund should be established to facilitate the participation of developing countries, particularly the Least Developed Countries, in the universal periodic review mechanism.

23. Half an hour will be allocated for the adoption of the report of each country under review in the working group.

24. A reasonable time frame should be allocated between the review and the adoption of the report of each State in the working group.

25. The final outcome will be adopted by the plenary of the Council.

E. Outcome of the review

1. Format of the outcome

26. The format of the outcome of the review will be a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned.

2. Content of the outcome

27. The universal periodic review is a cooperative mechanism. Its outcome may include, inter alia:

(a) An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country;

(b) Sharing of best practices;

(c) An emphasis on enhancing cooperation for the promotion and protection of human rights;

(d) The provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned;[c]

(e) Voluntary commitments and pledges made by the country under review.

3. Adoption of the outcome

28. The country under review should be fully involved in the outcome.

29. Before the adoption of the outcome by the plenary of the Council, the State concerned should be offered the opportunity to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue.

30. The State concerned and the member States of the Council, as well as observer States, will be given the opportunity to express their views on the outcome of the review before the plenary takes action on it.

31. Other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.

[c] A decision should be taken by the Council on whether to resort to existing financing mechanisms or to create a new mechanism.

32. Recommendations that enjoy the support of the State concerned will be identified as such. Other recommendations, together with the comments of the State concerned thereon, will be noted. Both will be included in the outcome report to be adopted by the Council.

F. Follow-up to the review

33. The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.

34. The subsequent review should focus, inter alia, on the implementation of the preceding outcome.

35. The Council should have a standing item on its agenda devoted to the universal periodic review.

36. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned.

37. In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow up is necessary.

38. After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.

II. SPECIAL PROCEDURES

A. Selection and appointment of mandate-holders

39. The following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.

40. Due consideration should be given to gender balance and equitable geographic representation, as well as to an appropriate representation of different legal systems.

41. Technical and objective requirements for eligible candidates for mandate-holders will be approved by the Council at its sixth session (first session of the second cycle), in order to ensure that eligible candidates are highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights.

42. The following entities may nominate candidates as special procedures mandate-holders: (a) Governments; (b) Regional Groups operating within the United Nations human rights system; (c) international

organizations or their offices (e.g. the Office of the High Commissioner for Human Rights); (d) non-governmental organizations; (e) other human rights bodies; (f) individual nominations.

43. The Office of the High Commissioner for Human Rights shall immediately prepare, maintain and periodically update a public list of eligible candidates in a standardized format, which shall include personal data, areas of expertise and professional experience. Upcoming vacancies of mandates shall be publicized.

44. The principle of non-accumulation of human rights functions at a time shall be respected.

45. A mandate-holder's tenure in a given function, whether a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders).

46. Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded. Mandate holders will act in their personal capacity.

47. A consultative group would be established to propose to the President, at least one month before the beginning of the session in which the Council would consider the selection of mandate holders, a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements.

48. The consultative group shall also give due consideration to the exclusion of nominated candidates from the public list of eligible candidates brought to its attention.

49. At the beginning of the annual cycle of the Council, Regional Groups would be invited to appoint a member of the consultative group, who would serve in his/her personal capacity. The Group will be assisted by the Office of the High Commissioner for Human Rights.

50. The consultative group will consider candidates included in the public list; however, under exceptional circumstances and if a particular post justifies it, the Group may consider additional nominations with equal or more suitable qualifications for the post. Recommendations to the President shall be public and substantiated.

51. The consultative group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate.

52. On the basis of the recommendations of the consultative group and following broad consultations, in particular through the regional coordinators, the President of the Council will identify an appropriate

candidate for each vacancy. The President will present to member States and observers a list of candidates to be proposed at least two weeks prior to the beginning of the session in which the Council will consider the appointments.

53. If necessary, the President will conduct further consultations to ensure the endorsement of the proposed candidates. The appointment of the special procedures mandate-holders will be completed upon the subsequent approval of the Council. Mandate-holders shall be appointed before the end of the session.

B. Review, rationalization and improvement of mandates

54. The review, rationalization and improvement of mandates, as well as the creation of new ones, must be guided by the principles of universality, impartiality, objectivity and non selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

55. The review, rationalization and improvement of each mandate would take place in the context of the negotiations of the relevant resolutions. An assessment of the mandate may take place in a separate segment of the interactive dialogue between the Council and special procedures mandate-holders.

56. The review, rationalization and improvement of mandates would focus on the relevance, scope and contents of the mandates, having as a framework the internationally recognized human rights standards, the system of special procedures and General Assembly resolution 60/251.

57. Any decision to streamline, merge or possibly discontinue mandates should always be guided by the need for improvement of the enjoyment and protection of human rights.

58. The Council should always strive for improvements:
    (a) Mandates should always offer a clear prospect of an increased level of human rights protection and promotion as well as being coherent within the system of human rights;
    (b) Equal attention should be paid to all human rights. The balance of thematic mandates should broadly reflect the accepted equal importance of civil, political, economic, social and cultural rights, including the right to development;
    (c) Every effort should be made to avoid unnecessary duplication;
    (d) Areas which constitute thematic gaps will be identified and addressed, including by means other than the creation of special procedures mandates, such as by expanding an existing mandate, bringing a cross-cutting issue to the attention of mandate-holders or by requesting a joint action to the relevant mandate-holders;

(e) Any consideration of merging mandates should have regard to the content and predominant functions of each mandate, as well as to the workload of individual mandate holders;

(f) In creating or reviewing mandates, efforts should be made to identify whether the structure of the mechanism (expert, rapporteur or working group) is the most effective in terms of increasing human rights protection;

(g) New mandates should be as clear and specific as possible, so as to avoid ambiguity.

59. *It should be considered desirable to have a uniform nomenclature of* mandate-holders, titles of mandates as well as a selection and *appointment process, to make the whole system more understandable.*

60. Thematic mandate periods will be of three years. Country mandate periods will be of one year.

61. Mandates included in Appendix I, where applicable, will be renewed until the date on which they are considered by the Council according to the programme of work.[d]

62. Current mandate-holders may continue serving, provided they have not exceeded the six year term limit (Appendix II). On an exceptional basis, the term of those mandate-holders who have served more than six years may be extended until the relevant mandate is considered by the Council and the selection and appointment process has concluded.

63. Decisions to create, review or discontinue country mandates should also take into account the principles of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations.

64. In case of situations of violations of human rights or a lack of cooperation that require the Council's attention, the principles of objectivity, non-selectivity, and the elimination of double standards and politicization should apply.

III. HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

65. The Human Rights Council Advisory Committee (hereinafter "the Advisory Committee"), composed of 18 experts serving in their personal capacity, will function as a think-tank for the Council and work at its direction. The establishment of this subsidiary body and its functioning will be executed according to the guidelines stipulated below.

[d] Country mandates meet the following criteria:
- There is a pending mandate of the Council to be accomplished; or
- There is a pending mandate of the General Assembly to be accomplished; or
- The nature of the mandate is for advisory services and technical assistance.

A. Nomination

66. All Member States of the United Nations may propose or endorse candidates from their own region. When selecting their candidates, States should consult their national human rights institutions and civil society organizations and, in this regard, include the names of those supporting their candidates.

67. The aim is to ensure that the best possible expertise is made available to the Council. For this purpose, technical and objective requirements for the submission of candidatures will be established and approved by the Council at its sixth session (first session of the second cycle). These should include:

    (a) Recognized competence and experience in the field of human rights;

    (b) High moral standing;

    (c) Independence and impartiality.

68. Individuals holding decision-making positions in Government or in any other organization or entity which might give rise to a conflict of interest with the responsibilities inherent in the mandate shall be excluded. Elected members of the Committee will act in their personal capacity.

69. The principle of non-accumulation of human rights functions at the same time shall be respected.

B. Election

70. The Council shall elect the members of the Advisory Committee, in secret ballot, from the list of candidates whose names have been presented in accordance with the agreed requirements.

71. The list of candidates shall be closed two months prior to the election date. The Secretariat will make available the list of candidates and relevant information to member States and to the public at least one month prior to their election.

72. Due consideration should be given to gender balance and appropriate representation of different civilizations and legal systems.

73. The geographic distribution will be as follows:

    African States: 5

    Asian States: 5

    Eastern European States: 2

    Latin American and Caribbean States: 3

    Western European and other States: 3

74. The members of the Advisory Committee shall serve for a period of three years. They shall be eligible for re election once. In the first term, one third of the experts will serve for one year and another third for two years. The staggering of terms of membership will be defined by the drawing of lots.

C. Functions

75. The function of the Advisory Committee is to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice. Further, such expertise shall be rendered only upon the latter's request, in compliance with its resolutions and under its guidance.

76. The Advisory Committee should be implementation-oriented and the scope of its advice should be limited to thematic issues pertaining to the mandate of the Council; namely promotion and protection of all human rights.

77. The Advisory Committee shall not adopt resolutions or decisions. The Advisory Committee may propose within the scope of the work set out by the Council, for the latter's consideration and approval, suggestions for further enhancing its procedural efficiency, as well as further research proposals within the scope of the work set out by the Council.

78. The Council shall issue specific guidelines for the Advisory Committee when it requests a substantive contribution from the latter and shall review all or any portion of those guidelines if it deems necessary in the future.

D. Methods of work

79. The Advisory Committee shall convene up to two sessions for a maximum of 10 working days per year. Additional sessions may be scheduled on an ad hoc basis with prior approval of the Council.

80. The Council may request the Advisory Committee to undertake certain tasks that could be performed collectively, through a smaller team or individually. The Advisory Committee will report on such efforts to the Council.

81. Members of the Advisory Committee are encouraged to communicate between sessions, individually or in teams. However, the Advisory Committee shall not establish subsidiary bodies unless the Council authorizes it to do so.

82. In the performance of its mandate, the Advisory Committee is urged to establish interaction with States, national human rights institutions, non-governmental organizations and other civil society entities in accordance with the modalities of the Council.

83. Member States and observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations shall be entitled to participate in the work of the Advisory Committee based on arrangements, including Economic and Social Council resolution 1996/31 and practices observed by the Commission on Human Rights and the Council, while ensuring the most effective contribution of these entities.

84. The Council will decide at its sixth session (first session of its second cycle) on the most appropriate mechanisms to continue the work of the Working Groups on Indigenous Populations; Contemporary Forms of Slavery; Minorities; and the Social Forum.

IV. COMPLAINT PROCEDURE

A. Objective and scope

85. A complaint procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

86. Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000 served as a working basis and was improved where necessary, so as to ensure that the complaint procedure is impartial, objective, efficient, victims oriented and conducted in a timely manner. The procedure will retain its confidential nature, with a view to enhancing cooperation with the State concerned.

B. Admissibility criteria for communications

87. A communication related to a violation of human rights and fundamental freedoms, for the purpose of this procedure, shall be admissible, provided that:

(a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;

(b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;

(c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;

(d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms,

or by any person or group of persons, including non governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;

(e) It is not exclusively based on reports disseminated by mass media;

(f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;

(g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.

88. National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

C. Working groups

89. Two distinct working groups shall be established with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.

90. Both working groups shall, to the greatest possible extent, work on the basis of consensus. In the absence of consensus, decisions shall be taken by simple majority of the votes. They may establish their own rules of procedure.

1. *Working Group on Communications: composition, mandate and powers*

91. The Human Rights Council Advisory Committee shall appoint five of its members, one from each Regional Group, with due consideration to gender balance, to constitute the Working Group on Communications.

92. In case of a vacancy, the Advisory Committee shall appoint an independent and highly qualified expert of the same Regional Group from the Advisory Committee.

93. Since there is a need for independent expertise and continuity with regard to the examination and assessment of communications received, the independent and highly qualified experts of the Working Group

on Communications shall be appointed for three years. Their mandate is renewable only once.

94. The Chairperson of the Working Group on Communications is requested, together with the secretariat, to undertake an initial screening of communications received, based on the admissibility criteria, before transmitting them to the States concerned. Manifestly ill-founded or anonymous communications shall be screened out by the Chairperson and shall therefore not be transmitted to the State concerned. In a perspective of accountability and transparency, the Chairperson of the Working Group on Communications shall provide all its members with a list of all communications rejected after initial screening. This list should indicate the grounds of all decisions resulting in the rejection of a communication. All other communications, which have not been screened out, shall be transmitted to the State concerned, so as to obtain the views of the latter on the allegations of violations.

95. The members of the Working Group on Communications shall decide on the admissibility of a communication and assess the merits of the allegations of violations, including whether the communication alone or in combination with other communications appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. The Working Group on Communications shall provide the Working Group on Situations with a file containing all admissible communications as well as recommendations thereon. When the Working Group on Communications requires further consideration or additional information, it may keep a case under review until its next session and request such information from the State concerned. The Working Group on Communications may decide to dismiss a case. All decisions of the Working Group on Communications shall be based on a rigorous application of the admissibility criteria and duly justified.

2. Working Group on Situations: composition, mandate and powers

96. Each Regional Group shall appoint a representative of a member State of the Council, with due consideration to gender balance, to serve on the Working Group on Situations. Members shall be appointed for one year. Their mandate may be renewed once, if the State concerned is a member of the Council.

97. Members of the Working Group on Situations shall serve in their personal capacity. In order to fill a vacancy, the respective Regional Group to which the vacancy belongs, shall appoint a representative from member States of the same Regional Group.

98. The Working Group on Situations is requested, on the basis of the information and recommendations provided by the Working Group

on Communications, to present the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and to make recommendations to the Council on the course of action to take, normally in the form of a draft resolution or decision with respect to the situations referred to it. When the Working Group on Situations requires further consideration or additional information, its members may keep a case under review until its next session. The Working Group on Situations may also decide to dismiss a case.

99. All decisions of the Working Group on Situations shall be duly justified and indicate why the consideration of a situation has been discontinued or action recommended thereon. Decisions to discontinue should be taken by consensus; if that is not possible, by simple majority of the votes.

D. Working modalities and confidentiality

100. Since the complaint procedure is to be, inter alia, victims-oriented and conducted in a confidential and timely manner, both Working Groups shall meet at least twice a year for five working days each session, in order to promptly examine the communications received, including replies of States thereon, and the situations of which the Council is already seized under the complaint procedure.

101. The State concerned shall cooperate with the complaint procedure and make every effort to provide substantive replies in one of the United Nations official languages to any of the requests of the Working Groups or the Council. The State concerned shall also make every effort to provide a reply not later than three months after the request has been made. If necessary, this deadline may however be extended at the request of the State concerned.

102. The Secretariat is requested to make the confidential files available to all members of the Council, at least two weeks in advance, so as to allow sufficient time for the consideration of the files.

103. The Council shall consider consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year.

104. The reports of the Working Group on Situations referred to the Council shall be examined in a confidential manner, unless the Council decides otherwise. When the Working Group on Situations recommends to the Council that it consider a situation in a public meeting, in particular in the case of manifest and unequivocal lack of cooperation, the Council shall consider such recommendation on a priority basis at its next session.

105. So as to ensure that the complaint procedure is victims-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not, in principle, exceed 24 months.

E. Involvement of the complainant and of the State concerned

106. The complaint procedure shall ensure that both the author of a communication and the State concerned are informed of the proceedings at the following key stages:

(a) When a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations; or when a communication is kept pending by one of the Working Groups or by the Council;

(b) At the final outcome.

107. In addition, the complainant shall be informed when his/her communication is registered by the complaint procedure.

108. Should the complainant request that his/her identity be kept confidential, it will not be transmitted to the State concerned.

F. Measures

109. In accordance with established practice the action taken in respect of a particular situation should be one of the following options:

(a) To discontinue considering the situation when further consideration or action is not warranted;

(b) To keep the situation under review and request the State concerned to provide further information within a reasonable period of time;

(c) To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council;

(d) To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same;

(e) To recommend to OHCHR to provide technical cooperation, capacity building assistance or advisory services to the State concerned.

V. AGENDA AND FRAMEWORK FOR THE PROGRAMME OF WORK

A. Principles

- Universality
- Impartiality
- Objectivity

- Non-selectiveness
- Constructive dialogue and cooperation
- Predictability
- Flexibility
- Transparency
- Accountability
- Balance
- Inclusive/comprehensive
- Gender perspective
- Implementation and follow-up of decisions

B. Agenda

Item 1. Organizational and procedural matters

Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General

Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Item 4. Human rights situations that require the Council's attention

Item 5. Human rights bodies and mechanisms

Item 6. Universal Periodic Review

Item 7. Human rights situation in Palestine and other occupied Arab territories

Item 8. *Follow-up and implementation of the Vienna Declaration and* Programme of Action

Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow up and implementation of the Durban Declaration and Programme of Action

Item 10. Technical assistance and capacity building

C. Framework for the programme of work

Item 1. Organizational and procedural matters

- Election of the Bureau
- Adoption of the annual programme of work
- Adoption of the programme of work of the session, including other business
- Selection and appointment of mandate-holders

- Election of members of the Human Rights Council Advisory Committee
- Adoption of the report of the session
- Adoption of the annual report

Item 2. Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General

- Presentation of the annual report and updates

Item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

- Economic, social and cultural rights
- Civil and political rights
- Rights of peoples, and specific groups and individuals
- Right to development
- Interrelation of human rights and human rights thematic issues

Item 4. Human rights situations that require the Council's attention

Item 5. Human rights bodies and mechanisms

- Report of the Human Rights Council Advisory Committee
- Report of the complaint procedure

Item 6. Universal Periodic Review

Item 7. Human rights situation in Palestine and other occupied Arab territories

- Human rights violations and implications of the Israeli occupation of Palestine and other occupied Arab territories
- Right to self-determination of the Palestinian people

Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action

Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow up and implementation of the Durban Declaration and Programme of Action

Item 10. Technical assistance and capacity-building

VI. METHODS OF WORK

110. The methods of work, pursuant to General Assembly resolution 60/251 should be transparent, impartial, equitable, fair, pragmatic; lead to clarity, predictability, and inclusiveness. They may also be updated and adjusted over time.

A. Institutional Arrangements

1. Briefings on prospective resolutions or decisions

111. The briefings on prospective resolutions or decisions would be informative only, whereby delegations would be apprised of resolutions and/or decisions tabled or intended to be tabled. These briefings will be organized by interested delegations.

2. President's open-ended information meetings on resolutions, decisions and other related business

112. The President's open-ended information meetings on resolutions, decisions and other related business shall provide information on the status of negotiations on draft resolutions and/or decisions so that delegations may gain a bird's eye view of the status of such drafts. The consultations shall have a purely informational function, combined with information on the extranet, and be held in a transparent and inclusive manner. They shall not serve as a negotiating forum.

3. Informal consultations on proposals convened by main sponsors

113. Informal consultations shall be the primary means for the negotiation of draft resolutions and/or decisions, and their convening shall be the responsibility of the sponsor(s). At least one informal open-ended consultation should be held on each draft resolution and/or decision before it is considered for action by the Council. Consultations should, as much as possible, be scheduled in a timely, transparent and inclusive manner that takes into account the constraints faced by delegations, particularly smaller ones.

4 Role of the Bureau

114. The Bureau shall deal with procedural and organizational matters. The Bureau shall regularly communicate the contents of its meetings through a timely summary report.

5. Other work formats may include panel debates, seminars and round tables

115. Utilization of these other work formats, including topics and modalities, would be decided by the Council on a case-by-case basis. They may serve as tools of the Council for enhancing dialogue and mutual understanding on certain issues. They should be utilized in the context of the Council's agenda and annual programme of work, and reinforce and/or complement its intergovernmental nature. They shall not be used to substitute or replace existing human rights mechanisms and established methods of work.

6. High-Level Segment

116. The High-Level Segment shall be held once a year during the main session of the Council. It shall be followed by a general segment wherein

delegations that did not participate in the High-Level Segment may deliver general statements.

B. Working culture

117. There is a need for:

(a) Early notification of proposals;

(b) Early submission of draft resolutions and decisions, preferably by the end of the penultimate week of a session;

(c) Early distribution of all reports, particularly those of special procedures, to be transmitted to delegations in a timely fashion, at least 15 days in advance of their consideration by the Council, and in all official United Nations languages;

(d) Proposers of a country resolution to have the responsibility to secure the broadest possible support for their initiatives (preferably 15 members), before action is taken;

(e) Restraint in resorting to resolutions, in order to avoid proliferation of resolutions without prejudice to the right of States to decide on the periodicity of presenting their draft proposals by:

(i) Minimizing unnecessary duplication of initiatives with the General Assembly/Third Committee;

(ii) Clustering of agenda items;

(iii) Staggering the tabling of decisions and/or resolutions and consideration of action on agenda items/issues.

C. Outcomes other than resolutions and decisions

118. These may include recommendations, conclusions, summaries of discussions and President's Statement. As such outcomes would have different legal implications, they should supplement and not replace resolutions and decisions.

D. Special sessions of the Council

119. The following provisions shall complement the general framework provided by General Assembly resolution 60/251 and the rules of procedure of the Human Rights Council.

120. The rules of procedure of special sessions shall be in accordance with the rules of procedure applicable for regular sessions of the Council.

121. The request for the holding of a special session, in accordance with the requirement established in paragraph 10 of General Assembly resolution 60/251, shall be submitted to the President and to the secretariat of the Council. The request shall specify the item proposed for consideration and include any other relevant information the sponsors may wish to provide.

122. The special session shall be convened as soon as possible after the formal request is communicated, but, in principle, not earlier than two working days, and not later than five working days after the formal receipt of the request. The duration of the special session shall not exceed three days (six working sessions), unless the Council decides otherwise.

123. The secretariat of the Council shall immediately communicate the request for the holding of a special session and any additional information provided by the sponsors in the request, as well as the date for the convening of the special session, to all United Nations Member States and make the information available to the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as to non-governmental organizations in consultative status by the most expedient and expeditious means of communication. Special session documentation, in particular draft resolutions and decisions, should be made available in all official United Nations languages to all States in an equitable, timely and transparent manner.

124. The President of the Council should hold open-ended informative consultations before the special session on its conduct and organization. In this regard, the secretariat may also be requested to provide additional information, including, on the methods of work of previous special sessions.

125. Members of the Council, concerned States, observer States, specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non governmental organizations in consultative status may contribute to the special session in accordance with the rules of procedure of the Council.

126. If the requesting or other States intend to present draft resolutions or decisions at the special session, texts should be made available in accordance with the Council's relevant rules of procedure. Nevertheless, sponsors are urged to present such texts as early as possible.

127. The sponsors of a draft resolution or decision should hold open-ended consultations on the text of their draft resolution(s) or decision(s) with a view to achieving the widest participation in their consideration and, if possible, achieving consensus on them.

128. A special session should allow participatory debate, be results-oriented and geared to achieving practical outcomes, the implementation of which can be monitored and reported on at the following regular session of the Council for possible follow-up decision.

VII. RULES OF PROCEDURE[e]

SESSIONS

Rules of procedure

Rule 1

The Human Rights Council shall apply the rules of procedure established for the Main Committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council.

REGULAR SESSIONS

Number of sessions

Rule 2

The Human Rights Council shall meet regularly throughout the year and schedule no fewer than three sessions per Council year, including a main session, for a total duration of no less than 10 weeks.

Assumption of membership

Rule 3

Newly-elected member States of the Human Rights Council shall assume their membership on the first day of the Council year, replacing member States that have concluded their respective membership terms.

Place of meeting

Rule 4

The Human Rights Council shall be based in Geneva.

SPECIAL SESSIONS

Convening of special sessions

Rule 5

The rules of procedure of special sessions of the Human Rights Council will be the same as the rules of procedure applicable for regular sessions of the Human Rights Council.

Rule 6

The Human Rights Council shall hold special sessions, when needed, at the request of a member of the Council with the support of one third of the membership of the Council.

[e] Figures indicated in square brackets refer to identical or corresponding rules of the General Assembly or its Main Committees (A/520/Rev.16).

PARTICIPATION OF AND CONSULTATION WITH OBSERVERS OF THE COUNCIL

Rule 7

(a) The Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council, and the participation of and consultation with observers, including States that are not members of the Council, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as non-governmental organizations, shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996, and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities.

(b) Participation of national human rights institutions shall be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005, while ensuring the most effective contribution of these entities.

ORGANIZATION OF WORK AND AGENDA FOR REGULAR SESSIONS

Organizational meetings

Rule 8

(a) At the beginning of each Council year, the Council shall hold an organizational meeting to elect its Bureau and to consider and adopt the agenda, programme of work, and calendar of regular sessions for the Council year indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item.

(b) The President of the Council shall also convene organizational meetings two weeks before the beginning of each session and, if necessary, during the Council sessions to discuss organizational and procedural issues pertinent to that session.

PRESIDENT AND VICE-PRESIDENTS

Elections

Rule 9

(a) At the beginning of each Council year, at its organizational meeting, the Council shall elect, from among the representatives of its members, a President and four Vice-Presidents. The President and the Vice Presidents shall constitute the Bureau. One of the Vice-Presidents shall serve as Rapporteur.

(b) In the election of the President of the Council, regard shall be had for the equitable geographical rotation of this office among the following

Regional Groups: African States, Asian States, Eastern European States, Latin American and Caribbean States, and Western European and other States. The four Vice-Presidents of the Council shall be elected on the basis of equitable geographical distribution from the Regional Groups other than the one to which the President belongs. The selection of the Rapporteur shall be based on geographic rotation.

Bureau

Rule 10

The Bureau shall deal with procedural and organizational matters.

Term of office

Rule 11

The President and the Vice-Presidents shall, subject to rule 13, hold office for a period of one year. They shall not be eligible for immediate re-election to the same post.

Absence of officers

Rule 12[105]

If the President finds it necessary to be absent during a meeting or any part thereof, he/she shall designate one of the Vice-Presidents to take his/her place. A Vice-President acting as President shall have the same powers and duties as the President. If the President ceases to hold office pursuant to rule 13, the remaining members of the Bureau shall designate one of the Vice Presidents to take his/her place until the election of a new President.

Replacement of the President or a Vice-President

Rule 13

If the President or any Vice-President ceases to be able to carry out his/her functions or ceases to be a representative of a member of the Council, or if the Member of the United Nations of which he/she is a representative ceases to be a member of the Council, he/she shall cease to hold such office and a new President or Vice-President shall be elected for the unexpired term.

SECRETARIAT

Duties of the secretariat

Rule 14[47]

The Office of the United Nations High Commissioner for Human Rights shall act as secretariat for the Council. In this regard, it shall receive, translate, print and circulate in all official United Nations languages, documents, reports and resolutions of the Council, its committees and its organs; interpret speeches made at the meetings; prepare, print and circulate the records of the session; have the custody and proper preservation of the documents in the archives of the Council; distribute all documents of the

Council to the members of the Council and observers and, generally, perform all other support functions which the Council may require.

RECORDS AND REPORT

Report to the General Assembly

Rule 15

The Council shall submit an annual report to the General Assembly.

PUBLIC AND PRIVATE MEETINGS OF THE HUMAN RIGHTS COUNCIL

General principles

Rule 16[60]

The meetings of the Council shall be held in public unless the Council decides that exceptional circumstances require the meeting be held in private.

Private meetings

Rule 17[61]

All decisions of the Council taken at a private meeting shall be announced at an early public meeting of the Council.

CONDUCT OF BUSINESS

Working groups and other arrangements

Rule 18

The Council may set up working groups and other arrangements. Participation in these bodies shall be decided upon by the members, based on rule 7. The rules of procedure of these bodies shall follow those of the Council, as applicable, unless decided otherwise by the Council.

Quorum

Rule 19[67]

The President may declare a meeting open and permit the debate to proceed when at least one third of the members of the Council are present. The presence of a majority of the members shall be required for any decision to be taken.

Majority required

Rule 20[125]

Decisions of the Council shall be made by a simple majority of the members present and voting, subject to rule 19.

APPENDIX I

Renewed mandates until they could be considered by the Human Rights Council according to its Annual Programme of Work

Independent expert appointed by the Secretary-General on the situation of human rights in Haiti

Independent expert appointed by the Secretary-General on the situation of human rights in Somalia

Independent expert on the situation of human rights in Burundi

Independent expert on technical cooperation and advisory services in Liberia

Independent expert on the situation of human rights in the Democratic Republic of the Congo

Independent expert on human rights and international solidarity

Independent expert on minority issues

Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights

Independent expert on the question of human rights and extreme poverty

Special Rapporteur on the situation of human rights in the Sudan

Special Rapporteur on the situation of human rights in Myanmar

Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (The duration of this mandate has been established until the end of the occupation.)

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Special Rapporteur on extrajudicial, summary or arbitrary executions

Special Rapporteur on freedom of religion or belief

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Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights

Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children

Special Rapporteur on the human rights of migrants

Special Rapporteur on the independence of judges and lawyers

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Special Rapporteur on the right to education

Special Rapporteur on the right to food

Special Rapporteur on the sale of children, child prostitution and child pornography

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Special Rapporteur on violence against women, its causes and consequences

Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises

Special Representative of the Secretary-General for human rights in Cambodia

Special Representative of the Secretary-General on the situation of human rights defenders

Representative of the Secretary-General on human rights of internally displaced persons

Working Group of Experts on People of African Descent

Working Group on Arbitrary Detention

Working Group on Enforced or Involuntary Disappearances

Working Group on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

APPENDIX II

Terms in office of mandate-holders

Mandate-holder	Mandate	Terms in office
Charlotte Abaka	Independent Expert on the situation of human rights in Liberia	July 2006 (first term)
Yakin Ertürk	Special Rapporteur on violence against women, its causes and consequences	July 2006 (first term)
Manuela Carmena Castrillo	Working Group on Arbitrary Detention	July 2006 (first term)
Joel Adebayo Adekanye	Working Group on Enforced or Involuntary Disappearances	July 2006 (second term)
Saeed Rajaee Khorasani	Working Group on Enforced or Involuntary Disappearances	July 2006 (first term)
Joe Frans	Working Group on people of African descent	July 2006 (first term)
Leandro Despouy	Special Rapporteur on the independence of judges and lawyers	August 2006 (first term)
Hina Jilani	Special Representative of the Secretary-General on the situation of human rights defenders	August 2006 (second term)
Soledad Villagra de Biedermann	Working Group on Arbitrary Detention	August 2006 (second term)
Miloon Kothari	Special Rapporteur on adequate housing as a component of the right to an adequate standard of living	September 2006 (second term)
Jean Ziegler	Special Rapporteur on the right to food	September 2006 (second term)
Paulo Sérgio Pinheiro	Special Rapporteur on the situation of human rights in Myanmar	December 2006 (second term)
Darko Göttlicher	Working Group on Enforced or Involuntary Disappearances	January 2007 (first term)
Tamás Bán	Working Group on Arbitrary Detention	April 2007 (second term)
Ghanim Alnajjar	Independent Expert appointed by the Secretary General on the situation of human rights in Somalia	May 2007 (second term)
John Dugard	Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	June 2007 (second term)

Mandate-holder	Mandate	Terms in office
Rodolfo Stavenhagen	Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	June 2007 (second term)
Arjun Sengupta	Independent Expert on the question of human rights and extreme poverty	July 2007 (first term)
Akich Okola	Independent Expert on the situation of human rights in Burundi	July 2007 (first term)
Titinga Frédéric Pacéré	Independent Expert on the situation of human rights in the Democratic Republic of the Congo	July 2007 (first term)
Philip Alston	Special Rapporteur on extrajudicial, summary or arbitrary executions	July 2007 (first term)
Asma Jahangir	Special Rapporteur on freedom of religion or belief	July 2007 (first term)
Okechukwu Ibeanu	Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights	July 2007 (first term)
Vernor Muñoz Villalobos	Special Rapporteur on the right to education	July 2007 (first term)
Juan Miguel Petit	Special Rapporteur on the sale of children, child prostitution and child pornography	July 2007 (second term)
Vitit Muntarbhorn	Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea	July 2007 (first term)
Leila Zerrougui	Working Group on Arbitrary Detention	August 2007 (second term)
Santiago Corcuera Cabezut	Working Group on Enforced or Involuntary Disappearances	August 2007 (first term)
Walter Kälin	Representative of the Secretary General on the human rights of internally displaced persons	September 2007 (first term)
Sigma Huda	Special Rapporteur on trafficking in persons, especially in women and children	October 2007 (first term)
Bernards Andrew Nyamwaya Mudho	Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights	November 2007 (second term)
Manfred Nowak	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	November 2007 (first term)

Mandate-holder	Mandate	Terms in office
Louis Joinet	Independent Expert appointed by the Secretary General on the situation of human rights in Haiti	February 2008 (second term)
Rudi Muhammad Rizki	Independent Expert on human rights and international solidarity	July 2008 (first term)
Gay McDougall	Independent Expert on minority issues	July 2008 (first term)
Doudou Diène	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	July 2008 (second term)
Jorge A. Bustamante	Special Rapporteur on the human rights of migrants	July 2008 (first term)
Martin Scheinin	Special Rapporteur on the promotion and protection of human rights while countering terrorism	July 2008 (first term)
Sima Samar	Special Rapporteur on the situation of human rights in the Sudan	July 2008 (first term)
John Ruggie	Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises	July 2008 (first term)
Seyyed Mohammad Hashemi	Working Group on Arbitrary Detention	July 2008 (second term)
Najat Al-Hajjaji	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2008 (first term)
Amada Benavides de Pérez	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2008 (first term)
Alexander Ivanovich Nikitin	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2008 (first term)
Shaista Shameem	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	July 2007 (first term)
Ambeyi Ligabo	Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	August 2008 (second term)
Paul Hunt	Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	August 2008 (second term)

Mandate-holder	Mandate	Terms in office
Peter Lesa Kasanda	Working Group on people of African descent	August 2008 (second term)
Stephen J. Toope	Working Group on Enforced or Involuntary Disappearances	September 2008 (second term)
George N. Jabbour	Working Group on people of African descent	September 2008 (second term)
Irina Zlatescu	Working Group on people of African descent	October 2008 (second term)
José Gómez del Prado	Working Group on the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination	October 2008 (first term)
Yash Ghai	Special Representative of the Secretary-General for human rights in Cambodia	November 2008 (first term)

BOOK REVIEW

Daniel Fischlin and Martha Nandorfy, The Concise Guide to Global Human Rights (Oxford University Press, 2007)

Prof. Ranbir Singh[*]

One of the greatest achievements of globalisation, amidst many criticisms visible at Doha or Cancun or may be in local demonstrations, is globalisation of ideas and values. While globalisation and proliferation of trade have resulted in the birth of some peculiar problems, they have certainly contributed in enabling the concept and study of borderless human rights. Authored by Daniel Fischlin and Martha Nandorfy, The Concise Guide to Global Human Rights is a successful attempt at foregrounding global human rights issues emerging from different facets of globalisation. It has moved beyond state centric vantage point of human rights violation and provides an upward looking, global picture. Also in terms of issues that have been addressed, unlike traditional compartmentalized understanding of legal subjects, the authors have expatiated across disciplines and subjects to give a birds eye view of concerns in global human rights regime.

According to Prof. Upendra Baxi, one of the most prominent contributions of globalisation towards human development is the signing of Universal Declaration of Human Rights, 1948. A progeny of instability resulting from War, the Declaration has laid a strong foundation for proliferation of rights instruments, agreements and actions even as their violation has increased disproportionately. The authors claim to advocate an intensely pragmatic understanding of human rights regime as opposed to idealist or utopian approach. In that sense, the book is a perfect bridge between law as it ought to be and law as it is. Unlike other works on human rights, this book does not suffer from rhetoric or sob stories; instead it utilizes printing space efficiently by providing a proportionate mix of facts and concepts. The book provides a new content to otherwise quotidian issues in human rights and inhuman wrongs, committed by agencies either run by or under the State.

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With a prologue written by prominent human rights activist Vandana Shiva, the book exposes cruel, unethical practices by transnational corporations without demur or flinch. The authors have made references to a series of writings by Vandana Shiva and other erudite thinkers, some of which have raised policy level critical questions about tenability of globalisation as a solution to poverty across the globe.

The book has seven chapters, each progressively moves ahead, like a fine pillar well chiseled stones piled over another to support a magnificent edifice. The book has snippets of information pertinent to the text boxed up in the middle of a chapter, putting all that one is reading immediately into context. The authors have successfully deployed graphics in the form of cartoons and caricatures to break the textual monotony. This works in a better understanding as well because images penetrate better into the minds of readers.

The first chapter is crucial for a sound understanding of the subsequent chapters as it exposes theoretical and practical aspects of human rights, its structure, and its implementation and exposes a number fallacies about practicing in human rights. While explaining the theoretical premises of human rights the book does not restrict itself to legalistic, reactive approach; instead says that "human rights occur at multiple levels of responsibility and inter-connectedness in relation to the actual lived experience of people on a day-to-day basis". Clearly, it has brought the understanding of human rights from the House of Parliament to streets, enabling a common man to comprehend the content of human rights. While demanding not for loaded legal instrument but for instruments of law that meaningfully enact rights of people, the book has alluded to the Bhopal Gas Tragedy where rights exist but only on paper. The book also exposes a number of transnational corporations and intergovernmental organizations as being hand-in-glove for commission of human right violation. For instance, the book reveals the that United Kingdom, one of the supposed stalwarts of human rights was found to be indulging in sale of arms and implements of torture ranging from iron shackles to kinetic impact devices to nations with extremely poor human rights record. In this chapter the authors have brought that the human rights activists are often targeted by States and other agencies, and that the UN's legal regime accords insufficient protection to people fighting for a new world order. In this chapter, the authors have indicted States, corporations, law enforcers, politicians and everybody for preferring personal gains over larger human values. It makes a very interesting reading because once having taken up the cause of truth, irrespective of anything the authors have stood by their argument of simpler understanding of human rights. The authors have clarified it is recourse to the notion of absolute freedom that has given ideological harbour to commit despotic excesses.

The second chapter explains relationship between globalisation and development in the context of human rights pitted against wealth maximization. The authors have begun by presenting two perspectives to globalisation; one that is purely corporate and other that is more from a uncommon understanding. The latter is globalisation from below which is the grassroot networking of common people, NGOs, and civil society organizations, all the various movers and shakers like labour groups, activists of many different stripes, women's groups, environmentalists, and so on. In the contemporary context, popular understanding of globalisation is only in the context of trade and commerce; rarely do people understand the multifarious implications of exchanges that happen between countries different in culture but being society of homo sapiens. International Trade Law is replete with examples of instances where developed countries have pleaded parity with developing countries on the ground of sovereign equality and have challenged the legality of a system of preferential treatment of such countries, conveniently forgetting that their economic position is because of historically documented continuous exploitation of the developing world. The authors have made blunt references to illogical provisions in NAFTA that have been exploited by the corporations to reverse the Rio Declaration principle of Polluter Pays to Pay the Polluter by showing that how initiatives taken by developing countries to protect environment are seen as attempts to expropriate investment.

The authors have commented on eclectic subjects and issues keeping the book distant from being monotonous, in fact the disclosures and information make the book more interesting. The authors have discussed ICC, UN, NAFTA, Racisms and Development, Right to Food, Israel-Palestine dispute, labour rights and Environment contextualizing all in terms of human rights and development.

The third chapter written around the divisions constructed by the societies creating a class of amorphous Others, divided between majority and minority involving disparate traits. In unequivalent fashion that authors have clarified that human rights is not a game of number, it must be assessed qualitatively and from a neutral perspective. The authors say that the notion of majority hides many different forms of power dynamics and inequality, the most obvious one being men's supremacy. Rather than relying on high fidelity examples, the authors give a simple example of universality of the "he" pronoun which includes "she' as well. "The global hegemony of patriarchy is just such a world with profound implications for how those who are not a part its immediate interest are treated inequitably". Raising the issue of commodification of women, the book delves on the evils of dowry system and pre-natal sex determination tests in India. The authors write, "women's bodies have been colonized through history. Their capacity to be penetrated and impregnated has dominated and even determined their cultural status." The book brings out the impact of armed conflicts on women

and the sexual assaults that they have to face at the hands of soldiers who want to rape them to cause individual, social and national humiliation.

The authors have also expatiated at some length rights of people whose sexual preferences are different from the rest. With perfect statistical backing, the authors argue that despite international legal order moving in a different direction, anti-homosexuality laws, in various guises, remain in some 80 countries and homosexuality is punishable by death in nine. The book brings out instances where the law against homosexuality has been used to cause embarrassment to political leaders, such as in Malaysia. Critical issues and implications of HIV/AIDS program have also not escaped the attention of erudite authors. Further, in the chapter, the author has discussed about rights of people with disabilities, the aged, and children. Quite successfully the authors have been able to shed light on each issue they have raised, and have still been able to lay down generalized text that could be applied to other marginalized group to contextualize their experiences in international human rights regime.

In the present time, no book on human right would be complete without a chapter dedicated to terrorism and States' despotic attempts to prevent acts of terror by brutally killing rule of law. The fourth chapter in this book is on terrorism and security discussed in the back drop of selective enforcement of rights regime. The authors begin by saying that 9/11 had twin implications, firstly, constant fear from terrorist, and secondly, fear from the powers that the State begun to exercise in the name of preventive terrorism. "Both threats derive from a culture of retributive fear. The culture of fear and paranoia that underlies the war on terror is not conclusive to rights culture - if only because the war itself is such a crude instrument and is itself an opportunity to further abuse rights." The authors have made clear references backed by evidence to show how countries were "using the US led war on terrorism as an excuse to carry out repressive policies and crush...internal dissent". It has been argued in the book that States have caused more injury to human rights regime than the terrorists as at some levels police apprehensions were based on race and origin of suspects. It brings out how the number Asians stopped and searched by police rose by 41% between 2000/01 and 2001/02, and searches on black people rose by 30% compared to 8% for white people in the same period. The authors have made the reactive responses in India, and have shown that how during Gujarat riots the special terrorist legislation was misused. Out of two hundred and eighty seven people who were arrested for having committed 'genocide' on muslims, two hundred and eighty six were muslims and one was sikh. Also, the authors argue that harboured by the special law, the administration came down heavily on tribals, dalits, women and Muslims populations. Putting the text deeper in the Indian context, the authors have argued a case for repeal of other special legislations such as the Armed Forces Special Powers Act. Discourses do not end here. The book exhumes

other legislative-legal issues that subsumed importance in the developed world, primarily because their actions have a demonstrative impact of the developing world. It makes references to excesses and abuses committed under a special regime in the United States, Canada and the United Kingdom. It makes a remarkably critical analysis of impact of militarization and politics in the Arabian peninsula region, and unearths curious facts about State sponsored genocide in the aftermath of soviet disintegration. It concludes by saying that militarized global security is a myth, as the so called "defense" entails acts of war in which large civilian population are themselves terrorized. A similar point is made by Arundhati Roy in her book the Algebra of Infinite Justice.

Freedom of Speech and Expression is the cornerstone of a democratic society; and in view of the theoretical and practical linkages between democracy, rule of law and human rights, the authors have dedicated the fifth chapter wholly to communication rights. "The mainstream media have been converted in weapons of mass destruction, anesthetizing critical thinking, spreading misinformation, and reinforcing visual clichés about so-called reality." The Indian Supreme Court has guarded freedom of speech and expression exercised by the newspaper at several occasions; but in the present context the problem is different. The media has become mouthpiece of corporations and are totally profit driven that aim towards creating a class of misinformed citizenry. In the first place there is no alternative media, and where there is, they are under extraordinary pressures and subject to censorship. The authors have emphasized that in addition to the content of media expression, the problem also is with access to media. Access to media ideally empowers people by enabling the crucial exchange of views on how to work collectively toward more democratic social formations, in which the full range of human rights are protected. This connects the entire discussion with the practical side of human rights, that is, a set of rights that people know and that actually works to make their life better. While talking about communication, the authors have highlighted that pedagogy has not been kept aloof from ideological wars. Badawi in his book Good Muslims, Bad Muslims has commented on how pedagogy in Afghan primary schools was used as a tool to produce mujahids. The authors have brought out that "indigenous groups around the world have been critical of Western approaches to education that often teach Western values and downplay or denigrate students' own cultural knowledge." The chapter exemplifies the kind of approach that was taken by British in Indian education system laid out in Macaulay's Minute. The authors have questioned monotone in story telling, in all spheres of life, and have laid emphasis on finding alternative perspectives to ensure sound rights regime.

After having laid out a jeremiad of democracy across the globe, the sixth and the penultimate chapter in this book is dedicated to the future of human rights. The fact that a book with content as volcanic as it can get is

published means that there is some hope, and some semblance of rule of law that still remains. The book identifies two points at which continuous pressure must operate - first, where the most egregious forms of violation and abuse are taking place and second, where political systems claim to have internalized rights culture but nonetheless continue to compromise its principles. The authors suggest modus operandi that rights activists must follow to establish a regime of human rights. According to them, "rights need constant self-critique and re-invention", and rightly so because the content of right is extremely dynamic and challenges are ominous. Factors such networking, countervailing pressure, cost, access to information, distribution of power, freedom of expression, demilitarization remain and others remain crucial agenda for next generation of human rights. "We are all caught up in a perverse, global system that normalizes indifference, inequity, disempowerment, and the progressive immiseration of others... we also exist in a world of system in which creative alternatives are possible." That is where, according to authors, future of human rights lies.

Last Chapter is extremely insightful and lays down a time line for understanding of history of human rights. It is popularly believed that human rights is sole initiative of the developed North and that Other cultures have contributed more in violation of human rights than setting up a regime of human rights. This chapter breaks this myth. The chapter draws insightful details from world history, in just about the manner in which Nehru's Discovery of India is written. It is clear from the perusal of this chapter that even though the term "human right" was coined only recently, the content of human right has developed contemporaneously with human societies. The timeline amongst other sources draws from Code of Hammurabhi, scriptures of ancient Israelites, texts of Upanishads, the Christian Testament, Sacred Quran, and Arthashastra to demonstrate the eclecticism and universality rooted in human rights. More recently, it looks at state practice across the world, the resolution passed by prominent international organizations, and political developments to draw a chart of evolution of human rights. As pointed out earlier, the chapter clears the myth that human rights trace is genesis to the western world.

The Concise Guide to Global Human Rights is a book true to its name. In just about two hundred and fifty pages it gives the reader a complete insight into theoretical and practical aspects of human rights. All pervasive eclecticism in the content of this book cautions the reader against the human rights, reminding consistently to acclimatize oneself with perspectives and vantage points of looking at issues. Priced at Rs. 595, the book is expensive for student readers, but it is value for money.

C. Raj Kumar and K. Chockalingam, eds., Human Rights, Justice, and Constitutional Empowerment, Oxford University Press, New Delhi, 2007.

*By Dr. V. Vijayakumar**

Structure of the book

This book is divided into three main parts apart from the introductory one. The first part, entitled 'Constitutionalism, Human Rights, and Social Empowerment' contains seven chapters, with the lead chapter written by Prof. Upendra Baxi. The second part, entitled 'Governance, Development, and Human Rights' contains seven chapters, one chapter by Raj Kumar covering the areas of Governance, one by Arjun Sengupta on the right to development and the rest on different dimensions on human rights. The third part entitled 'Criminal Justice, Victim Justice, and Women's Empowerment' has six chapters, the first three covering the areas of criminal justice, the next two on victimology and the last one on sexual harassment. The diverse areas of human rights in the development of constitutionalism in India have been very well captured in this book.

In the first chapter, Prof. Baxi paid rich and glowing tributes to Justice Iyer, who according to him, led the renaissance of the judicial process and power, which he did along with Justices P. N. Bhagwati, O. Chinnappa Reddy and D. A. Desai. The role of judges in the Supreme Court in general, and the achievements of Justice Iyer in the quest of a 'higher law', moulding a few statutory rights into constitutional rights, in expanding 'substantive due process' and his engagement with the future of human rights in a globalizing India have been very well captured by Prof. Baxi. While highlighting the issues between subaltern and dominant constitutionalism, Prof Baxi recalled Justice Iyer's commitment in the servicing of the subaltern constitutionalism which he has substantiated through seven illustrative stages of development in the judicial process in India. This chapter highlights the achievements of the courts in empowering the vast majority of the people in India through various techniques by the courts. While this chapter is very interesting to read, it still remains to be seen as to how Prof.

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Baxi's contribution would communicate to the NGOs, the common man and other readers for want of plain English.

The second chapter by Mahendra P. Singh, on 'Constitutionalization and Realization of Human Rights in India' traces the origin of the International Bill of Rights, the pre-independent developments that paved way for fundamental rights under the Indian Constitution as well as the dynamics among the fundamental rights, directive principles of state policy and fundamental duties very briefly. Through this survey he asserts that the fundamental rights, directive principles of state policy and fundamental duties under the Indian Constitution cover all and more than that is provided for in International Instruments. Singh makes it clear that more than the executive and the legislature, it is the judiciary that lacks the understanding of the spirit of the Constitution and its makers. Referring to a plethora of judicial pronouncements, he pointed out how an attempt has been made to balance between the civil and political rights on the one hand and socio economic rights on the other as well as the innovative expansion of the meaning of Article 21 of the Constitution. He also identified the legal and institutional developments in India that go to strengthen human rights culture in India. He pointed out with conviction that it is for the state to secure human rights whether or not individuals claim human rights against the state. Again, with conviction, he argued for the moral basis of all rights including human rights and through that to wipe out the suffering, poverty and want of the poor and the weak in the society. Towards achieving this, he believed that the democratic process alone can protect their rights better. Summing up, he reiterated that there must be a clear emphasis on social and economic rights as much as civil and political rights, both at the national and international levels.

The third chapter by Sudhir Krishnaswamy, titled 'Horizontal Application of Fundamental Rights and State Action in India', clearly brings out the need to analyse the horizontal application of rights between citizens inter se to make the constitutional aims and aspirations to remain relevant in the future as well. In doing this, Sudhir has relied upon two important developments, viz., the impact of globalization in the Indian context and the judicial trend in making the actions of private citizens accountable within the constitutional mandate. Referring to Antulay's case, he pointed out that the Supreme Court failed to offer a coherent justification under Article 32 or 12, yet granted remedy to the petitioner. Until the court evolves a different interpretation of 'other authorities' under Article 12, he adds the court cannot be a vehicle for full horizontal effect of fundamental rights as proposed by Sir William Wade. Yet, he has also pointed out that the courts should not be burdened with this role as argued by Lester and Pannick. He refers to the decisions of the Supreme Court in Vishaka and People's Union to conclude that such an approach responds to both the Constitution and the court practice.

The fourth chapter by N. Ravi on 'Freedom of the Press and the Human Rights Discourse: Managing Tensions' argues that a free media with its impact on public opinion and institutions in a democratic system can promote human rights observance. Referring to provisions from UDHR, ICCPR, European and American Conventions, he identifies six aspects of the freedom of the press. He refers to both national and international developments to highlight the tensions between the freedom of the press and human rights advocates. He also illustrates with both national and international examples as to how the press freedom, though curtailed, was able to protect human rights. According to him there are two other kinds of pressures operating outside the formal democratic system, but supported by a free press. They are the civil society along with the NGOs and international community that can exert moral pressure on the recalcitrant country. After identifying the role of the media in promoting human rights in India, Ravi spells out the areas for reform. Referring to the Supreme Court's decision, he wanted the court's order against allowing intolerant groups to suppress dissenting voice be enforced in letter and spirit.

The fifth chapter by Vikram Raghavan on 'Reflections on Free Speech and Broadcasting in India', he has identified the radical transformation that has taken place since 1990s in the area of broadcasting. He points out through the constitutional framework and the Supreme Court's decisions the providing of fundamental right of access to government's broadcasting facilities even prior to its deregulation. Through three judicial decisions, starting from Odyssey's case, he points out the emergence of India's free speech jurisprudence as well as for not providing the monopoly over radio frequencies to the state. He concludes by balancing restriction on broadcasting services and the need to further strengthen fundamental rights with a bias towards constitutional guarantee for broadcasting as a fundamental right.

The sixth chapter by Parmanand Singh on 'Equality and Compensatory Discrimination: the Indian Experience' provides an assessment of contemporary developments on a burning issue, reservations, that is based on a caste system. He refers to a number of judicial decisions on the issue of reservation as well as constitutional amendments, and the consequence of the tussle between the Supreme Court and the Parliament on this issue. He emphasizes on the 'special provisions' rather than the reservation that is used by the political class to their advantage. While reservation has produced a small elite among groups, it has failed to achieve the desired group mobility. He suggests that the long range developmental measures may assist in withdrawing reservation over a period of time and if not done, there will be a constant threat of expansion of caste and communal quotas.

The seventh chapter by Raj Kumar on 'Corruption and its Impact on Human Rights and the Rule of Law' provides an overview of the problem of

corruption in India and its consequences on governance. He examines the problem of corruption from a human rights perspective with the help of statistics which has not been discussed by many writers on human rights or prevention of corruption. The profound effect of corruption on rule of law and democracy, as well as the need to empower Indian citizenry to fight corruption are discussed in this chapter. According to him, arbitrariness in decision making, discrimination in administration, abuse of discretion and unpredictability in law enforcement violate the principles of rule of law. He seems to have provided a role to the judiciary and the NHRC to fight corruption and the need for galvanizing the media and civil society. He has aptly mentioned the impact of the Right to Information Act in this venture that could be easily verified from various reports on this issue.

The eighth chapter by Arjun Sengupta on 'The Right to Development and its Implications for Governance Reforms in India', explains how in the first three decades or so the Indian planners focused on nation building with politics and economics intertwined into the process. He explains how in the last twenty five years the focus on development thinking has undergone substantial change, ushering in the concern with accelerating improvement of well-being of the people that came to be recognized as the principal purpose of development. He further explains clearly the evolution of human right to development at the national and international levels till up to the 1986 Declaration of the Right to Development and beyond. Interestingly, he avoids the use of duty, yet has brought out effectively the relationship between human rights and obligations and shifted this obligation on to the state authorities to adopt a development policy carried out with equity, participation and accountability at both micro and macro levels. Assessing further development in international law, he has clearly brought out international obligation in the globalized world to spell out a new paradigm of governance, accountability and obligation in relation to principles and practices of human rights.

The ninth chapter by Balakrishnan Rajgopal on 'Judicial Governance and the Ideology of Human Rights: Reflections from a Social Movement Perspective', uses the phrase 'social movements' in a much broader sense and observes that most of the social movements in India since 1970s have actively used the Supreme Court as part of their struggle. Yet, he laments, with the help of other findings, that the decisions of the Supreme Court and other courts have not been translated into reality for a variety of reasons. Referring to a plethora of judicial decisions, he points out the over-emphasis on civil and political rights as the cost of social, economic and cultural rights. His appreciation of inconsistency on the courts understanding to housing rights and the relevance of financial implications for enforcement seems a little overemphasized. He also captures the dynamics between civil and political rights on one side and the social, economic and cultural rights

on the other, both at the national and international levels. He opines that the contributions of Indian Supreme Court in protecting human rights show a bias against socio-economic rights of the poor and the dispossessed. He concludes by saying that the court must begin to pay more attention to emerging dimensions of socio-economic rights and that its legitimacy will depend to a large extent on its ability to offer support to social movement struggles.

The tenth chapter by Surya Deva on 'Globalization and its Impact on the Realization of Human Rights: Indian Perspective on a Global Canvas', briefly defines the process of globalization and identifies the interaction of the process of globalization with human rights which according to him could affect human rights in many ways. The different branches of government in India, though conscious of their responsibility towards human rights obligation under the Constitution, have left a lot more to be done by them towards better protection of human rights. In this, he has appreciated the role of judiciary in comparison to other branches. He refers to many judicial decisions in support of this role by judiciary, yet observes that on occasions even the Supreme Court has been influenced by the liberalization at the cost of human rights. He also presents three strategies and three guiding principles towards ensuring that human rights are neither forgotten not hijacked by market forces. The three guiding principles are well presented viz., sustainable development, duty of humanity-fraternity and a corporate culture of human rights. He observes that globalization is to be harnessed to suit human rights interests. His summing up in relation to Gandhian ideology deserves appreciation.

The eleventh chapter by Arun Tiruvangadam on 'The Global Dialogue Among Courts: Social Rights Jurisprudence of the Supreme Court of India from a Comparative Perspective', focuses on trans-judicial influences between India and South Africa in the area of social rights. He has described the constitutional basis and judicial interpretation of social rights under the Indian and South African Constitutions. Citing a plethora of decisions, he explains the approach of the Indian Supreme Court in realizing the social rights like housing, education, health etc., Assessing the importance and relevance of public interest litigation, Arun observes that the challenge for the Supreme Court is to ensure that its orders in social rights cases are successfully monitored and implemented. With a few judicial decisions from India and South Africa analysed critically in the social rights perspective, Arun provides a comparative reflection on the role of courts. He laments that while the South African Constitutional Court has relied extensively on the decisions of the Supreme Court of India, the reverse is not true and hopes that the Indian Supreme Court also would be benefited by referring to the reasoning of the South African Constitutional Court as well.

The twelfth chapter by Charu Sharma on 'Human Rights and Environmental Wrongs: Integrating the Right to Environment and

Developmental Justice in the Indian Constitution', observes that in the developing world, environment will always be placed at the low end of the spectrum of fundamental rights and whenever it does receive priority somewhere, the rights of many will be trampled. He explores the link between human rights and environmental justice as meted out by the courts and how international legal regime has affected the judicial decision making. He refers to the interpretations of the Supreme Court in expanding the meaning and scope of Article 21. He reiterates that the achievement of objective human rights is directly linked with achievement of meaningful environmental rights.

The next chapter by Venkat Iyer on 'The Human Rights Movement: Time to Turn the Searchlight Inwards' points out that human rights remain a deeply controversial issue, an issue which has divided people as much as it has united them. He feels that apart from standard setting, there is a need to recognize what has been achieved in the trans-border enforcement of human rights through regional mechanisms and other institutions set up for this purpose during the past three or four decades that has resulted in a greater awareness among the people in the world today of the importance of protecting and promoting human rights. He goes on to observe that the concept of human rights is an evolving concept and any change has to be gradual rather than revolutionary, an approach ignored by many contemporary human rights activists. He points out that global consensus on human rights is still fragile and there are inconsistencies in the articulation of the human rights ideas and principles. His observations that 'common sense would dictate that human rights violations do not emanate from government alone and that violence by private groups is just as destructive of freedom and human security' and his advice to human rights activists not to let their zeal undermine those basic notions of fair play and reasonableness which are the common currency of all civilized societies, deserves appreciation.

The Fourteenth chapter by Smita Narula on 'Criminal Injustice: Impunity for Communal Violence in India', narrates the communal violence that shook our nation and the complicity of the police force during such violence. The ineffectiveness and inefficiency of both the police and prosecution are highlighted. Referring to a few cases, she makes out a specific role for the judiciary and the NHRC. Based on the ground realities that go against human rights, she suggests the need for reforms in the criminal justice system, police reforms as well as improved and effective role for the prosecutors in criminal cases, and these seem to have the central place among policy makers, judiciary and the general public.

The fifteenth chapter by Prof. B. B. Pande on 'Criminality of the Marginalized Sections or the Lumpen-Proletariat Criminality: Critical Perspectives', explains how groups get marginalized on economic, social factors and even geographical location. He also explains the specific

problems faced by theses marginalized criminals within the existing criminal justice system and emphasizes the need to change the policy of criminalization and has made a few concrete suggestions as well.

The sixteenth chapter by Prof. N. R. Madhava Menon on 'Towards Making Criminal Justice Human Rights-Friendly: Policy Choices and Institutional Strategies' explains how the existing system involves the use of coercive power by the State and the need to place appropriate checks on such power. His rich experience in the field of criminal law and as a member of Justice Malimath Committee on Criminal Justice Reforms, enables him to argue in favour of balancing rights with the security concerns of the state. He refers to the Preventive Detention laws as well as the role played by the NHRC in India. Relying on a few provisions of the Constitution, Menon argues in favour of setting minimum human rights standards in dealing with such offenders. The need for reclassification of crimes, rights of victims in criminal proceedings, use of scientific methods in investigation, training for enhanced professionalism and efficiency as well as the need for reforms in sentencing and corrections are highlighted by him in this chapter. Pointing out corruption as a threat to human rights he argues that reforms in criminal justice system should not be left to politicians and the government alone, he wants every right thinking person committed to rule of law and human rights to organize, educate and agitate till the state apparatus for criminal justice is cleansed of the scourge of corruption.

The seventeenth chapter by K. Chockalingam on 'Victimology and Victim Justice: Human Rights Perspectives' examines the development of victimology and victim justice at national and international levels. Based on theoretical analysis, he has brought out the international developments in victimology and victim concerns. Again, referring to the international developments, he emphasizes the need to reform criminal justice system to pave way for the victims' rights in criminal proceedings as well as their human rights. He also refers to the developments in India through the judicial decisions, committees and commissions and emphasizes on the need for creating awareness on justice to victims as well as a national legislation for victim justice.

The eighteenth chapter by Lutz Oette on 'India's International Obligations Towards Victims of Human Rights Violations: Implementation in Domestic Law and Practice' emphasizes on the change in the content of international law which now recognizes the individual also as a subject of that branch of law, and advances the argument in favour of the right in international law to reparation for human rights violations. The author also identifies the ground realities within domestic law in the matter of obtaining reparation for human rights violations. Referring to India's international obligations, the author describes that India's laws fall short of enforcing accountability for serious human rights violations in several respects and explains the same briefly. The remedies available under the

Constitution, statutory and common law, judicial decisions as well as alternative avenues available like the NHRC have been explained in detail. Summing up, the author identifies two crucial areas, first, the recognition of victim's right to reparation, and second the need for an institutional set up, to be addressed to tackle human rights violations in India.

The concluding chapter by D. K. Srivastava on 'Sexual Harassment and Violence against Women in India: Constitutional and Legal Perspectives' describes the legal response to sexual harassment in India initially, and the response of the Supreme Court in Vishaka's case. In doing so, reference has been made to the provisions of the Indian Constitution, statutes as well as the judicial response to sexual harassment based on which the Sexual Harassment of Women at Workplace (Prevention) Bill, 2003 was drafted by the National Commission for Women. This chapter concludes with a comparative analysis of laws on sexual harassment and decisions in other jurisdictions.

The volume with nineteen chapters covering various aspects of human rights law and in a comparative perspective probably could not cover many other important groups whose rights are violated throughout the globe, like the refugees, displaced persons, children, migrants, elderly, disabled and the like. Similarly, this volume does not reflect on the importance or relevance of other national institutions, barring a scanty reference to NHRC. Some of the regional issues peculiar to South Asia and the need for evolving a regional mechanism as in Europe or Americas could have further strengthened this volume.

On the positive side, this volume covers a wide range of issues with accompanying critical analysis. Several new dimensions on human rights have been incorporated along with comparative inputs that make this volume interesting to read. For students, teachers and researchers in the field of human rights law, this book provides a vast reference to relevant source materials, statutes and judicial decisions, not only from India but also from other jurisdictions. This volume has a reasonably good coverage on international developments on various issues discussed on human rights. Discussion on the impact of globalization on human rights and how best we could use globalization to further strengthen human rights make this book unique from the opposite perspective presented in other books. Organization of the contributions, by and large in thematic sequence, with enormous references would provide the teachers, researchers, students, NGOs, lawyers and judges a wonderful resource book. It is hoped and desired that the book is prescribed as a text in many of the universities in India and abroad both for the undergraduate and post graduate students. The publication of this book is very timely and deserves appreciation from all those who are involved in Human Rights Law teaching and research and practice.

Setting an Ambitious Agenda for Human Rights Discourse–A Review of Prof. Upendra Baxi's Human Rights in a Posthuman World-Critical Essays

*Prof. B.B. Pande**

The debates around human rights are far from exhausted, particularly in countries like India where the human rights theme still remain under-explored and under-exposed as a public issue. The main reasons for such a state of things are : First, unlike the post-industrialized west where human rights are accorded primacy as a normative system, here they are at best treated as 'weak' norms in comparison to religion or traditions that still hold the sway, Second, the deep disjuncture between human rights rhetoric and ground level existential realities leading to a widespread skepticism about the very existence of human rights, and, Third, the lack of human rights-orientation and commitment amidst the state functionaries who are assigned the responsibility of implementing human rights, leading to an all round weak human rights culture in these societies.

Professor Upendra Baxi's latest endeavour (August, 2007) on human rights (his earlier classic on the same theme titled : The Future of Human Rights, OUP, Delhi (2002) has already gone into second edition in 2006) titled : Human Rights in a Posthuman World : Critical Essays[1] (hereinafter Posthuman) has expanded the human rights debate much beyond the traditional understanding of the subject, as the title itself suggests. In the words of the author: "while human rights theory and movement remain fully engaged with discourse concerning human and social development, its engagement with 'terror' is nascent and the notion of posthuman remains below the radar screen of human rights theory."[2] The author does not rest content even with the present expanded agenda but pushes his exploratory yearnings further when he states: "relating the Posthuman discourse to theory of classical and contemporary human rights remains a formidable task, in itself deserving at least a series of separate volumes.... The tasks of understanding 'human rights' in the discourse of posthuman may not any longer be 'safely' deferred, at least by theorists of and about human rights."[3]

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[1] Baxi, Upendra, Oxford University Press, Delhi, 2007

[2] Posthuman, Preface at p.ix

[3] Posthuman, Preface at p. xiii

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Thus, the Posthuman will be reviewed in terms of the 'ambitious agenda' set in the Preface and also relate it to the human rights discourse that would be most relevant for our society (not assuming that there is an inherent conflict between 'ambitious agenda' and 'socially relevant'). Presently, the review would focus primarily on the issues relating to (i) the theory of human rights, (ii) relating development to human rights and (iii) futuristic expansions of human rights.

(i) Concerning Human Rights Theory :

Posthuman has carried an elaborate discussion relating to the need for a theory of human rights in Chapter 1. The critique of human rights theory, begins with the ideas of classicalist like Jermy Bentham and comes down to the post-modernist thinking. The author in a teacher like exposition of the basic elements of theory such as 'producers', 'consumers', 'theory aversion', 'theory resistance' takes us to this conclusion : "The prime function of the contemporary human rights theory is to persuade oneself and everyone in a territorially bounded society/community that the human is the entity to which everyone owes duties of equal respect and full recognition of worth, regardless of sex, religion, race, residence and like features. Never mind, the circulatory or self referentiality in which it is the spread of belief in human rights that adds up to, or establishes the human. What matters, at the end of the day, are forms of rhetoric that induce change in common beliefs and sentiments."[4] Further strengthening the theory building exercise in Chapter 2 the author analyses Amartya Sen's 'Elements of a Theory of Human Rights'. The author gives a useful elaboration of Sen's contribution by making a distinction between social theory of human rights (terms it TOHR) and social theory about human rights (terms it TAHR). THOR concerns primarily about justifications for human rights and relates to ethical sphere, TAHR clarifies different relationship between rights and allied notions, thus belong to juridico-political sphere. TOHR, according to Sen's vision, constitutes a means of ethic of understanding human rights that ought to address six issues[5], which alongwith ten features[6] go in to make Sen's theory of human rights. The authors discussions of 'The Problem of Includability' (pp. 39 to 44) touches upon the 'Positive' and 'Negative' distinction and 'Duties to Help' in the context of Sen's theory and also of the other thinkers that not only makes the discussion informative but also useful as a starting point for other human rights debates. Critically examining the ethical content of Sen's theory under the sub-heading 'What Ethics' (at p.67) the author appreciates Sen's thesis in terms of : "Goal rights systems then 'require consequentialist analysis, though they may not (be) fully consequentialist at least in the sense that justifies the pursuit of entirely 'rights-independent goals'.... Human rights are goals that advance

[4] Posthuman, at p.22

[5] Listed out in Posthuman at pp. 35-36

[6] Posthuman at pp. 48-53

capabilities and freedoms.... Not all ethical demands for rights with corresponding appropriate freedoms may be justified under ethical idea of rights. For this to happen, such claims should meet certain threshold conditions for inclusion among human rights on which society should focus."[7] However, the author rightly critiques Sen's goal rights systems in these words : "Goal rights system facilitates in important ways the broad inclusion, under the capabilities Approaches" of social and economic rights. Yet it is not always clear as to how are the threshold conditions to be fully met, or what it entails to say that others 'pay substantial attention' and 'make a material difference'? I think the questions do not always find a quietus by weights and measures type approach."[8] The issue of ethics of human rights theory is extended at a general level, beyond Sen, by raising the vital question : 'Whose Ethics?' The poser takes us to the diverse visions of human rights and also points out the limits of human rights theory. In the 'Conclusionary Remarks' chapter 2 raises the issue of various "forms of human rightlessness comprehensively caused by both design and intention of corporate governance and business conduct? Ought such a 'theory' confine itself primarily to the state-caused forms and states of human rightlessness, even in an era where the distinction, all over again, between that which constitutes the distinction between the 'state' and 'market' remains ever so nebulous"[9]

The first two chapters on theory of human rights provide a rich material for building the foundations of a meaningful human rights discourse in many societies like ours where human rights deliberation are still at a nascent stage. Also they may prove helpful in clarifying human rights related controversies that still persist even in the advanced west, as reflected in the U.S. based philosopher Martha Nussbaum's following observation: "The idea of human rights is by no means a crystal clear idea. Rights have been understood in many different ways, and difficult theoretical questions are frequently observed by the use of rights language, which can give the illusion of agreement where there is deep philosophical disagreement. People differ about what the basis of rights claim is: rationality, sentience, and mere life have all had their defenders. They differ, too, whether rights are pre-political or artifacts of laws and institutions."[10]

(ii) Relating Development to Human Rights

The theme of development is discussed in chapters 3 and 4, titled as 'The Uncanny Idea of Development', and 'The Development of the Right to Development', respectively. The 'Meanings and Contexts' of development

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[7] Posthuman at p 69 (citations within the quote omitted)

[8] Posthuman at p. 70

[9] Posthuman at p.74

[10] Nussbaum, Martha.C., Frontiere of Justice: Disability, Nationality, Species Membership, OUP, Delhi, 2007 at pp.284-85.

have been most elaborately discussed in chapter 1.[11] The author has discussed the twelve aspects of planned social change or development in pages 79 to 93, as the constructive arena, the agency/representation arena, the relative autonomy/dependence arena, the distributional arena, the time dimension, the space of development, the cost of developmental judgments/ decisions, relating development to justice, 'good-governance' or 'global rule of law' or 'human rights based' development indicators, new governance styles or civic virtue indicators, governance learning curve type issues, relationship with science and technology etc. Each of these aspects of development raises significant debates relating to the theme of development generally. The author has taken up the third world dimension, though in the international politics dimension, to the developmental debate for a detailed discussion (pp.93-105).

The authors' inevitable style of coining terms like 'developmental complicities'(p.115), 'developmentalism'(p.116) and 'developers' and 'developees' is extremely helpful in grasping the essence of the complicated theme of development, the authors' way of making a distinction between 'development' and 'developmentalism' thus: 'Development' as a multidimentional and ubiquitous process of social transformation and 'developmentalism' as a dominant ideology, or as several histories of mentality, of directed social change" or "Developmentalism may be broadly described as the discourse of power, that is the official mindset of key globally networked policy and political actors dedicated to the pursuit of economic growth", (p.116) explains a complex issue in a very effective manner. No doubt the author terms developmentalism:" as a source of the manifold practices of 'reasoned' justification of radical evil." (p.118), thereby displaying a clear bias against it. In chapter 4 the author discusses around the right to development guaranteed by the United Nations Declaration and adopted by the Commission on Human Rights in 1986. The author discusses critically how the global governance turned the right to development into "yet another trick". The author's powerful critique of the treatment meted-out to right to development has been articulated very well in 'Five silences and collective Responsibility' in these words: "The UNDRD silences occur in many modes. The first occurs in ennunciative hiatus between the preamble and the text of the Declaration; the second in the exclusion of constituencies of right bearers; the third in the diffuseness of identification (underdetermination) of the bearers of obligation; the fourth; in contrast, the over-determination of goals themselves; and the fifth by way of manifest gaps between proclaimed goals and means through which these may be reached".[12]

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[11] The wide sweep of the ideas incorporated in this chapter can be had from the list of 47 cent readings quoted in footnote one itself.

[12] Posthuman at p.135

Towards the end of chapter 4 a discussion relating to the contribution of the UN Independent Expert is undertaken; which according to the author lays too much emphasis on the 'language of mathematical economics'(p.152). The author closes the chapter with a radical idea that treats deliberate causing of mal-development as a crime against right to development. The author has identified eight categories of such crimes (at p.153) for which he finds the state, the multinational corporations international finance institutions as the main perpetrators. But would the use of strong language alone suffice to help the cause of furthering right to development? I am raising this question mainly because it has lot of bearing for our society. As a matter of fact both these chapters have special relevance of societies like ours where, both 'development' and right to development are vitally important and sadly ignored still.

(iii) Futuristic Expansions of Human Rights

Chapters 5 and 6 are devoted to two futuristic expansions of human rights, namely 'Human Rights in Times of Terror' and 'The Post human and Human Rights'

The relationship between terror and human right begins with following poser: "How then international and human rights lawyers/lawpersons may make sense of relationship between 'Terror' and human rights is a vexed question raised by infliction of indiscriminate violence by insurgent non-state actors against civilian populations and sites ever justified as a means of restoration of their own human rights and making these secure for the future? And how far may collateral damage be justified under the principle of double effect."[13] The subsequent pages are devoted to the discussion relating to the criticisms and justifications of 'War of terror' and 'War on terror'. In the context of human rights the relevant issues are: Whether there are any types of war of terror that lead to forfeiture of the individuals claim to human rights? To what extent State enjoys immunity for actions undertaken in response to terrorism? Thus, could some of the terror times' tales not have been brought under the state sponsored 'rightlessness' discussion under the earlier chapter on development?

The last chapter on 'the Posthuman and Human Rights' is the essence of the expansion enterprise on the human rights horizon. The author locates the origins of this chapter in his earlier work: Future of Human Rights and admits his resistance to the posthuman ideas: "I must now confess that understanding the posthuman entails the redressal of several orders of reading deficits. The Future dwelt on the implications of biotechnologies and digitalization for human rights but did not extend the grasp to nanotechnology, neurobiology, or cognitive sciences."[14] Accepting the new human rights agenda the author displays, not a mere awareness, but a

[13] Posthuman at p.165 (footnote within the quote omitted)

[14] Posthuman at p.200

whole hearted acceptance of posthuman in these words: "These new knowledges re-situate human subjectivity and agency in terms of what has been named as 'digital philosophy', as providing answers to metaphysical questions' by way of the thought that 'the universe is discrete rather than continuous, digital rather than analog' and further that 'it can be understood as software running on an unfathomable universal digital computer"[15] The author adumberates the issues likely to be impacted by the implication of posthuman most, such as: 'The Dying, or the Re-birthing, of the Human?'(pp.202-205), 'The Loss of Subjectivity'(pp.205-207), 'The Apocalyptic 'Construction' of the 'Posthuman"(pp 208-214) and 'The 'Benign' Posthuman' (pp.214-220) etc. But, by every standard, this is a very ambitious agenda for many of us still.

In the end after reviewing the six chapters that focus mainly on four issues, namely human rights theory, human rights and development, human rights in times of terror and human rights and modern technologies, and acknowledging the rich contributions of the Posthuman to human rights knowledge base generally, I would take the liberty of reminding the author of my long standing two basic disagreements with him: First, the missing subaltern perspective, both in the theoretical and applied aspects. Though the references to globalization process and macro economic policy debates ultimately lead to the last-man, but when you perceive human rights world from the 'worms-eye view' side emphasis tends to change, along with the nature of discourse itself. For example what kind of human rights issues arise on the face of continued child labour even in hazardous processes or sale of children or death by starvation of one of the three sisters who had remained without food for weeks in the Metropolitan city of Delhi? Second, lack of concern for the level of the common human rights student and teachers, particularly those who are supposed to teach human rights as a course in the Faculties of Law, Political Science, International Relations, Social Work and now, the newly created Departments of Human Rights.[16] It is true that a scholar has to constantly delve at the highest level to create knowledge and be in touch with others involved in similar enterprise but that does not completely absolve the scholar of his responsibility towards those who are at the day to day, mundane levels of the subject. After all it is these footsoldiers of the subject who shoulder the burden of creating basic knowledge on the subject. Is the mission of knowledge to 'drive in' or 'drive out' the new entrants? Therefore, unless the abstract or Nirgun/Nirakaar human rights knowledge is made more Sagun or Saakar for the common reader/teacher, the knowledge remains out of reach for the large sections. The big question is what would have made Posthuman reach-out to the common reader or make it more intelligible to him?

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[15] Posthuman at pp.200-201.(footnote within the quote omitted)

[16] The National Human Rights Commission has already taken significant initiatives in pushing the human rights education idea by developing courses for the University and pre-University levels of education. It is hoped that this will ultimately lead to creation of Departments and specialized centers for human rights education.

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